

**MURFREESBORO CITY COUNCIL**  
**Regular Meeting Agenda**  
**Council Chambers – 6:00 PM**  
**June 6, 2024**

**PRAYER**

Mr. Shawn Wright

**PLEDGE OF ALLEGIANCE**

**Public Comment on Actionable Agenda Items**

**Consent Agenda**

1. Change Order 511 Eventide Drive Housing Rehabilitation (Community Development)
2. Murfreesboro Transit Center Contingency Allowance Allocation (Project Development)
3. Asphalt and Concrete Purchase Report (Street)
4. Cumberland International Amendment 2 (Water Resources)
5. Unifirst Contract First Amendment (Water Resources)
6. Amendment to Renew Memorandum of Understanding with MTSU for Stormwater Education Services (Water Resources)
7. Asphalt Purchases Report (Water Resources)
8. Purchase Itron's Temetra Portal (Water Resources)

**Old Business**

Ordinance

9. Ordinance 24-O-12 Amendment to the International Energy Conservation Code-Amended (2nd and Final Reading)(Building & Codes)
10. Ordinance 24-O-11 Setting FY25 Water and Sewer Rate (2nd and final reading) (Water Resources)

**New Business**

Ordinance

11. FY25 Public Hearing and Related Ordinances (Administration)
  - a. Public Hearing: Adoption of Proposed FY25 Budget
  - b. First Reading: Ordinance 24-O-14
  - c. First Reading: Ordinance 24-O-15
12. Ordinance 24-O-19 School Board Member Compensation (Legal)  
First Reading: Ordinance 24-O-19
13. Ordinance 24-O-17 City Code Ch 33-2 & 50 Changes (Water Resources)

Resolution

14. Resolution 24-R-21 Schools FY24 Budget Amendment #10 (Schools)
15. Resolution 24-R-20 WRRF Biosolids Dryer Construction Costs Reimbursement (Water Resources)

### On Motion

16. Updated Commercial Operator Lease Agreement with Mike Jones Aircraft Sales (Airport)
17. Amended Contract for Professional Management and Administrative Services (Community Development)
18. Contract Amendment Patterson Park Ductwork Replacement (Facilities)
19. Professional Services Contract Amendment Old Fort Tennis Court Renovations (Facilities)
20. Use of Competitive Sealed Proposals for Human Resources Procurement (Purchasing)
21. Master Services Agreements for Pre-Qualified Building Contractors and Trades Contractors (Purchasing)
22. Dr. Martin Luther King Jr. Blvd. Phase 2 Sidewalk Project Amendment No. 4 TDOT Contract (Transportation)
23. Memorial Boulevard (SR 10) Traffic Signal Improvements Contract Amendment No. 1 with TDOT (Transportation)
24. ADS Professional Services Contract 2nd Amendment (Water Resources)
25. WRRF Biosolids Dryer RPR Engineering Task Order Approval (Water Resources)
26. WRRF Biosolids Dryer Construction Contract Approval (Water Resources)
27. WRRF Biosolids Dryer Geotechnical Testing Task Order Approval (Water Resources)

### **Board & Commission Appointments**

28. Board of Electrical Examiners (Administration)

### **Licensing**

29. Beer Permits (Finance)

### **Payment of Statements**

### **Other Business**

### **Adjourn**



# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Change Order 511 Eventide Drive Housing Rehabilitation

**Department:** Community Development

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Change order through the Community Development Housing Rehabilitation program.

**Staff Recommendation**

Approve the change order for \$4,961.

**Background Information**

CDBG funded were used to repair a residence at 511 Eventide Drive to maintain its habitability. The existing roof decking was deteriorated due to attic heat and had to be replaced. A credit is included in this change order time and material savings for cleaning out the garage and re-using flashing around chimney.

**Council Priorities Served**

*Responsible Budgeting*

Utilizing federal funds to provide community-based assistance is a cost-effective means of addressing the needs of the community.

**Fiscal Impact**

The expenditure, \$4,961, is funded by CDBG funds allocated to the City's Housing Rehabilitation Program.

**CHANGE ORDER #3 TO  
CONTRACT FOR REHABILITATION – CDBG  
FOR MURFREESBORO COMMUNITY DEVELOPMENT DEPARTMENT**

This **Change Order #3** for Contract for Rehabilitation – CDBG for the City of Murfreesboro, acting through its Community Development Department, dated January 11, 2024 (“Contract”) is effective as of the date of the last party to sign below, by and between the City of Murfreesboro (“City”), a municipal corporation of the State of Tennessee, as Grantee; Monica Himes (“Owner”); and David Underhill (“Contractor”).

WHEREAS, Owner and Contractor, with City’s approval, entered into the Contract for certain rehabilitation services at 511 Eventide Drive, Murfreesboro, TN;

WHEREAS, pursuant to Section VIII and Exhibit B of the Contract, said Contract may be modified by written change order executed by all parties and approval by the City Council; and

WHEREAS, on March 14, 2024, Owner, Contractor, and City entered into Change Order #1; and

WHEREAS, on May 3, 2024, Owner, Contractor, and City entered into Change Order #2; and

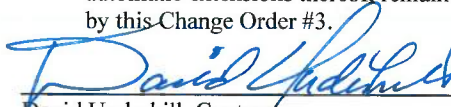
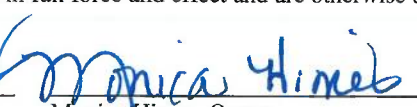
WHEREAS, the parties desire to amend the Contract to include the removal and disposal of all decking from the roof of house and replace with new ½ inch thick OSB plywood and include deductions for the cost of installing new counterflashing around chimney and the cleaning out of the garage as listed below;

NOW, THEREFORE, Owner and Contractor hereby amend the Contract as follows:

- The parties agree to include the additional scope of work as follows as follows:

ITEM	COST
Original Project Cost	\$55,000.00
Change Order #1	\$7,200.00
Change Order #2	\$1,560.00
Change Order #3	\$4,961.00
1) Remove all decking from roof of house, and replace with new ½ inch thick OSB plywood. Haul off debris.	
2) Deduct cost of installing new counterflashing around chimney.	
3) Deduct for cleaning out garage, original quote was based on time and material.	
<b>Change Order #3 Total</b>	<b>\$4,961.00</b>
<b>New Project Cost</b>	<b>\$68,721.00</b>

- All other terms of the Contract, Change Order #1 and Change Order #2, including automatic extensions thereof, remain in full force and effect and are otherwise unchanged by this Change Order #3.

  
 David Underhill, Contractor
   
 Monica Himes, Owner

Date: 5.22.24

APPROVED BY CITY:  
 \_\_\_\_\_  
 Name: Shane McFarland  
 Title: Mayor

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

APPROVED AS TO FORM:  
 \_\_\_\_\_  
 Name: Adam Tucker  
 Title: City Attorney

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

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Murfreesboro Transit Center Contingency Allowance Allocation

**Department:** Project Development Department

**Presented by:** Scott Elliott, Manager of Project Development

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Report of Murfreesboro Transit Center contract contingency allowance.

**Staff Recommendation**

The contingency report of use of the allowance is provided as information only.

**Background Information**

The attached change control log identifies the change requests, through change control forms, and tracks the allowance allocations issued through field work change directives. Note that this work change directive no. 6 does not change the contract price or contract time. The final contract price and number of working days will be adjusted accordingly in the final balancing change order at the end of the project.

**Council Priorities Served**

*Expand infrastructure*

Constructing a Transit Center will allow for continued improvement and expansion of transit services.

**Fiscal Impact**

The amount of the credit, \$18,166, is added back to the contingency allowance with no change in the total contract amount of \$17,845,843.

**Attachments**

Change Control Log and Forms

**AIA****Document G701™ – 2017****Change Order****PROJECT: (name and address)**Murfreesboro Transit Center  
324 New Salem Highway  
Murfreesboro , Tennessee 37129**CONTRACT INFORMATION:**Contract For: Murfreesboro Transit  
Center  
Date:**CHANGE ORDER INFORMATION:**Change Order Number: 006  
Date: 4/30/2024**OWNER: (name and address)**CITY OF MURFREESBORO  
111 WEST VINE STREET  
MURFREESBORO, Tennessee 37130**ARCHITECT: (name and address)**HDR, INC.  
120 BRENTWOOD COMMONS  
WAY#525  
BRENTWOOD, Tennessee 37027**TO CONTRACTOR: (name and address)**Rock City Construction Company, LLC  
1885 General George Patton Drive  
Franklin, Tennessee 37067**THE CONTRACT IS CHANGED AS FOLLOWS:**Total Amount of this Credit CO= \$18,166  
Owner Contingency after CO= \$630,187.93

PCO 012 Bus Maintenance Building foundation underdrain credit	\$0.00
PCO 013 Bus Maintenance Underground Piping Credit	\$0.00

The original Contract Sum was	\$ 17,145,843.00
The net change by previously authorized Change Orders	\$ 700,000.00
The Contract Sum prior to this Change Order was	\$ 17,845,843.00
The Contract Sum will would be changed by this Change Order in the amount of	\$ 0.00
The new Contract Sum including this Change Order will be	\$ 17,845,843.00
The Contract Time will by	
The new date Substantial Completion will be	

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

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

HDR, INC.

**ARCHITECT (Firm name)****SIGNATURE**

Neal Corbett vice President

**PRINTED NAME AND TITLE**

5/14/2024

**DATE**

Rock City Construction Company, LLC

**CONTRACTOR (Firm name)****SIGNATURE**

Joe Hyken Project Manager

**PRINTED NAME AND TITLE**

5/14/2024

**DATE**

CITY OF MURFREESBORO

**OWNER (Firm Name)****SIGNATURE**

Craig Tindall, City Manager

**PRINTED NAME AND TITLE**

5/23/2024

**DATE**

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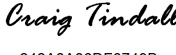
User Notes:

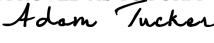
(1932678762)

**APPROVED AS TO FORM**

Adam F. Tucker, City Attorney

## CHANGE CONTROL FORM NO. 6

<b>Date Issued:</b>	May 14, 2024	<b>Project:</b>	Murfreesboro Transit Center
<b>Project No.:</b>	ITB-07-2023	<b>Contractor:</b>	Rock City Construction Co LLC
This Document is a: <input type="checkbox"/> Request for Proposal <input type="checkbox"/> Field Order <input checked="" type="checkbox"/> Work Change Directive <input type="checkbox"/> Contractor Change Request			
<b>Description of Change</b> <i>(attach necessary supporting documentation):</i> PCO 012 Bus Maintenance Building foundation underdrain credit. PCO 013 Bus Maintenance underground piping credit. Add \$18,166.00 back to the Owner's Contingency. The Owner's contingency will be \$630,187.93 after the credit.			
<b>Initiated By:</b> <input checked="" type="checkbox"/> Contractor <input type="checkbox"/> Engineer <input type="checkbox"/> Owner <input type="checkbox"/> Resident Project Representative			
<b>Drawing(s) Reference:</b> N/A		<b>Spec. Reference:</b> N/A	
<b>RFI Reference:</b> N/A		<b>Date of RFI:</b> N/A	
<b>Attachments:</b> CO # 6			
<b>REQUEST FOR PROPOSAL/CHANGE REQUEST</b>			
We propose to perform the Work or make the Claim described above for the following change in Contract Cost and Contract Times:			
<input checked="" type="checkbox"/> No Change in Contract Amount is Required		<input type="checkbox"/> A Change in Contract Amount is Required:	
<input checked="" type="checkbox"/> No Change in Contract Time is required		<input type="checkbox"/> A Change in Contract Time is Required:	
<b>WORK CHANGE DIRECTIVE</b>			
You are directed to proceed to make the changes to the Work described in this Work Change Directive. Any change in Contract Price or Contract Time will be determined in accordance with the General Conditions.			
<b>FIELD ORDER</b>			
This Field Order issued in accordance with the General Conditions for minor changes in the Work without changes in the Contract Price or Contract Time. If you consider that a change in Contract Price or Contract Times is required, notify the Engineer immediately and before proceeding with the proposed Work.			
<b>AUTHORIZING SIGNATURES</b>			
<b>ENGINEER:</b> DocuSigned by:  _____ <small>0F37AE7D206B425...</small> Neal Corbett _____ (print name) Date: 5/23/2024 _____	<b>CONTRACTOR:</b> DocuSigned by:  _____ <small>C5E9E8166E5F402...</small> Joe Hyken _____ (print name) Date: 5/21/2024 _____	<b>OWNER:</b> DocuSigned by:  _____ <small>242A8A88DF8749B...</small> Craig Tindall _____ (print name) Date: 5/23/2024 _____	<b>RESIDENT PROJECT REPRESENTATIVE:</b> _____ _____ (print name) Date: _____

DocuSigned by:  
 APPROVED AS TO FORM  
  
 \_\_\_\_\_  
43A2935E51F9401  
 Adam P. Tucker, City Attorney

**CHANGE CONTROL LOG**

**Owner:** City of Murfreesboro  
**Project Name:** Murfreesboro Transit Center  
**Contract No.:** ITB-07-2023  
**Arch/Eng:** HDR Engineering, Inc.  
**Contractor:** Rock City Construction Co LLC

<b>Original Contract Amount:</b>	\$ 17,145,843.00
<b>Adjusted Contract Amount:</b>	\$ 17,845,843.00
<b>Contingency Allowance Amount:</b>	\$ 700,000.00
<b>Adjusted Contingency Allowance Amount:</b>	\$ 630,187.93

CCF No.	Brief Description of Change Item	Change Type	Initial By	Status (Approved/ Pending/ Rejected)	Approved By:	Date From/ To Contractor	Date Submitted to Owner	Date Approved/ Rejected by Owner	Contract Time Extension (days)	Add/ Deduct (+/-) from Allowance	Cumulative Add/ Deduct (+/-) from contract	Adjusted Contingency Amount
1	ADD-Owners Contingency Allowance	CO	OWNER	APPROVED	Council	1/9/2024	1/9/2024	1/26/2024	0	\$ -	\$ 700,000.00	
2	ADD-MTE Fees over Allowance	CCR	CONTRACTOR	APPROVED	Craig Tindall	12/6/2023	12/6/2023	2/14/2024	0	\$ (27,121.18)	\$ -	\$ 672,878.82
3	ADD-Irrigation Change to spray heads	CCR	CONTRACTOR	APPROVED	Craig Tindall	12/6/2023	12/6/2023	2/14/2024	0	\$ (2,676.05)	\$ -	\$ 670,202.77
4	ADD-GAS Fees over Allowance	CCR	CONTRACTOR	APPROVED	Craig Tindall	1/5/2024	1/5/2024	2/14/2024	0	\$ (17,940.00)	\$ -	\$ 652,262.77
5	ADD-Communication lines new route	WCD	CONTRACTOR	APPROVED	Craig Tindall	4/2/2024	4/17/2024	4/29/2024	0	\$ (40,240.84)	\$ -	\$ 612,021.93
6	DEDUCT-PCO 12,13 Foundation and Piping credit	WCD	CONTRACTOR	APPROVED	Craig Tindall	4/30/2024	5/14/2024	5/23/2024	0	\$ 18,166.00	\$ -	\$ 630,187.93
7												
8												
9												
10												
11												
12												
13												
14												
<b>Totals</b>									<b>0</b>	<b>\$ (69,812.07)</b>	<b>\$ 700,000.00</b>	<b>\$ 630,187.93</b>

A Contract Times  
 Extension Requires  
 City Council Approval

Abbreviations  
 RFP = REQUEST FOR PROPOSAL  
 FO = FIELD ORDER  
 WCD = WORK CHANGE DIRECTIVE  
 CCR = CONTRACTOR CHANGE REQUEST



**PCO #012**

Rock City Construction Company, LLC  
 1885 General George Patton Drive  
 Franklin, Tennessee 37067  
 Phone: (615) 794-6691

**Project:** 6230020 - Murfreesboro Transit Center  
 324 New Salem Highway  
 Murfreesboro , Tennessee 37129

**DRAFT**

**Prime Contract Potential Change Order #012: Bus Maintenance Building foundation underdrain credit**

<b>TO:</b>	CITY OF MURFREESBORO 111 WEST VINE STREET MURFREESBORO, Tennessee 37130	<b>FROM:</b>	ROCK CITY CONSTRUCTION CO LLC 1885 GENERAL GEORGE PATTON DR FRANKLIN, Tennessee 37067
<b>PCO NUMBER/REVISION:</b>	012 / 0	<b>CONTRACT:</b>	1 - Murfreesboro Transit Center
<b>REQUEST RECEIVED FROM:</b>		<b>CREATED BY:</b>	Lindsey Slay (ROCK CITY CONSTRUCTION CO LLC)
<b>STATUS:</b>	Draft	<b>CREATED DATE:</b>	4/3/2024
<b>REFERENCE:</b>		<b>PRIME CONTRACT CHANGE ORDER:</b>	None
<b>FIELD CHANGE:</b>	No		
<b>LOCATION:</b>		<b>ACCOUNTING METHOD:</b>	Amount Based
<b>SCHEDULE IMPACT:</b>	0 days	<b>PAID IN FULL:</b>	No
<b>EXECUTED:</b>	No	<b>SIGNED CHANGE ORDER RECEIVED DATE:</b>	
		<b>TOTAL AMOUNT:</b>	\$0.00

**POTENTIAL CHANGE ORDER TITLE:** Bus Maintenance Building foundation underdrain credit

**CHANGE REASON:** Additional Scope

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*  
 Bus Maintenance Building foundation underdrain credit

**ATTACHMENTS:**

[Change Order #10 Murfreesboro Transit.pdf](#)

#	Budget Code	Description	Amount
1	02-02500.S SITE UTILITIES	Underdrain Credit	\$(8,240.00)
2	88-82002.U OWNERS CONTINGENCY.Undefined	Underdrain Credit	\$8,240.00
<b>Grand Total:</b>			<b>\$0.00</b>

**Neal Corbett (HDR, INC.)**  
 120 BRENTWOOD COMMONS WAY#525  
 BRENTWOOD, Tennessee 37027

**CITY OF MURFREESBORO**  
 111 WEST VINE STREET  
 MURFREESBORO, Tennessee 37130

**ROCK CITY CONSTRUCTION CO LLC**  
 1885 GENERAL GEORGE PATTON DR  
 FRANKLIN, Tennessee 37067

\_\_\_\_\_  
 SIGNATURE DATE

\_\_\_\_\_  
 SIGNATURE DATE

\_\_\_\_\_  
 SIGNATURE DATE



**Josh LeFevre Construction Company LLC**

Jackson Office  
 PO Box 10841  
 Jackson, TN 38308  
 (731) 425-9222

Nashville Office  
 2831 Hickory Hill Church Rd  
 Shelbyville, TN 37160  
 (731) 693-9324

**Change Order #10**

**General Contractor**

Rock City Construction Co.  
 1885 General George Patton Dr.  
 Franklin, TN 37067

**Project Details**

**Date:** 4/2/2024  
**G.C. Project No.:**  
**S.C. Project No.:** #2327

**Contacts**

Chris Brothers (731) 693-9324  
 Greg Fox (931) 205-7458  
 Justin Reese (931) 492-1024

**Project**

**Murfreesboro Transit**  
 324 New Salem Highway  
 Murfreesboro, TN 37129

<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
6" Perforated Underdrain	218	L.F.	\$ (30.00)	\$ (6,540.00)
Storm Cleanouts	2	EACH	\$ (850.00)	\$ (1,700.00)
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -

**Change Order Total:**

**\$ (8,240.00)**

**Rock City Construction Co.**

Signature: \_\_\_\_\_

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

**Josh LeFevre Construction**

Signature: Chris Reese

Date: 4-2-24





**PCO #013**

Rock City Construction Company, LLC  
 1885 General George Patton Drive  
 Franklin, Tennessee 37067  
 Phone: (615) 794-6691

**Project:** 6230020 - Murfreesboro Transit Center  
 324 New Salem Highway  
 Murfreesboro , Tennessee 37129

**DRAFT**

**Prime Contract Potential Change Order #013: Bus Maintenance Underground Piping Credit**

<b>TO:</b>	CITY OF MURFREESBORO 111 WEST VINE STREET MURFREESBORO, Tennessee 37130	<b>FROM:</b>	ROCK CITY CONSTRUCTION CO LLC 1885 GENERAL GEORGE PATTON DR FRANKLIN, Tennessee 37067
<b>PCO NUMBER/REVISION:</b>	013 / 0	<b>CONTRACT:</b>	1 - Murfreesboro Transit Center
<b>REQUEST RECEIVED FROM:</b>		<b>CREATED BY:</b>	Lindsey Slay (ROCK CITY CONSTRUCTION CO LLC)
<b>STATUS:</b>	Draft	<b>CREATED DATE:</b>	4/3/2024
<b>REFERENCE:</b>		<b>PRIME CONTRACT CHANGE ORDER:</b>	None
<b>FIELD CHANGE:</b>	No		
<b>LOCATION:</b>		<b>ACCOUNTING METHOD:</b>	Amount Based
<b>SCHEDULE IMPACT:</b>	0 days	<b>PAID IN FULL:</b>	No
<b>EXECUTED:</b>	No	<b>SIGNED CHANGE ORDER RECEIVED DATE:</b>	
		<b>TOTAL AMOUNT:</b>	\$0.00

**POTENTIAL CHANGE ORDER TITLE:** Bus Maintenance Underground Piping Credit

**CHANGE REASON:** Architect/Engineer Design Change

**POTENTIAL CHANGE ORDER DESCRIPTION:** *(The Contract Is Changed As Follows)*  
 Bus Maintenance Underground Piping Credit

**ATTACHMENTS:**

[1223 Mboro Transit Bus Maint pipe deduct.pdf](#)

#	Budget Code	Description	Amount
1	15-15400.S PLUMBING	Underground Piping Credit	\$(9,926.00)
2	88-82002.U OWNERS CONTINGENCY.Undefined	Underground Piping Credit	\$9,926.00
<b>Grand Total:</b>			<b>\$0.00</b>

**Neal Corbett (HDR, INC.)**  
 120 BRENTWOOD COMMONS WAY#525  
 BRENTWOOD, Tennessee 37027

**CITY OF MURFREESBORO**  
 111 WEST VINE STREET  
 MURFREESBORO, Tennessee 37130

**ROCK CITY CONSTRUCTION CO LLC**  
 1885 GENERAL GEORGE PATTON DR  
 FRANKLIN, Tennessee 37067

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

Phone (615) 890-8573

Fax (615) 890-8575

[wwplumbing@comcast.net](mailto:wwplumbing@comcast.net)

LICENSE #33785

**W. W. PLUMBING CO., INC.**

3520 HALLS HILL PIKE  
MURFREESBORO, TN 37130  
SINCE 1980

CMC-A, MU-A \$1,181,990.00 EXP DATE: 06/30/2025

*Proposal*

To **Rock City Construction**

DATE: **03/28/24**

JOB: **Murfreesboro Transit Bus Main  
Pipe deduct**

ATTN: **Joe Hyken/Lindsey Slay**

**Murfreesboro, TN**

We hereby submit specifications and estimates for:

**Deduct for material and labor at Murfreesboro Transit; Bus  
Maintenance underground piping not required, as requested**

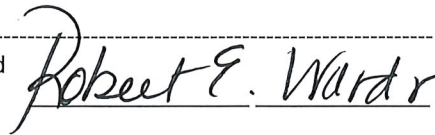
**Total deduct (\$9,926.00)**

*We Propose* hereby to furnish material and labor- complete in accordance with above specifications, for the sum of:

Payment to be as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature



Note: This proposal may be withdrawn by us if not accepted within 14 days.

**Acceptance of Proposal**

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

Payment will be made as outlined above.

Date of Acceptance: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**W. W. PLUMBING CO., INC.**

Date 03/27/24

ORDERED FROM \_\_\_\_\_

SALESMAN ATTN: JOE & LINDSEY

SHIP TO \_\_\_\_\_

JOB M' Boro Transit Bus Maintenance

HOW SHIPPED \_\_\_\_\_  
 QTY \_\_\_\_\_ ORDER DATE \_\_\_\_\_ SHIPPING DATE \_\_\_\_\_

Order	Stock	DESCRIPTION	Unit	TOTAL
50'	5	4" sch 40 PVC Pipe	2 <sup>43</sup>	121 <sup>50</sup>
		fittings @ 50%		60 <sup>70</sup>
		Ditching 50' @ 6 <sup>00</sup>	(300 <sup>00</sup> )	
		Gravel 10 @ 28 <sup>00</sup>	(280 <sup>00</sup> )	
360	18	2" sch 80 PVC Pipe	2 <sup>45</sup>	882 <sup>00</sup>
		fittings @ 35%		308 <sup>70</sup>
		Ditching 360' @ 6 <sup>00</sup>	(2160 <sup>00</sup> )	
		Gravel 38 @ 28 <sup>00</sup>	(1,064 <sup>00</sup> )	
		Restocking fee 30%		(357 <sup>22</sup> )
40'	4	3/4" Type-K soft Copper	5 <sup>00</sup>	200 <sup>00</sup>
	27	@ 128 <sup>00</sup> = 3,456 <sup>00</sup>		
			mat.	1,215 <sup>70</sup>
			Tax.	118 <sup>50</sup>
			labor.	3,456 <sup>00</sup>
		Deduct for Material + labor @ M' Boro Transit	Ditch.	2,460 <sup>00</sup>
		Bus Maintenance underground piping. Not	Gravel.	1,344 <sup>00</sup>
		required, as requested		8594 <sup>20</sup>
			10%	859 <sup>40</sup>
				9453 <sup>60</sup>
			5%	472 <sup>60</sup>
				9926 <sup>20</sup>

(9,926<sup>00</sup>)

Order	Stock	Description	Unit	Ditching	Gravel	Materials	Labor	Total
50'	5	4" Sch 40 PVC Pipe	2.43			\$ 121.50		\$ 121.50
		Fittings @ 50%				\$ 60.70		\$ 60.70
		Ditching x 50'	6	\$ 300.00				\$ 300.00
		Gravel x 10	28		\$ 280.00			\$ 280.00
360'	18	2" Sch 80 PVC Pipe	2.45			\$ 882.00		\$ 882.00
		Fittings @ 35%				\$ 308.70		\$ 308.70
		Ditching x 360'	6	\$ 2,160.00				\$ 2,160.00
		Gravel x 38	28		\$ 1,064.00			\$ 1,064.00
		Restocking FEE				\$ (357.20)		\$ (357.20)
40'	4	3/4" Type K Soft Copper	5			\$ 200.00		\$ 200.00
		Labor @128.00 x 27hrs					\$ 3,456.00	\$ 3,456.00
		TAX	9.75			\$ 118.50		\$ 118.50
								\$ 8,594.20
		10% Overhead						\$ 859.40
		5% Profit						\$ 472.60
		Grand Total						\$ 9,926.20

**COUNCIL COMMUNICATION**  
**Meeting Date: 6/6/2024**

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

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

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**Summary**

Report of asphalt and concrete purchases.

**Background Information**

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

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

**Council Priorities Served**

*Responsible budgeting*

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

**Fiscal Impacts**

Asphalt purchases, \$100,000, and concrete purchases, \$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
3/25/2024	Hawkins	411E	\$ 90.97	72.42	\$ 6,588.04	\$ 8,179.41
3/29/2024	Hawkins	411E	\$ 90.97	44.36	\$ 4,035.43	\$ 12,214.84
4/8/2024	Hawkins	411E	\$ 90.97	14.79	\$ 1,345.45	\$ 13,560.29
5/1/2024	Hawkins	411E	\$ 90.97	9.11	\$ 828.74	\$ 14,389.03
5/28/2024	Hawkins	307BM Mix	\$ 84.60	8.11	\$ 686.11	\$ 15,075.14

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
3/8/2024	Vulcan	411E PG 64-22	\$ 89.50	31.36	\$ 2,747.45	\$ 39,315.61
3/12/2024	Vulcan	411E PG 64-22	\$ 89.50	10.19	\$ 892.75	\$ 40,208.36
3/19/2024	Vulcan	411E PG 64-22	\$ 89.50	10.09	\$ 883.99	\$ 41,092.35
4/17/2024	Vulcan	411E PG 64-22	\$ 87.50	3.13	\$ 267.65	\$ 41,360.00
4/30/2024	Vulcan	411E PG 64-22	\$ 87.50	15.19	\$ 1,298.90	\$ 42,658.90
4/30/2024	Vulcan	411E PG 64-22	\$ 87.50	2.13	\$ 182.14	\$ 42,841.04

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
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**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
3/13/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3		\$ 414.00	\$ 16,584.50
3/18/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3		\$ 414.00	\$ 16,998.50
3/20/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2.5		\$ 345.00	\$ 17,343.50
	Nashville Ready Mix	Fiber 2	\$ 5.00	2.5		\$ 12.50	\$ 17,356.00
4/15/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	3		\$ 414.00	\$ 17,770.00
4/23/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2		\$ 276.00	\$ 18,046.00
5/13/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2		\$ 276.00	\$ 18,322.00
5/20/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.5		\$ 207.00	\$ 18,529.00
5/21/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2		\$ 276.00	\$ 18,805.00
5/22/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1		\$ 138.00	\$ 18,943.00
5/23/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2		\$ 276.00	\$ 19,219.00
5/24/2024	Nashville Ready Mix	FFlow-3 Flowable Fill	\$ 126.00	8		\$ 1,008.00	\$ 20,227.00
		Fuel Surcharge	\$ 50.00	1		\$ 50.00	\$ 20,277.00
5/24/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1		\$ 138.00	\$ 20,415.00
5/24/2024	Nashville Ready Mix	Flow-1 Flowable Fill TDOT	\$ 126.00	1		\$ 126.00	\$ 20,541.00
5/28/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	2		\$ 276.00	\$ 20,817.00

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: 06/06/2024

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**Item Title:** Cumberland International Amendment 2

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Consider contract amendment for dump truck price increase.

**Staff Recommendation**

Approve price increase from Cumberland International for a 2024 International Dump Truck. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

In August 2022, the Water Resources Board approved the preorder of a 2024 International Dump Truck from Cumberland International Trucks to replace a 2000 Mack Dump Truck (Unit#32). Staff received notification that the vendor is unable to honor the original contract price.

Funding for the purchase was approved in MWRD's FY 2023 Rate Funded Capital Budget for \$190,000. The original quote was \$141,868. The current price is \$154,572, an additional cost of \$12,704.

**Council Priorities Served**

*Responsible Budgeting*

By leveraging a Sourcewell contract, the Department benefits from competitive pricing.

**Fiscal Impact**

The increased costs, or \$12,704, will be funded from the Department's working capital reserves.

**Attachments**

Cumberland International Amendment 2

**SECOND AMENDMENT  
TO THE CONTRACT  
BETWEEN THE CITY OF MURFREESBORO  
AND  
CUMBERLAND INTERNATIONAL TRUCKS, INC.  
FOR HV613 SBA DUMP TRUCK**

This Second Amendment (“Second Amendment”) to the Contract, entered into September 23, 2022 (“Contract”), is effective as of \_\_\_\_\_ (“Effective Date”), by and between the City of Murfreesboro (“City”), a municipal corporation of the State of Tennessee and Cumberland International Trucks, Inc., (“Contractor”), a corporation of the State of Delaware.

**RECITALS**

WHEREAS, on September 23, 2022, the City entered into the Contract with Contractor for One (1) New 2024 International HV613 6x4 Chassis with Options as Listed on Contractor’s Proposal #16961 (Attachment A to Amendment 1); and,

WHEREAS, the term of the contract between the City and Contractor is currently from September 23, 2022 to August 1, 2024; and,

WHEREAS, Section 10 of the Contract allows modifications to the Contract upon mutual agreement between City and Contractor; and,

WHEREAS, the City and Contractor entered into Amendment One due to the Contractor experiencing a new material price surcharge from the manufacturer; and,

WHEREAS, the Contractor has experienced an additional material price surcharge from the manufacturer (Attachment A to Amendment 2); and,

WHEREAS, the City is allowing the contractor this additional material cost-related price adjustment of Nine Thousand, Six Hundred Fifty Six Dollars and Eighty-Eight Cents (\$9,656.88).

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

1. **Material Cost Adjustment:** The price in Section 3 of the Contract is hereby amended to a price of \$154,572.53 for One (1) New 2024 International HV613 4x2 Chassis with Options as Listed.
2. Except as provided herein, the parties make no other modifications or amendments, and all other terms of the Contract shall continue in full force and effect.

ENTERED into as of the Effective Date listed above.

**CITY OF MURFREESBORO**

**CUMBERLAND INTERNATIONAL TRUCK, INC.**

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

DocuSigned by:  
By: Chris Randall  
Chris Randall, Director of Sales

Approved as to form:  
DocuSigned by:

Adam F. Tucker  
Adam F. Tucker, City Attorney



International Trucks is pleased to provide you with this proposal compliant with all terms of the Sourcewell Vehicles and Chassis Contract #060920-NVS awarded to Navistar, Inc for new International Trucks. If you have any questions regarding enrollment in Sourcewell or detailed contract terms and conditions, please see your International Truck sales representative.

PROPOSAL PREPARED FOR:	PROPOSAL PREPARED BY:
Sourcewell Member:	Cumberland International
Contact:	Erick Creasey
Address:	
City/State/Zip:	
Phone:	
Email:	

Proposal Number	
Date	5/17/2024
Quantity of this Specification	
Single Sourcewell Transaction Total Volume	

Chassis		
New International HV613 4x2 Chassis		\$ 263,683.00
Base Chassis List	\$ 213,368.00	
Options List	\$ 50,315.00	
Sourcewell Contract Discount	47.8%	\$ (126,010.47)
Volume Incentive		\$ -
Material Price Increases		\$ -
Net Sourcewell Chassis Price		\$ 137,672.53
Sourcewell Partner Body		
		\$ -
Handling Fee	4.00%	\$ -
Non-Sourcewell Dealer Supplied Body		
		\$ 25,900.00
Handling Fee	5.00%	\$ 1,295.00
Additional Post Build Work		
		\$ -
Handling Fee	5.00%	\$ -
Service Contracts		
		\$ -
		\$ -
		\$ -
Additional Freight		
		\$ -
		\$ -
Additional Floorplan		
		\$ -
		\$ -
Additional Fees & Taxes		
Shop work& training		\$ 1,000.00
		\$ -
		\$ -
<b>Final Sourcewell Per Vehicle Price FOB</b>		<b>\$ 154,572.53</b>
<b>Final Sourcewell Total Vehicle(s) Price</b>		<b>\$ 154,572.53</b>

Additional Sourcewell Qualified Content	
Customer Parts Credit - Fleet Charge only	\$200
A26 Incremental Parts Credit - Fleet Charge only	\$200
Silver Package Award	\$1,200

**Terms:**

Stock unit in dealer's inventory, dealer will accept a final purchase order using the current Sourcewell pricing quoted above.

Dealer placing a new orders for the Sourcewell Member, the purchase order cannot be firm up until the unit is slotted to build with a firm build date or lineset.

Once a firm build date has been established, dealer will provide the Sourcewell Member approved pricing and a final purchase order can be accepted with firm pricing.

Dealer cannot guarantee bodies and/or equipment pricing added to the chassis for a turnkey sale until chassis is lineset.



# **HV613 SBA**

**Sales Proposal For:**

**Murfreesboro Water & Sewer Dept.**

**Presented By:**

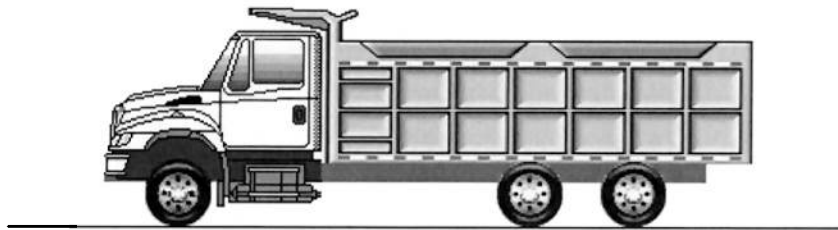
**CUMBERLAND INTERNATIONAL TRUCKS, INC.**

**INTERNATIONAL®****May 17, 2024**

**Prepared For:**  
 Murfreesboro Water & Sewer Dept.  
 Donald Hughes  
 1725 S Church St.  
 Murfreesboro, TN 37130-5599  
 (615)893 - 1223  
 Reference ID: N/A

**Presented By:**  
 CUMBERLAND INTERNATIONAL TRUCKS, INC.  
 Erick Creasey  
 640 Massman Dr.  
 NASHVILLE TN 37210 -  
 (615)256-4633

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.



**Model Profile**  
**2024 HV613 SBA (HV613)**

<b>AXLE CONFIG:</b>	6X4
<b>APPLICATION:</b>	Construction Dump
<b>MISSION:</b>	Requested GVWR: 66000. Calc. GVWR: 66000. Calc. GCWR: 110000 Calc. Start / Grade Ability: 40.44% / 2.48% @ 55 MPH Calc. Geared Speed: 84.1 MPH
<b>DIMENSION:</b>	Wheelbase: 203.00, CA: 135.90, Axle to Frame: 65.00
<b>ENGINE, DIESEL:</b>	{International A26} EPA 2021, 430HP @ 1700 RPM, 1550 lb-ft Torque @ 900 RPM, 2100 RPM Governed Speed, 430 Peak HP (Max)
<b>TRANSMISSION, MANUAL:</b>	{Eaton Endurant XD PRO EXDP-16F118D} 18-Speed Fully Automated Manual, Aluminum Clutch Housing, Overdrive, Mechatronic Shift Controls, Pneumatic Clutch Actuation, Internal Lube Oil Pump, Hill Start Aid
<b>CLUTCH:</b>	{Eaton Fuller 430MM} Maintenance Free, Self-Adjusting, Extreme Duty, 17" (430 mm) Dia Single Plate, Diaphragm Spring, Organic, 5-Spring Coaxial 254mm Damper with Pre-Damper, 2"-18 Tooth Splines, Pneumatic Push Type Control, 1850 lb-ft (2508 Nm) Torque Capacity
<b>AXLE, FRONT NON-DRIVING:</b>	{Meritor MFS-20-133A} Wide Track, I-Beam Type, 20,000-lb Capacity
<b>AXLE, REAR, TANDEM:</b>	{Meritor RT-46-160} Single Reduction, 46,000-lb Capacity, Driver Controlled Locking Differential in Forward-Rear and Rear-Rear Axle, 200 Wheel Ends Gear Ratio: 4.30
<b>CAB:</b>	Conventional, Day Cab
<b>TIRE, FRONT:</b>	(2) 315/80R22.5 Load Range L HAU 3 WT (CONTINENTAL), 480 rev/mile, 68 MPH, All-Position
<b>TIRE, REAR:</b>	(8) 11R22.5 Load Range G DH37 (HANKOOK), 498 rev/mile, 75 MPH, Drive
<b>SUSPENSION, REAR, TANDEM:</b>	{Hendrickson HMX EX 460} Walking Beam, 46,000-lb Capacity, 54" Axle Spacing, Rubber Springs, with Transverse Torque Rods, Rubber End Bushings
<b>FRAME REINFORCEMENT:</b>	Full Outer C-Channel, Heat Treated Alloy Steel (120,000 PSI Yield), 10.813" x 3.892" x 0.312" (274.6mm x 98.8mm x 7.9mm), 480.0" (12192mm) OAL
<b>PAINT:</b>	Cab schematic 100WN Location 1: 9219, Winter White (Std) Chassis schematic N/A

**INTERNATIONAL®****Vehicle Specifications**  
**2024 HV613 SBA (HV613)**

May 17, 2024

<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
Base Chassis, Model HV613 SBA with 203.00 Wheelbase, 135.90 CA, and 65.00 Axle to Frame.	8102/4132	12234

**AXLE CONFIGURATION**

AXLE CONFIGURATION {Navistar} 6x4	-58/-53	-111
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Notes

: Pricing may change if axle configuration is changed.

**ENGINE**

ENGINE, DIESEL {International A26} EPA 2021, 430HP @ 1700 RPM, 1550 lb-ft Torque @ 900 RPM, 2100 RPM Governed Speed, 430 Peak HP (Max)	0/0	0
EMISSION, CALENDAR YEAR {International A26} EPA, OBD and GHG Certified for Calendar Year 2024	0/0	0
CARB EMISSION WARR COMPLIANCE Does Not Comply with CARB Emission Warranty	0/0	0
CARB IDLE COMPLIANCE Does Not Comply with California Clean Air Idle Regulations	0/0	0
EPA IDLE COMPLIANCE Low NOx Idle Engine, Complies with EPA Clean Air Regulations; Includes "Certified Clean Idle" Decal on Hood	0/0	0
RADIATOR Aluminum, Welded, Cross Flow, Front to Back System, 1292 SqIn, with 1008 SqIn Charge Air Cooler	0/0	0

Includes: DEAERATION SYSTEM with Surge Tank  
: HOSE CLAMPS, RADIATOR HOSES Gates Shrink Band Type; Thermoplastic Coolant Hose Clamps  
: RADIATOR HOSES Premium, Rubber

FAN DRIVE {Horton Drivemaster} Two-Speed Type, Direct Drive, with Residual Torque Device for Disengaged Fan Speed	0/0	0
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Includes

: FAN Nylon

AIR CLEANER Single Element, with Integral Pre-Cleaner	5/0	5
ANTI-FREEZE Red, Extended Life Coolant; To -40 Degrees F/ -40 Degrees C, Freeze Protection	0/0	0
BLOCK HEATER, ENGINE {Phillips} 120V/1500W	4/0	4

Includes

: BLOCK HEATER SOCKET Receptacle Type; Mounted below Drivers Door

FAN DRIVE SPECIAL EFFECTS Fan Cooling Ring with Fan Shroud Effects, Engine Mounted	0/0	0
FAN OVERRIDE Manual; with Electric Switch on Instrument Panel, (Fan On with Switch On)	0/0	0

**TRANSMISSION**

TRANSMISSION, MANUAL {Eaton Endurant XD PRO EXDP-16F118D} 18-Speed Fully Automated Manual, Aluminum Clutch Housing, Overdrive, Mechatronic Shift Controls, Pneumatic Clutch Actuation, Internal Lube Oil Pump, Hill Start Aid	59/50	109
OIL COOLER, TRANSMISSION Water to Oil Type Included in Radiator End Tank (REQUIRES TRANSMISSION LUBE PUMP)	20/0	20
PTO CONTROL, DASH MOUNTED For Customer Provided PTO; Includes Switch, Electric/Air Solenoid, Piping and Wiring	3/0	3
PTO LOCATION Customer Intends to Install PTO at Bottom of Transmission	0/0	0

**INTERNATIONAL®****Vehicle Specifications**  
**2024 HV613 SBA (HV613)****May 17, 2024**

<b><u>Description</u></b>	<b><u>F/R Wt</u></b> (lbs)	<b><u>Tot Wt</u></b> (lbs)
SHIFT CONTROL PARAMETERS {Eaton Endurant} Automated Manual Transmission, Performance Calibration	0/0	0
TRANSMISSION OIL {EmGard 40W} Synthetic; 22 thru 33.99 Pints	0/0	0
WIRING, TRANSMISSION Installed Wiring and Connector for Transmission/PTO Controls, for Eaton Endurant Transmission	0/0	0
<b><u>CLUTCH</u></b>		
CLUTCH {Eaton Fuller 430MM} Maintenance Free, Self-Adjusting, Extreme Duty, 17" (430 mm) Dia Single Plate, Diaphragm Spring, Organic, 5-Spring Coaxial 254mm Damper with Pre-Damper, 2"-18 Tooth Spline, Pneumatic Push Type Control, 1850 lb-ft (2508 Nm) Torque Capacity	97/21	118
<b><u>REAR AXLES, SUSPENSIONS</u></b>		
AXLE, REAR, TANDEM {Meritor RT-46-160} Single Reduction, 46,000-lb Capacity, Driver Controlled Locking Differential in Forward-Rear and Rear-Rear Axle, 200 Wheel Ends . Gear Ratio: 4.30	0/2321	2321
SUSPENSION, REAR, TANDEM {Hendrickson HMX EX 460} Walking Beam, 46,000-lb Capacity, 54" Axle Spacing, Rubber Springs, with Transverse Torque Rods, Rubber End Bushings	0/593	593
PDL WARNING BUZZER Power Divider Lock	0/0	0
TRANSVERSE TORQUE RODS {Hendrickson} TRAAX Rod, Transverse Only	0/-8	-8
<b><u>FRONT AXLES</u></b>		
AXLE, FRONT NON-DRIVING {Meritor MFS-20-133A} Wide Track, I-Beam Type, 20,000-lb Capacity	186/0	186
<b><u>FRONT SUSPENSIONS</u></b>		
SUSPENSION, FRONT, SPRING Parabolic Taper Leaf, Shackle Type, 20,000-lb Capacity, with Shock Absorbers	57/0	57
<b><u>CABS, COWLS, BODIES</u></b>		
CAB Conventional, Day Cab	0/0	0
ACCESS, CAB Steel, Driver & Passenger Sides, Two Steps per Door, for use with Day Cab and Extended Cab	0/0	0
AIR CONDITIONER with Integral Heater and Defroster	0/0	0
CAB INTERIOR TRIM Classic, for Day Cab	0/0	0
<b><u>Includes</u></b>		
: CONSOLE, OVERHEAD Molded Plastic with Dual Storage Pockets, Retainer Nets and CB Radio Pocket; Located Above Driver and Passenger		
: DOME LIGHT, CAB Door Activated and Push On-Off at Light Lens, Timed Theater Dimming, Integral to Overhead Console, Center Mounted		
: SUN VISOR (2) Padded Vinyl; 2 Moveable (Front-to-Side) Primary Visors, Driver Side with Toll Ticket Strap		
CAB REAR SUSPENSION Air Suspension, for High Cab Height	0/0	0
CAB SOUND INSULATION Includes Dash Insulator and Engine Cover Insulator, Premium Floormat, and Sound Dampening Patches	27/0	27
FLOOR, COATING LINE-X, Applied to Interior Cab Floor	0/0	0
FRESH AIR FILTER Attached to Air Intake Cover on Cowl Tray in Front of Windshield Under Hood	0/0	0

**INTERNATIONAL®****Vehicle Specifications  
2024 HV613 SBA (HV613)**

May 17, 2024

<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
GAUGE CLUSTER Base Level; English with English Electronic Speedometer	0/0	0
<u>Includes</u>		
: GAUGE CLUSTER DISPLAY: Base Level (3" Monochromatic Display), Premium Level (5" LCD Color Display); Odometer, Voltmeter, Diagnostic Messages, Gear Indicator, Trip Odometer, Total Engine Hours, Trip Hours, MPG, Distance to Empty/Refill for		
: GAUGE CLUSTER Speedometer, Tachometer, Engine Coolant Temp, Fuel Gauge, DEF Gauge, Oil Pressure Gauge, Primary and Secondary Air Pressure		
: WARNING SYSTEM Low Fuel, Low DEF, Low Oil Pressure, High Engine Coolant Temp, Low Battery Voltage (Visual and Audible), Low Air Pressure (Primary and Secondary)		
GAUGE, AIR APPLICATION	1/0	1
INSTRUMENT PANEL Wing Panel	0/0	0
IP CLUSTER DISPLAY On Board Diagnostics Display of Fault Codes in Gauge Cluster	0/0	0
MIRRORS (2) Aero Pedestal, Power Adjust, Heated, Black Heads and Arms, 6.5" x 14" Flat Glass, Includes 6.5" x 6" Convex Mirrors, for 102" Load Width	0/0	0
<u>Notes</u>		
: Mirror Dimensions are Rounded to the Nearest 0.5"		
MONITOR, TIRE PRESSURE Omit	-10/-1	-11
SEAT BELT All Orange; 1 to 3	0/0	0
SEAT, DRIVER {National 2000} Air Suspension, High Back with Integral Headrest, Vinyl, Isolator, 1 Chamber Lumbar, with 2 Position Front Cushion Adjust, -3 to +14 Degree Angle Back Adjust	0/0	0
SEAT, PASSENGER {National} Non Suspension, High Back, Fixed Back, Integral Headrest, Vinyl	16/7	23
SUNSHADE, EXTERIOR Aerodynamic, Painted Roof Color, with Integral Clearance/Marker Lights	14/3	17
WINDOW, POWER (2) and Power Door Locks, Left and Right Doors, Includes Express Down Feature	0/0	0
<b>FRAMES</b>		
FRAME RAILS Heat Treated Alloy Steel (120,000 PSI Yield); 10.125" x 3.580" x 0.312" (257.2mm x 90.9mm x 8.0mm); 480.0" (12192) Maximum OAL	48/201	249
FRAME REINFORCEMENT Full Outer C-Channel, Heat Treated Alloy Steel (120,000 PSI Yield), 10.813" x 3.892" x 0.312" (274.6mm x 98.8mm x 7.9mm), 480.0" (12192mm) OAL	425/550	975
BUMPER, FRONT Swept Back, Steel, Painted 0001 Canyon Black, Heavy Duty	0/0	0
TOW HOOK, FRONT (2) Frame Mounted	8/0	8
WHEELBASE RANGE 183" (465cm) Through and Including 248" (630cm)	236/-236	0
<b>BRAKES</b>		
BRAKE SYSTEM, AIR Dual System for Straight Truck Applications	0/0	0
<u>Includes</u>		
: BRAKE LINES Color and Size Coded Nylon		
: DRAIN VALVE Twist-Type		
: GAUGE, AIR PRESSURE (2) Air 1 and Air 2 Gauges; Located in Instrument Cluster		
: PARKING BRAKE CONTROL Yellow Knob, Located on Instrument Panel		
: PARKING BRAKE VALVE For Truck		
: QUICK RELEASE VALVE On Rear Axle for Spring Brake Release: 1 for 4x2, 2 for 6x4		
: SPRING BRAKE MODULATOR VALVE R-7 for 4x2, SR-7 with relay valve for 6x4/8x6		



**INTERNATIONAL®****Vehicle Specifications**  
**2024 HV613 SBA (HV613)****May 17, 2024**

<b>Description</b>	<b>F/R Wt (lbs)</b>	<b>Tot Wt (lbs)</b>
AIR BRAKE ABS {Bendix AntiLock Brake System} 4-Channel (4 Sensor/4 Modulator) Full Vehicle Wheel Control System, with Automatic Traction Control	0/0	0
BRAKE, PARKING Manual Push-Pull Pneumatic Parking Brake	1/0	1
BRAKES, FRONT {Meritor 16.5X6 Q-PLUS CAST} Air S-Cam Type, Cast Spider, Fabricated Shoe, Double Anchor Pin, Size 16.5" X 6", 23,000-lb Capacity	33/0	33
BRAKE CHAMBERS, FRONT AXLE {Bendix} 24 SqIn	4/0	4
SLACK ADJUSTERS, FRONT {Gunite} Automatic	14/0	14
BRAKES, REAR {Meritor 16.5X7 Q-PLUS CAST} Air S-Cam Type, Cast Spider, Fabricated Shoe, Double Anchor Pin, Size 16.5" X 7", 23,000-lb Capacity per Axle	0/104	104
BRAKE CHAMBERS, REAR AXLE {Bendix EverSure} 30/30 SqIn Spring Brake	0/14	14
SLACK ADJUSTERS, REAR {Gunite} Automatic	0/28	28
PARK BRAKE CHAMBERS, ADDITIONAL (2) Spring Brake Type	0/30	30
AIR COMPRESSOR {Bendix BA-921 Head Unload} 15.9 CFM	0/0	0
AIR DRYER {Wabco System Saver 1200} with Heater, Integrated Coalescing Filtration	0/0	0
AIR DRYER LOCATION Mounted Inside Left Rail, Back of Cab	0/0	0
AIR TANK LOCATION (2) Mounted Under Battery Box, Outside Left Rail, Back of Cab, Perpendicular to Rail	0/0	0
AIR TANK, AUXILIARY for Transmission Air Supply, Crossmember Mounted, Forward of Engine	27/-4	23
DRAIN VALVE {Berg} with Pull Chain, for Air Tank	0/0	0
TRAILER CONNECTIONS Four-Wheel, with Hand Control Valve and Tractor Protection Valve, for Straight Truck	0/0	0

**Notes**

: When electronic stability control is ordered with trailer connections on a 4x2 truck, please check the operator manual for trailer weight restrictions.

**STEERING**

STEERING GEAR (2) {Sheppard M100/M80} Dual Power	103/-7	96
STEERING COLUMN Tilting	12/4	16
STEERING WHEEL 4-Spoke; 18" Dia., Black	0/0	0

**DRIVELINES**

DRIVELINE SYSTEM {Dana Spicer} SPL250 Main Driveline with SPL170 Interaxle Shaft, for 6x4	1/6	7
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**EXHAUST SYSTEMS**

EXHAUST SYSTEM Horizontal Aftertreatment System, Frame Mounted Right Side Under Cab, for Single Vertical Tail Pipe, Frame Mounted Right Side Back of Cab	56/21	77
AFTERTREATMENT COVER Aluminum	7/2	9
ENGINE COMPRESSION BRAKE by Jacobs; for N13/A26 Engines, with Selector Switch and On/Off Switch	0/0	0
EXHAUST HEIGHT 10'	17/11	28
MUFFLER/TAIL PIPE GUARD (1) Bright Stainless Steel	18/13	31

**INTERNATIONAL®****Vehicle Specifications**  
**2024 HV613 SBA (HV613)****May 17, 2024****Description**

	<b>F/R Wt</b>	<b>Tot Wt</b>
	(lbs)	(lbs)
SWITCH, FOR EXHAUST 3 Position, Momentary, Lighted Momentary, ON/CANCEL, Center Stable, INHIBIT REGEN, Mounted in IP Inhibits Diesel Particulate Filter Regeneration When Switch is Moved to ON While Engine is Running, Resets When Ignition is Turned OFF	2/0	2
TAIL PIPE (1) Turnback Type, Bright	7/4	11

**ELECTRICAL SYSTEMS**

ELECTRICAL SYSTEM 12-Volt, Standard Equipment	0/0	0
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Includes

- : DATA LINK CONNECTOR For Vehicle Programming and Diagnostics In Cab
- : HAZARD SWITCH Push On/Push Off, Located on Instrument Panel to Right of Steering Wheel
- : HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever
- : PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light
- : STARTER SWITCH Electric, Key Operated
- : STOP, TURN, TAIL & B/U LIGHTS Dual, Rear, Combination with Reflector
- : TURN SIGNAL SWITCH Self-Cancelling for Trucks, Manual Cancelling for Tractors, with Lane Change Feature
- : WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature (5 Pre-Set Delays), Integral with Turn Signal Lever
- : WINDSHIELD WIPERS Single Motor, Electric, Cowl Mounted
- : WIRING, CHASSIS Color Coded and Continuously Numbered

ALARM, PARKING BRAKE Electric Horn Sounds in Repetitive Manner When Vehicle Park Brake is "NOT" Set, with Ignition "OFF" and any Door Opened	0/0	0
ALTERNATOR {Leece-Neville AV1160P2013} Brush Type, 12 Volt, 160 Amp Capacity, Pad Mount	0/0	0
ANTENNA for Increased Roof Clearance Applications	1/0	1
BACK-UP ALARM Electric, 102 dBA	0/3	3
BATTERY BOX Steel, with Plastic Cover, 18" Wide, 2-4 Battery Capacity, Mounted Left Side Back of Cab	0/0	0
BATTERY DISCONNECT SWITCH {Cole-Hersee 75920-06} 300 Amp, Disconnects Cab Power, Does Not Disconnect Charging Circuits, Locks with Padlock, Battery Box Mounted	2/0	2
BATTERY SYSTEM {Fleetrite} Maintenance-Free, (3) 12-Volt 2250CCA Total, Top Threaded Stud	7/5	12
BODY BUILDER WIRING Back of Day Cab at Left Frame or Under Sleeper, Extended or Crew Cab at Left Frame; Includes Sealed Connectors for Tail/Amber Turn/Marker/ Backup/Accessory Power/Ground and Sealed Connector for Stop/Turn	2/0	2
2-WAY RADIO Wiring Effects; Wiring with 20 Amp Fuse Protection, Includes Ignition Wire with 5 Amp Fuse, Wire Ends Heat Shrink and Routed to Center of Header Console in Cab	1/0	1
CIRCUIT BREAKERS Manual-Reset (Main Panel) SAE Type III with Trip Indicators, Replaces All Fuses	0/0	0
CLEARANCE/MARKER LIGHTS (5) {Truck Lite} Amber LED Lights, Flush Mounted on Cab or Sunshade	0/0	0
ELECTRIC TRAILER BRAKE/LIGHTS Accommodation Package to Rear of Frame; for Separate Trailer Stop, Tail, Turn, Marker Light Circuits; Includes Electric Trailer Brake accommodation package with Cab Connections for Mounting Customer Installed Electric Brake Unit, Less Trailer Socket	0/2	2
HEADLIGHTS Halogen, with Daytime Running Lights, Automatic Twilight Controlled	0/0	0
HEADLIGHTS ON W/WIPERS Headlights Will Automatically Turn On if Windshield Wipers are Turned On	0/0	0
HORN, AIR (2) Single Tone, Chrome, Roof Mounted, with Lanyard Pull Cord	0/0	0
HORN, ELECTRIC (2) Disc Style	0/0	0

**INTERNATIONAL®****Vehicle Specifications  
2024 HV613 SBA (HV613)**

May 17, 2024

<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
POWER SOURCE, ADDITIONAL Auxiliary Power Outlet (APO) with USB-A Port and USB-C Port, Located in the Instrument Panel	0/0	0
RADIO AM/FM/WB/Clock/Bluetooth/USB Input/Auxiliary Input	3/0	3
SPEAKERS (2) 6.5" Dual Cone Mounted in Doors	5/0	5
STARTING MOTOR {Mitsubishi Electric Automotive America 105P} 12-Volt, with Soft-Start	0/0	0
TEST EXTERIOR LIGHTS Pre-Trip Inspection will Cycle all Exterior Lamps Except Back-up Lights	0/0	0
TRAILER AUXILIARY FEED CIRCUIT for Electric Trailer Brake Accommodation/Air Trailer ABS; with 30 Amp Fuse and Relay, Controlled by Ignition Switch	1/0	1
TURN SIGNALS, FRONT Includes LED Side Turn Lights Mounted on Fender	0/0	0
<b>FRONT END</b>		
FRONT END Tilting, Fiberglass, with Three Piece Construction, Includes Long Hood	0/0	0
BUG SCREEN Mounted Behind Grille	5/0	5
FENDER EXTENSIONS Rubber	0/0	0
GRILLE Stationary, Chrome	0/0	0
LOGOS EXTERIOR Model Badges	0/0	0
LOGOS EXTERIOR, ENGINE Badges	0/0	0
<b>SPEEDOMETER, TOOLS, MISC</b>		
COMMUNICATIONS MODULE Telematics Device with Over the Air Programming; Includes Five Year Data Plan and International 360	0/0	0
CUSTOMER IDENTITY for Sourcewell	0/0	0
FIRE EXTINGUISHER 5 lb Class A B C	8/2	10
FIRE EXTINGUISHER BRACKET Mounted Left Side Driver Seat	1/0	1
GCWR RANGE GCWR Equal to or Less than 110,000-lb, for Transmission Application Validation	0/0	0
PAINT SCHEMATIC, PT-1 Single Color, Design 100	0/0	0
<u>Includes</u> : PAINT SCHEMATIC ID LETTERS "WN"		
PAINT TYPE Base Coat/Clear Coat, 1-2 Tone	0/0	0
PROMOTIONAL PACKAGE Government Silver Package	0/0	0
SAFETY TRIANGLES	8/4	12
<b>FUEL TANKS</b>		
FUEL TANK Top Draw, Non-Polished Aluminum, 26" Dia, 80 US Gal (303L), Mounted Left Side, Under Cab	14/10	24
DEF TANK 9.5 US Gal (36L) Capacity, Frame Mounted Outside Left Rail, Under Cab	0/0	0
FUEL/WATER SEPARATOR {Racor} Fuel Pre-Filter and Filter Base, Includes Water-In-Fuel Sensor	0/0	0
LOCATION FUEL/WATER SEPARATOR Mounted Outside Left Rail, 46" Back of Cab	0/0	0

**INTERNATIONAL®****Vehicle Specifications**  
**2024 HV613 SBA (HV613)**

May 17, 2024

<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
<b>WHEELS, TIRES - FRONT</b>		
WHEELS, FRONT {Accuride 29039} DISC; 22.5x9.00 Rims, Powder Coat Steel, 5-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs, Non-Standard Offset, with .5" Thick Disc	72/0	72
(2) TIRE, FRONT 315/80R22.5 Load Range L HAU 3 WT (CONTINENTAL), 480 rev/mile, 68 MPH, All-Position	62/0	62
<b>WHEELS, TIRES - REAR</b>		
WHEELS, REAR {Maxion 91541} DUAL DISC; 22.5x8.25 Rims, Painted Steel, 2-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs	0/-8	-8
(8) TIRE, REAR 11R22.5 Load Range G DH37 (HANKOOK), 498 rev/mile, 75 MPH, Drive	0/-16	-16
<b>WHEELS MISC OPTIONS</b>		
PAINT IDENTITY, REAR WHEELS Disc Rear Wheels; with Vendor Applied White Powder Coat Paint	0/0	0
<b>Services Section:</b>		
<b>WARRANTY</b>		
WARRANTY Standard for HV513, HV613 Models, Effective with Vehicles Built July 1, 2017 or Later, CTS-2030A	0/0	0
<b>Total Component Weight:</b>	<b>9734/7808</b> (lbs)	<b>17542</b> (lbs)
Rogers 16 ft Rspec body	0/0	0
<b>Total Body Allied:</b>	<b>0/0</b> (lbs)	<b>0</b> (lbs)

The weight calculations included in this proposal are an estimate of future vehicle weight. The actual weight as manufactured may be different from the estimated weight. Navistar, Inc. shall not be liable for any consequences resulting from any differences between the estimated weight of a vehicle and the actual weight.

**INTERNATIONAL®**

**Financial Summary  
2024 HV613 SBA (HV613)**

**May 17, 2024**

<u>Description</u>	<u>(US DOLLAR)</u>	<u>Price</u>
Net Sales Price:		\$154,572.53

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle.

**Approved by Seller:**

**Accepted by Purchaser:**

\_\_\_\_\_  
Official Title and Date

\_\_\_\_\_  
Firm or Business Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature and Date

**This proposal is not binding upon the seller without  
Seller's Authorized Signature**

\_\_\_\_\_  
Official Title and Date

**The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.**

**The limited warranties applicable to the vehicles described herein are Navistar, Inc.'s standard printed warranties which are incorporated herein by reference and to which you have been provided a copy and hereby agree to their terms and conditions.**



**CONTRACT AMENDMENT  
PRICE AND PRODUCT CHANGE REQUEST FORM**

Supplier Name: Navistar, Inc

Sourcewell Contract Number: 060920-NVS (Contract)

**Instructions**

A request for product or service changes, additions, or deletions to the Contract will be considered at any time throughout the Contract term. All modifications must be within the scope of the original RFP and be in the best interests of Sourcewell and Sourcewell Participating Entities. If approved, the request will be incorporated into the above-referenced contract; however, no changes will be binding unless the request is approved by the Manager of Supplier Development and this request is signed by Sourcewell's Chief Procurement Officer.

*Additions:* New products and related services may be added to the contract if they are within the scope of the original RFP.

*Deletions:* Products and related services may be deleted from the contract if they are no longer available.

*Price increases:* Price increase requests must provide sufficient justification for the change (e.g., recently imposed tariffs or significant petroleum cost increases), not merely generalized statements requesting the increase.

*Price decreases:* Price decreases are accepted at any time.

Submit this request to the assigned Sourcewell Supplier Development Administrator.

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**Request**

Check all that apply

- Adding Products/Services
- Deleting Products/Services
- Price Increase
- Price Decrease
- Other

**Detailed Justification for Changes**

1. *Changed Product List*

List the products and/or services that are changing from the previous contract price list, along with the percentage change for each item or category. Attach a separate sheet if a large number of changes are included in this request.

We are adding the International eMV 607 Battery Electric Vehicle and related equipment to the contract.

2. *Justification for Changes*

Provide justification and documentation explaining the requested changes (e.g., add a product because of technology advances in new model of equipment, increased raw material costs, add a Hot List of products). Include the percentage range of increase.

The cost to build and ship commercial vehicles has risen to levels that need to be addressed. There are many factors contributing to this situation: raw material increases, finished component increases, chip shortage, fuel and shipping increases, cost of expedited freight and warehousing and the cost of carrying unfinished goods. In addition, the carrying cost has also risen with rising interest rates.

3. *Product additions only*

Describe how the product additions fit within the scope of the original RFP.

With Grants and funding on the street, many Sourcewell members have requested this product. We are manufacturing this product today at our plant in Escobedo, Mexico.

This product would be treated like the the other products in contract 060920-NVS, offering a turnkey option for bodies and equipment as well as needed charging stations. Our preference is to use other Sourcewell awarded providers.

This product in not available at every International Dealer. A list of dealers selling the eMV product will be provided to the Sourcewell Team on a monthly basis as additional dealers sign up.

The Base Chassis does not get any discount. The options will get a 24.5% list discount. A new worksheet will be created to ensure the Sourcewell member receives proper pricing. Items added as turnkey will be marked up the same as the current contract, Sourcewell awarded suppliers are capped at 4% mark up and non Sourcewell suppliers will be capped at 5% mark up.

4. *Price changes or product/service additions only*

State how the requested pricing is consistent with current Sourcewell contract pricing.

Pricing has been modified to reflect the current business/economic conditions.

The following reflects the total chassis increase over what is currently approved by Sourcewell:

- CV 4.2% (\$2200)
- MV-607 8.5% (\$6600)
- HV-507/607 4x2 9.5% (\$7300)
- HV-506/607 6x4 8.5% (\$7500)
- HV-513/613 4x2 8.9% (\$8300)
- HV-513/613 6x4 7.8% (\$7900)
- HX-620 6.9% (\$8200)
- RH-613 10.3% (\$10,651)
- LT-625 8.3% (\$9700)
- LoneStar 7.6% (\$10,800)

Production or build slots, are allocated by the region and dealer. When a member orders a vehicle, the selling dealer needs to communicate the estimated build date.

Our industry is currently experiencing supply constraints with engine, braking systems and tires. These constraints can easily move the order board out several weeks at a time.

Dealers are not able to price guarantee bodies and equipment added to the chassis for a turnkey sale.

Dealers are not able to guarantee additional freight or interest expense, due to rising expense and interest rates.

If a unit is in dealer inventory, the selling dealer will be able to accept a purchase order using the current Sourcewell pricing that is in place.

If a unit is not in dealer inventory and the selling dealer is placing a new order for the Sourcewell Member, the purchase order cannot be firmed up until the unit is slotted to build with a firm build date (Line-Set). Once a firm build date has been established, dealer will provide the Sourcewell approved pricing and a purchase order can be accepted with firm pricing.

**Complete Restatement of Pricing Submitted**

I understand that a complete restatement of pricing must be attached with this request or it will not be processed.

**Approvals**

*Supplier Offer:*

This Price and Product Change Request has been submitted for review to be considered as an amendment to the above referenced Contract.

By: Bob Mann  
Supplier Authorized Signature

08/26/2022  
Date

**Bob Mann**  
Print Name and Title of Authorized Signer

*Sourcewell Acceptance:*

Sourcewell accepts Supplier's offer in this Price and Product Change Request. By Sourcewell's signature below, this document becomes an amendment to the above referenced Contract and incorporates all referenced attachments into this Amendment.

DocuSigned by:  
By: Jeremy Schwartz  
Jeremy Schwartz  
Sourcewell Chief Procurement Officer

9/2/2022 | 10:22 AM CDT  
Date



# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Unifirst Contract First Amendment

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Approval to extend contract with Unifirst Corporation to provide uniform services.

**Staff Recommendation**

Approve First Amendment to Unifirst Contract. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

MWRD entered into a contract with Unifirst Corporation to provide uniform services on May 22, 2020. This contract expires May 22, 2024, and may be extended up to one additional year with written agreement from both parties.

**Council Priorities Served**

*Responsible budgeting*

Proper procurement ensures effective cost savings to the department and our customers.

**Fiscal Impacts**

MWRD's estimated annual costs will be approximately \$35,000. The total cost will be based on the actual amount of uniforms ordered by and serviced for the department. The costs associated with this agreement are included in MWRD's approved budget.

**Attachments**

Unifirst Contract – First Amendment

**FIRST AMENDMENT TO  
AGREEMENT FOR PURCHASE OF UNIFORMS AND RELATED PRODUCTS AND SERVICES  
FOR CITY OF MURFREESBORO**

This First Amendment to the Agreement for Uniforms and Related Products and Services for the City of Murfreesboro, dated August 17, 2020 (“Contract”) is effective as of \_\_\_\_\_, by and between the **City of Murfreesboro** (“City”), a municipal corporation of the State of Tennessee and **Unifirst Corporation**, a Corporation of the State of Massachusetts (“Contractor”).

**WHEREAS**, City and Contractor entered into the Contract pursuant to Unifirst’s Sourcewell Agreement for Uniforms and Related Products and Services;

**WHEREAS**, pursuant to Section 2 of the Contract, the term of the Contract may be extended by mutual agreement of the parties; and

**WHEREAS**, pursuant to Section 11 of the Contract, said Contract may be modified by written amendment executed by all parties; and

**WHEREAS**, the parties desire to amend the Contract to exercise the optional one year period from May 22, 2024 to May 22, 2025;

NOW, THEREFORE, City and Contractor hereby amend the Contract as follows:

1. The parties agree to amend Section 2 of the Contract in order to extend the term of the contract through May 22, 2025.
2. All other terms of the Contract remain in full force and effect and are otherwise unchanged by this First Amendment.

**CITY OF MURFREESBORO**

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

**UNIFIRST CORPORATION**

DocuSigned by:  
By: *Chris Smith*  
92367DD15A0947F...  
Chris Smith, General Manager

**APPROVED AS TO FORM:**

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

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Amendment to Renew Memorandum of Understanding with MTSU for Stormwater Education Services

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Annual extension of MOU with MTSU for public education related to the prevention of stormwater pollution.

**Staff Recommendation**

Approve amendment to renew MOU with MTSU for FY25. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

Since 2012, the City and MTSU’s MOU has allowed MTSU to assist the City in educating and involving the community in stormwater pollution prevention.

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

The City and MTSU meet annually to plan education projects and events for the upcoming year. Thereafter, activities are evaluated monthly for effectiveness. Projects range from stream clean ups to the education of specific audiences such as landscapers, automotive businesses, HOA’s, and students.

**Council Priorities Served**

*Expand Infrastructure*

Increasing the knowledge of residents, students, and employees of local businesses in the storm water infrastructure projects provides long-term benefits to the system.

**Fiscal Impacts**

The expenses, \$52,000, are funded by the FY25 Stormwater Utility Fund.

**Attachments**

2<sup>nd</sup> MOU renewal amendment for 2024-25.

**SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF MURFREESBORO, TENNESSEE  
AND  
MIDDLE TENNESSEE STATE UNIVERSITY**


This Amendment to the Memorandum of Understanding (MOU), MTSU Contract Number C23-0005 between the City of Murfreesboro, Tennessee and Middle Tennessee State University shall be effective July 1, 2024 through June 30, 2025.

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

**City of Murfreesboro**

**Middle Tennessee State University**

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

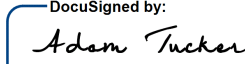
  
By: \_\_\_\_\_  
Alan R. Thomas  
Vice President Business and Finance

Digitally signed by Alan R. Thomas, Vice President for Business and Finance, acting for and on behalf of Middle Tennessee State University  
Date: 2024.05.14 11:49:43 -05'00'

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

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

Approved as to form:

By:   
Adam Tucker  
City Attorney

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# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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

**Requested Council Action:**

- Ordinance
- Resolution
- Motion
- Direction
- Information

---

**Summary**

Report of asphalt purchases.

**Staff Recommendation**

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

**Background Information**

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

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

**Council Priorities Served**

*Responsible budgeting*

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

**Fiscal Impacts**

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

**Attachments**

Asphalt Purchases Report

**OPERATIONS & MAINTENANCE  
ASPHALT QUOTES | FY 2024**

	Wire Grass Const Co.		Hawkins		Vulcan		Notes
	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	
Jul	\$73.05	\$85.54	\$77.82	\$84.45	\$72.00	\$83.50	
Aug	\$72.71	\$85.11	\$77.38	\$83.85	\$72.00	\$83.50	
Sep	\$72.63	\$85.01	\$77.38	\$83.85	\$72.00	\$83.50	
Oct	\$72.63	\$85.01	\$77.38	\$83.85	\$72.00	\$83.50	
Nov	\$72.63	\$85.01	\$77.38	\$83.85	\$72.00	\$83.50	
Dec	\$72.63	\$85.01	\$77.38	\$83.85	\$72.00	\$83.50	
Jan	\$72.63	\$85.01	\$77.38	\$83.35	\$72.00	\$83.50	
Feb	\$77.48	\$86.82			\$72.00	\$83.50	Hawkins Closed till March 2024
Mar	\$78.00	\$95.00	\$79.60	\$85.97	\$73.58	\$84.61	
Apr	\$77.77	\$94.71	\$79.60	\$85.97	\$73.51	\$84.51	
May							
Jun							



# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Purchase Itron’s Temetra Portal

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Purchase Itron’s Temetra Portal, a hosted solution for gathering water meter data and analytics.

**Staff Recommendation**

Approve sole source purchase from United Systems for Temetra. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

United Systems is a sole source provider of Itron equipment within our region. Temetra is a data collection toolkit designed for mobile employees to collect and analyze Itron’s meter reading information from a secure web interface. Temetra with mobile will replace Field Collection system which is an outdated technology and relies on Internet Explorer’s discontinued browser.

**Council Priorities Served**

*Responsible budgeting*

By maintaining up to date technology for tracking water usage, the department benefits from more accurate meter readings and billing information.

**Fiscal Impact**

The cost is \$25,500, is funded by MWRD’s – AMI Capital Budget.

**Attachments**

United Systems & Itron Addendum



**AGREEMENT BETWEEN  
CITY OF MURFREESBORO  
AND  
UNITED SYSTEMS & SOFTWARE, INC  
FOR  
ITRON 500 SERIES PROJECT IMPLEMENTATION SERVICES**

This Agreement is entered into and effective as of the \_\_\_\_\_ (the "Effective Date"), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **United Systems & Software Inc.**, a corporation of the State of Kentucky and Sole Source Provider of equipment being purchased ("Contractor").

This Agreement consists of the following documents:

- This document
- Contractor's Sales Quotation dated November 1, 2023, for ITRON 500 Series Project Implementation Services, Annual Hosting Fees, and Additional Hardware ("Contractor's Proposal");
- Any properly executed amendments to this Agreement.

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

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

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase ITRON 500 Series Project Implementation Services, including 100 Cellular Endpoints (500W), AMI Essentials NAM-Hosted Application Management Setup, 1<sup>st</sup> Year AMA Essentials Saas (including cellular backhaul for first 100 endpoints), and USS Technical services as set forth in Contractor's Proposal, as well as additional hardware: one (1) 500W Cellular Water Pit Module Standard, 10 year cellular fees built in, and one (1) OEM-Diehl-120282-Hydrus V2 5/8"x1/2"x7.5", 7d, Ext.Enc. 5' Itron ILC\*GA. City also agrees to annual hosting fees for Temetra Portal invoiced by ITRON subsequent to implementation being completed.
2. **Term.** The term of this Contract shall begin on the Effective Date and continue for a period of one (1) year for the Implementation Services and Additional Hardware; regarding the Annual Hosting subscription, this Contract shall continue for a period to be coterminous with the end date of Contractor's subscription period. In the event the Murfreesboro City Council approves and appropriates funds for additional subscription periods, this Contract shall be deemed extended and renewed for an additional subscription period; Contractor's provision of Annual Hosting for an additional period shall also be deemed Contractor's agreement to said extension and renewal pursuant to the terms and conditions provided herein. 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 this procurement (including, without limitation, the Annual Hosting subscription) 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 ITRON 500 Series Project Implementation Services and Additional Hardware to be provided under this Agreement is set forth in the Contractor's Proposal, which reflects a **total purchase price for implementation of \$25,500.00**, including estimated freight charges. Post implementation, subscription services will be billed annually at \$24,530.00, with the subscription amount varying based on the number of endpoints. Unit pricing for additional hardware as needed is set forth in Contractor's Proposal as \$150.00 for one (1) ECW-1700-001 500W Cellular Water Pit Module Standard 10 Year Cellular Fees Built In and \$130.00 for one (1) OEM-6222-006 OEM-Diehl-3120282-Hydrus V2 5/8"X 1/2"X 7.5",7D, Ext.Enc. 5' Itron ILC\*GA. Unit pricing to remain firm for the duration of the contract. 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 Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment for the Implementation Services and Additional Hardware shall not be made until after performance is complete.
- b. Deliveries of all items shall be made within 10 weeks of order to: 1725 South Church Street, Murfreesboro, TN 37130. Delivery Contact: Adam Todd (tel.: 615-642-0373 email: atodd@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- c. 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 Proposals.
- e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

4. **Warranty.** Unless otherwise specified, every item quoted shall meet the warranty requirements set forth in the specifications and the manufacturer's standard warranty.

5. **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. **Insurance.** During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."
8. **Indemnification.**
  - a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and reasonable 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. Contractor's maximum liability to the City hereunder shall not exceed the limits of Contractor's insurance policies as evidenced by the Certificate of Insurance delivered by Contractor to the City in connection with this Contract; provided that, in the event said Certificate of Insurance is cancelled, lapses, or otherwise expires, this limitation shall be of no further force or effect unless and until Contractor provides the City with a new valid Certificate of Insurance containing the same or greater insurance amounts.
  - 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.

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

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

If to the Contractor:  
United Systems & Software, Inc.  
Attn: Kyle Deering  
91 Southwest One Blvd.  
Benton, KY 42025  
270-527-3293

10. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.

11. **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.

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

13. **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.
14. **No Waiver of Limitations Periods.** The parties shall have and maintain any applicable limitation period provided by state law in which to provide a notice, present a claim, or initiate an action in a court of competent jurisdiction. To the extent any other provision in the documents forming this Agreement provides a shorter limitation period, the City disclaims such provision, and Contractor acknowledges such disclaimer.
15. **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.
16. **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.
17. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

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

**affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

- c. **The City and Contractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.”**

18. **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.
19. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. 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.
20. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
21. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, pandemics, epidemics, shortages in materials or supplies required or the manufacture or shipment of the products, governmental order, or other cause of similar or dissimilar nature beyond its control.
22. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
23. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.

- 24. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 25. **Iran Divestment Act of Tennessee.** By submission of the Contractor's Quote, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
- 26. **Non-Boycott of Israel.** By submission of the Contractor's Quote, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.
- 27. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

**CITY OF MURFREESBORO, TENNESSEE**

**UNITED SYSTEMS & SOFTWARE, INC.**

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

DocuSigned by:  
By: *Kyle Deering* \_\_\_\_\_  
7E27491A991543A  
Kyle Deering, Account Manager

APPROVED AS TO FORM:

DocuSigned by:  
*Adam F. Tucker* \_\_\_\_\_  
43A2035E51E9401...  
Adam F. Tucker, City Attorney



P.O. Box 547 | 91 Southwest One Blvd. | Benton, Kentucky 42025  
 Phone: 270.527.3293 | 800.455.3293 | FAX: 270.527.3132  
 www.united-systems.com

United Systems & Software, Inc. is a technical services firm that specializes in the software development and information technology to utilities and local government. Founded in 1977, USS now serves over 400 customers within nine-state region. As a distributor of Itron Automatic Meter Reading (AMR) and metering technology, we offer complete AMR systems, radio transmitters & receivers, handheld & mobile computers, software, installation, training and support.



November 1, 2023

**Bid Quotation For:**

Murfreesboro, TN

Note— Thank you for this opportunity to quote on your information technology and meter reading requirements.

Kind Regards,

Kyle Deering, Account Manager  
 United Systems & Software, Inc.

Qty	Product/Service Description	Unit Price	Ext. Price
1	ITRON 500 Series Project Implementation Services Promotion Includes: -100 Cellular Endpoints (500W) -AMI Essentials NAM-Hosted Application Management Setup -1st Year AMI Essentials SaaS Including Cellular Backhaul for first 100 endpoints -USS Technical Services	\$29,500.00	\$29,500.00
<b>Sub-Total-</b>			<b>\$29,500.00</b>
<b>MC Credit-</b>			<b>(\$4,000.00)</b>
<b>Total-</b>			<b>\$25,500.00</b>
<b>Annual Hosting Fees Invoiced by ITRON:</b>			
1	TEM-PORTAL-E-SUB Temetra Portal, 25001-50000 Endpoints, Subscription		~ \$24,530.00
<b>Additional Hardware:</b>			
1	ECW-1700-001 500W Cellular Water Pit Module Standard 10 Year Cellular Fees Built in	\$150.00	\$150.00
1	OEM-6222-006 OEM-Diehl-3120282-Hydrus V2 5/8"X 1/2"X 7.5", 7D, Ext.Enc. 5' Itron ILC*GA	\$130.00	\$130.00



**ADDENDUM TO ITRON, INC. NORTH AMERICAN CELLULAR AMI  
(WATER & GAS) SOLUTION AGREEMENT  
WITH THE CITY OF MURFREESBORO**


This Addendum (herein "Addendum") amends the Itron, Inc. North American Cellular AMI (Water & Gas) Solution Agreement ("AMI Agreement") for the City of Murfreesboro on behalf of the Murfreesboro Water Resources Department, as well as all attachments, exhibits, any physical or virtual documents or writings, referenced therein, and any click through, clickwrap, shrink-wrap, or other such virtual agreements (all of which are herein "Agreement") between Itron, Inc. ("Seller" or "Itron") and the City of Murfreesboro, Tennessee ("City"). In consideration of using Itron's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

1. **Precedence.** Notwithstanding any other provision in the AMI Agreement or the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control it being acknowledged and agreed to by the parties that this Addendum shall be executed and entered into after execution of the Agreement regardless of what order the Agreement and this Addendum are actually executed. Unless defined herein, capitalized terms in this Addendum shall have the meaning set forth in the Agreement.
2. **Term.** Notwithstanding any other provision in the AMI Agreement or the Agreement, the term of the Agreement shall begin on the effective date of the Agreement and shall terminate one (1) year from the date thereof.
3. **Termination for Convenience.** The Agreement may be terminated by City upon thirty (30) days written notice to Itron. Such termination will not be deemed a breach of contract by either party. Should City exercise this provision, City will compensate Itron for all satisfactory and authorized services completed as of the termination date and for the cost of equipment purchased by Itron to be delivered for such service to City, but only to the extent such equipment cannot be returned to the seller or used for another Itron customer. In addition, Itron will refund to City any funds paid by City in excess of the cost of services and equipment delivered to City. Upon such termination, and except as set forth above, neither party shall be entitled to recovery of incidental, consequential, or lost-profit damages.
4. **Payment Terms.** Notwithstanding any other provision in the AMI Agreement or the Agreement, payment terms are Net 30, payable in U.S. Dollars.
5. **Indemnity and Limitation of Liability.**
  - a. Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring City to indemnify or hold harmless Itron or any other person or entity and any limitation of liability in favor of Itron is enforceable only to the extent permitted by Tennessee law provided City's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 et seq. No provision of this Agreement shall act or be deemed a waiver by City of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq.
  - b. Notwithstanding any other provision in the Agreement to the contrary, Itron's liability in connection with the Agreement, other than Itron's liability for indemnification, under the Agreement shall be the greater of: (i) the total amount of available proceeds recoverable from Itron's insurance for any covered event or occurrence; (ii) One Hundred Thousand Dollars (\$100,000.00); or (iii) two-times (2x) the value of the Agreement.

- 6. Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Public Records Act, set out in T.C.A. §10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, City must, upon proper request, release public documents and records as defined by T.C.A. §10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Itron or provide Itron with notice or the time to obtain a protective order. City does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 5 serves to meet such burden and authorization of disclosure.
- 7. Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles. City rejects and disclaims any provision of the Agreement that limit the rights of City beyond those rights, obligations, and limitations provided in Tennessee state law.
- 8. Selection of Jurisdiction and Venue, Waiver of Jury Trial, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, City is a sovereign entity subject only to those courts with jurisdiction over City. Notwithstanding any other provision in the Agreement to the contrary, if a dispute, claim, or cause of action should arise between the parties (hereinafter “claim”) the claim shall be brought in the state courts in Murfreesboro, Rutherford County, Tennessee or the Federal court for the Middle District of Tennessee, and the parties hereby expressly waive any objections and thereby consent to the jurisdiction and venue of said courts. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. Service of process on City shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and City does not agree to any other service of process procedure.
- 9. Responsibility for Litigation Costs, Expenses and Payment of Attorney’s Fees.** Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney’s fees, paralegal fees, investigator fees, court costs, or any other expenses related to litigation. In the event of litigation between City and Itron each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney’s fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.
- 10. Non-appropriation.** Itron acknowledges that City is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event City fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to City, such termination shall not be a breach of this Agreement. Furthermore, this provision shall extend to any and all obligations imposed upon City to reimburse Itron for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations to Itron following the date of termination under this section 10.
- 11. No Taxes.** As a tax-exempt entity, City shall not be responsible for sales or use taxes incurred for products or services. City shall supply Itron with its Sales and Use Tax Exemption Certificate upon Itron’s request.
- 12. Binding Effect.** This agreement is the entire agreement between City, (including City’s employees and other end users) and Itron. No employee of City or any other person, without authorization of the Murfreesboro City Council can bind City to any contract or agreement and anything contrary contained in the Agreement, the Terms of Service or other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, with City’s employees or other end users, to the contrary are null, void and without effect as it applies to City.

- 13. **No Liability of City Officials and Employees.** No member, official, or employee of City shall be personally liable to Itron or any other person or entity, including a third-party beneficiary, in the event any provision of the Agreement is unenforceable, there is any default or breach by City, for any amount which may become due and the Agreement, or on any obligations under the terms of the Agreement.
- 14. **Parties to Receive Notice:** Any notices contemplated by the agreement to City shall also be sent via certified United States mail addressed to:  
  
City of Murfreesboro  
Legal Department  
111 West Vine Street  
Murfreesboro, TN 37130
- 15. **Amendment.** This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties. This includes any changes to pricing, fees, rates and charges.
- 16. **Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
- 17. **No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.
- 18. **Counterparts.** This Addendum may be executed in one or more counterparts by City and Itron. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.
- 19. **Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

**Itron, Inc.**

DocuSigned by:  
  
 9F6BEA338A474F6...  
 Signature

Date: 5/1/2024

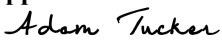
Joel Vach

VP Tax, Treasury, MD&A  
Title

**City of Murfreesboro, Tennessee**

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

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

Approved by to form:  
  
 43A2035E51F9401...  
 Adam F. Tucker, City Attorney



## NORTH AMERICAN

### CELLULAR AMI (WATER & GAS) SOLUTION AGREEMENT

THIS NORTH AMERICAN CELLULAR AMI (WATER & GAS) SOLUTION AGREEMENT (THIS "AGREEMENT") GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES AND EQUIPMENT DESCRIBED IN A QUOTE THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH "ITRON"). THE TERMS "SERVICES", "EQUIPMENT" AND "QUOTE" ARE DEFINED IN THE DEFINITIONS SECTION BELOW.

This Agreement is effective as of the latest signed date below (the "**Effective Date**"). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (a) you have full legal authority to bind your employer, or the applicable entity, to this Agreement, (b) you have read and understand this Agreement, and (c) you agree, on behalf of the party that you represent, to this Agreement.

#### 1. Definitions.

**Affiliate** means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

**Annual Adjustment** means Itron's annual price increase.

**Billing Cycle** means a period of one year beginning on the Service Offering Commencement Date or any anniversary thereof.

**Claim** means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney's fees) or other relief.

**Channel Partner** means a third-party authorized by Itron to distribute Services and/or Equipment to Customer.

**Client Services Guidelines Documents** means the following documents as they may be updated by Itron from time to time: "Product Contact Information Sheet", "After Hours Support", "Itron Equipment Repair Center Locations", and "Working Effectively with Itron Global Services". Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

**Confidential Information** means any confidential, trade secret or other proprietary information disclosed by a Party or a Party's Affiliate related to its business that is designated as "confidential" or which a reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party.

**Covered Itron Equipment** means Itron Equipment for which Customer has purchased Maintenance Services.

**Covered Third-Party Equipment** means Third-Party Equipment for which Customer has purchased Maintenance Services.

**Covered Products** mean Software, Covered Itron Equipment and Third-Party Covered Equipment.

**Customer** means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

**Customer Data** means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

**Defended Party** means a Party entitled to defense and indemnification from the other Party under Section 12 ("Third-Party Claims") of this Agreement.

**Defending Party** means a Party obligated to provide defense and indemnification to the other Party under Section 12 ("Third Party Claims") of this Agreement.

**Documentation** means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services and Equipment provided by Itron, which Itron customarily makes available to its customers.

**Endpoint** means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device from which Customer Data will be collected and managed as part of a Service Offering.

**Error** means a material failure of Software to comply with applicable published Itron specifications.

**Equipment** means Itron Equipment and Third-Party Equipment.

**Equipment Maintenance Fees** mean the annual fees identified in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron, for each category of Covered Itron Equipment and Covered Third-Party Equipment, plus the Annual Adjustment, if any.

**Fees** means all amounts payable to Itron by Customer for Services and Equipment provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

**Fix** means a correction or workaround for an Error.

**Global Support Services** means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

**Improvement** means an update, modification, enhancement and/or extension to Software functionality that is included in a Release.

**Intellectual Property** and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

**Itron Equipment** means equipment listed on a Purchase Order for sale to Customer under this Agreement that is manufactured by or on behalf of Itron.

**M&S Commencement Date** means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be as follows:

Covered Product	M&S Commencement Date
-----------------	-----------------------

Covered Software provided as a Service Offering	Service Offering Commencement Date
Covered Itron Equipment	End of warranty period
Third Party Covered Products	Per applicable third-party service provider terms and conditions

**Maintenance Services** means maintenance and support services described in [Section 8](#) (“Maintenance Services”) of this Agreement.

**Mobile Device Software** means Itron’s Temetra Mobile application.

**One-Time Setup Fee** means the one-time setup fee(s) for each Service Offering identified in the applicable Quote or, if no Quote, Itron’s then-current list price at the time of Purchase Order acceptance by Itron.

**Operating Condition** means performance in accordance with applicable published Itron specifications.

**Party** means Customer or Itron and **Parties** means Customer and Itron.

**Primary Services Contacts** means Customer’s primary support staff who provides internal support to Customer’s operations personnel and who are key interface to Itron for all Maintenance Services.

**Quote** means a quote for Services and/or Equipment provided to Customer by Itron or a Channel Partner.

**Release** means a collection of Fixes and/or Improvements made available by Itron to Customer.

**Service Offering** means the Temetra software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

**SaaS Software** means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

**Servers** means the physical computer hardware owned by Itron or its designated provider on which SaaS Software will be installed, operated, and maintained by or on behalf of Itron.

**Service Offering Commencement Date** means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

**Service Levels** means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in [Attachment A](#) to this Agreement.

**Services** mean the Service Offering(s) and Maintenance Services.

**Software** means Mobile Device Software and SaaS Software.

**Subscription Fees** means annual fees identified in the applicable Quote or, if no Quote, Itron’s then-current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

**Subscription Term** means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

**Territory** means the country in which Itron provides Services and/or Equipment to Customer.

**Third-Party Equipment** means equipment listed on a Purchase Order for sale to Customer under this Agreement that is not manufactured by or on behalf of Itron.

**2. Purchase Order Requirement.** Customer shall purchase Services and any Equipment by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services and Equipment, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

**3. Term.** The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Thereafter, the term of this Agreement will automatically renew for successive one-year periods, unless either Party provides the other with written notice of its intent not to renew at least ninety (90) days prior to commencement of the next renewal period. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 15 ("Termination") of this Agreement.

#### **4. Fees, Invoicing, Taxes and Payment.**

**4.1. Fees.** Initial fees for Services and Equipment are set forth in the Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. If the Territory is the United States, Customer will issue its Purchase Order to Itron, Inc. and pay Fees to such entity in USD. If the Territory is Canada, Customer will issue its Purchase Order to Itron Canada, Inc. and pay Fees to such entity in CAD.

#### **4.2. Invoicing.**

**4.2.1.** Customer shall pay Subscription Fees in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. During deployment, Itron will invoice Subscription Fees quarterly beginning on the Effective Date and each subsequent period of three months. Beginning on the anniversary of the Effective Date immediately following completion of deployment Itron will invoice Subscription Fees annually in advance. Deployment is considered complete when Customer installs the quantity of devices specified in an applicable purchase Order or pricing document.

**4.2.2. Equipment.** Itron will invoice Customer for Equipment and related shipping costs on or after the date of shipment.

**4.2.3. Maintenance Services.** Fees for Software Maintenance Services are included in the Subscription Fee for the applicable Service Offering. As compensation for Maintenance Services for Equipment, Customer shall, in advance, pay Equipment Maintenance Fees for each Billing Cycle in which it receives such Maintenance Services. Itron shall invoice Customer for Equipment Maintenance Services to be provided during the first Billing Cycle as soon as practicable following the M&S Commencement Date. For Equipment Maintenance Services provided during any subsequent Billing Cycle, Itron shall provide Customer with a renewal notice at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue Maintenance Services for any Covered Itron Equipment or Covered Third-Party Equipment by providing Itron with written notice of non-renewal for such Covered Product(s) no less than 90 days prior to the commencement of any subsequent Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each subsequent Billing Cycle, Itron shall provide Customer with an invoice for Equipment Maintenance Fees payable by Customer for the forthcoming Billing Cycle. Itron may, in its discretion, invoice Customer for Maintenance Services for Covered Itron Equipment or Covered Third-Party that is added during any Billing Cycle as soon as such Maintenance Services have been added (at a prorated amount) or at the beginning of the next Billing Cycle. The Equipment Maintenance Fee for any partial Billing Cycle (i.e., for Covered Itron Equipment or Covered Third-Party Equipment with a M&S Commencement Date falls after the beginning of the Billing Cycle) shall be prorated based on the applicable M&S Commencement Date and the remaining number of months Customer is to receive Maintenance Services during the Billing Cycle.

**4.3. Payment.** Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

**4.4. Invoice Disputes.** Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all

amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 18 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

**4.5. Late Payment.** Except for invoiced payments that Customer has timely disputed, all late payments shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services and/or delivery of any Equipment if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

**4.6. No Setoff.** Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

**4.7. Taxes.** All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer will reimburse Itron for sales and use tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein.

**5. Documentation.** Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services and Equipment for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

## **6. Service Offerings**

### **6.1. Access Rights and Restrictions.**

**6.1.1. Access Rights.** Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

**6.1.2. Restrictions on Use.** Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related Documentation to provide services to third parties, or otherwise use any Service Offering on a "service bureau" or "timesharing" or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron's or its providers' Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron's or its providers' Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron's or its providers' systems or networks; (m) merge any Service Offering with any other product or service



without Itron's prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

**6.1.3. Content Restrictions.** Customer may not distribute, download, or place on any Itron or its providers' website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as "**Prohibited Content**"). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. To the extent not prohibited by law, Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys' fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers' website or Server or used with any Service Offering by Customer.

**6.2. Breach of Restrictions.** Customer's breach of the restrictions set forth in Section 6.1.2 ("Restrictions on Use") or Section 6.1.3 ("Content Restrictions") shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer's breach of these restrictions.

**6.3. SaaS Software Availability.** Itron will endeavor to make the SaaS Software available to Customer through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

**6.4. Third-Party Radio Devices.** Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("Third-Party Radio Device"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

**6.5. Sizing of Software-as-a-Service.** Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

**6.6. Application Upgrade and Fixes.** SaaS Software is updated regularly using a continuous delivery method.

**6.7. Conditions on Use of Service.** Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

**6.8. Suspension or Restriction of Service.** Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 ("Restrictions on Use"), Section 6.1.3 ("Content Restrictions") or Section 6.7 ("Conditions on Use of Service"), until such breach is cured to Itron's reasonable satisfaction.

**6.9. Incident Management.** Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party

providers.

**6.10. Customer Technical Responsibilities.** Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense. For the avoidance of doubt, Customer is responsible for providing WAN connectivity.

**6.11. User IDs and Passwords.** Itron shall provide Customer with a user identification and password ("User ID") to access each Service Offering. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

**6.12. Maintenance.** System maintenance, whenever reasonably practicable, will be performed during off-business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

**6.13. Business Continuity.** Itron uses streaming replication to keep a hot failover database always available, with automatic switch over in the event of failure. Application data is automatically backed up every night.

**6.14. Recovery of Customer Data.** Prior to the end of the Subscription Term, or earlier termination of this Agreement or applicable Order Document, (the "**Recovery Request Deadline**") Customer may request to Itron in writing to recover system data relating to this Service Offering ("**Recovery Request**"). Provided that Itron has received the Recovery Request from Customer prior to the Recovery Request Deadline, Itron will maintain Customer's access to this Service Offering for a period of three (3) months from Recovery Request Deadline (the "**Recovery Period**"), for the sole purpose of enabling Customer to retrieve the following system data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by this Service Offering, or the format already supported by this Service Offering. At the end of the Recovery Period, the system data will be permanently deleted and will no longer be recoverable. Notwithstanding the foregoing, if Customer fails to pay undisputed amounts due, Itron will have no obligation to maintain system data or Customer's access to this Service Offering following the Recovery Request Deadline. Itron may restore system data (if recoverable) and reinstate Customer's access to this Service Offering upon payment of Itron's then current reinstatement fee.

## **7. Mobile Device Software License.**

**7.1. License Grant.** Subject to the terms of this Agreement, Itron grants Company a limited, non-exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a "**Mobile Device**") strictly in accordance with the Documentation.

**7.2. License Restrictions.** Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

**7.3. Updates.** Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "**Updates**"). Based on Customer's Mobile Device settings, when Customer's Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

**7.4. Compatible Mobile Devices.** Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device

Software work with any other mobile devices.

**7.5. Disclaimer of Liability.** Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

## 8. Equipment

**8.1. Ordering, Lead Time & Ship Date.** Scheduled shipping dates will be assigned by Itron as close as possible to Customer's requested date based on Itron's then-current lead times for the Equipment. Upon Customer's request, Itron will communicate current lead times. Itron will also communicate scheduled shipping dates in the order acknowledgment or on Itron's customer portal.

**8.2. Order Cancellation & Rescheduling.** Purchase Orders for Equipment may not be canceled or rescheduled by Customer, unless agreed to by Itron.

**8.3. Shipment, Title & Risk of Loss.** For shipments within the United States, Itron will ship Equipment FOB Origin, production facility. Customer must pay for all costs associated with delivery of Equipment to the final destination. Title and risk of loss of Equipment will pass to Customer upon tender to the carrier at the production facility. For shipments outside the United States, Itron will ship Equipment FCA Origin (Incoterms 2020). Equipment will be delivered export cleared to Customer at the production facility. Customer will act as the Importer of Record (IOR) for Equipment and assumes all costs associated with delivery of Equipment to the final destination, including transportation after delivery to carrier and any licensing, certifications, permits, customs fees, import/local taxes, provincial/national tax, and value added tax related to importation of Equipment. Itron will provide all necessary information required for Customer to import Equipment. Title to and risk of loss for Equipment passes to Customer upon tender to the carrier at the production facility.

**8.4. Itron Equipment Warranty.** Itron warrants solely to Customer that Itron Equipment will be free from defects in materials and workmanship and will conform in all material respects to the applicable Itron published specifications for one (1) year following the original shipment date. As Customer's sole and exclusive remedy for a breach of the foregoing warranty, Itron will, at its option and expense: (i) repair or replace faulty Itron Equipment under warranty after it has been returned to an Itron-designated repair facility during the Warranty Period in accordance with Itron's then current RMA policy and procedures, (ii) provide Customer with a Firmware or software fix to correct the nonconformity, or (iii) if Itron determines (in its reasonable judgment) that it is unable to provide a remedy specified in item (i) or (ii) of this section, Itron will provide Customer with a depreciated refund of the purchase price for the applicable Itron Equipment. Customer will pay the cost of returning Itron Equipment to the Itron designated repair facility and Itron will pay the cost of returned repaired or replacement Itron Equipment to Customer. Customer is responsible for any labor costs associated with removal or reinstallation of Itron Equipment. Repaired and replacement Itron Equipment will be warranted for the remainder of the Warranty Period, or sixty (60) days from the ship date of the repaired or replaced Itron Equipment, whichever is longer.

**8.5. Itron Equipment Warranty Exclusions.** The above warranty does not cover Itron Equipment in poor operating condition due to: (a) changes made to Itron Equipment without Itron's prior written consent; (b) use with cables, mounting kits, antennas, battery backups and other devices, third party software or firmware that Itron has not provided to Customer or approved in writing for use with Itron Equipment; (c) Customer's or a third party's misuse, abuse, negligence, or failure to install, test, handle or operate Itron Equipment in accordance with its Documentation; (d) a Force Majeure event; or (e) incorrect data, or data entry or output by Customer or a third party not under Itron's control. Additional warranty exclusions for specific Itron Equipment may be specified in the attached Itron Equipment Warranty Table. Customer may request that Itron repair Itron Equipment damaged by any of the foregoing; if Itron agrees to make such repairs, Customer may be charged additional Fees.

**8.6. Third-Party Equipment Warranty.** Itron is not the manufacturer of the Third-Party Equipment and makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, quality, performance or non-infringement of Third-Party Equipment. Third Party Equipment shall be subject to any warranties provided by the Third-Party Equipment manufacturer. Itron will pass through to Customer, or make commercially reasonable efforts to enforce on Customer's behalf, any warranties and remedies received from the Third-Party Equipment

manufacturer.

## 9. Maintenance Services

### 9.1. Primary Services Contacts.

**9.1.1. Designation by Customer.** Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

**9.1.2. Training of Principal Services Contacts.** Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer-proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section.

### 9.2. Global Support Services & Service Requests.

**9.2.1. Global Support Services.** Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

**9.2.2. Service Request Process.** Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

**9.2.3. Field Support.** At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

### 9.3. Software Maintenance

**9.3.1. Fixes.** Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error,

and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

**9.3.2. Improvements.** Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

**9.3.3. Exclusions.** Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

**9.3.4. Customer Responsibilities.** Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

#### **9.4. Equipment Maintenance.**

**9.4.1. Preventive and Corrective Maintenance.** Upon receipt of an item of Covered Itron Equipment, Itron shall (i) perform preventative Maintenance Services necessary to maintain the Covered Itron Equipment in Operating Condition, and (ii) diagnose and correct any failure in the Covered Itron Equipment as necessary to meet Operating Condition, excluding minor cosmetic deficiencies such as blemishes, dents or scratches.

**9.4.2. Maintenance Procedures.** Customer shall initiate a request for Maintenance Services for Covered Itron Equipment by delivering the Covered Itron Equipment to the applicable Itron Certified Repair Center identified on the Itron Equipment Repair Table. Return of Covered Equipment shall be at Customer's expense and in accordance with Itron's then-current Return Material Authorization ("RMA") procedures. Upon receipt of Covered Itron Equipment (with the required information) under Itron's RMA procedures, Itron shall assess the item to determine (a) whether it is in fact Covered Itron Equipment and (b) whether the maintenance requested is included within the Maintenance Services ordered by Customer and not otherwise excluded from coverage. If the returned equipment is determined to be Covered Itron Equipment and the maintenance requested is included in the Maintenance Services ordered by Customer, Itron shall provide the applicable Maintenance Services and return the item of Covered Itron Equipment to Customer at Itron's expense within the applicable turnaround time identified on the Itron Equipment Repair Table. If Itron determines that returned equipment is not Covered Itron Equipment or is excluded from the Maintenance Services ordered by Customer, then Itron will proceed in accordance with the estimation fees section below.

**9.4.3. Exclusions.** Covered Itron Equipment Maintenance Services do not include repairs related to: (i) damage due to accident, abuse, misuse, inadequate maintenance, problems caused by electrical power surges or acts of God outside of the tolerances set forth in the applicable published Itron specifications; (ii) service or repair processes (including installation or de-installation of equipment, parts, or firmware/software) not performed or authorized by Itron; (iii) use of parts, configurations or repair depots not certified or authorized by Itron; or (iv) Customer's failure to perform material Customer responsibilities in accordance with this Addendum, including caring for Covered Itron Equipment in accordance with applicable Documentation.

**9.4.4. Estimation Fees.** Itron will provide Customer with a price quote for the estimated cost (including current inspection fees), including labor, materials and shipping, for any repairs to equipment that are requested, which Itron determines are excluded from or not included within the Maintenance Services ordered by Customer. If Customer elects not to proceed with the requested repair, Itron will return the item of equipment at Customer's expense and Itron may charge Customer its then-current inspection fee.

**9.4.5. Adding/Restoring Equipment to Maintenance Services.** Following the Effective Date, additional Covered Itron Equipment purchased by Customer, of a similar type and model already covered under this Agreement, shall automatically be deemed to be Covered Itron Equipment following the M&S Commencement Date. If Customer declines or discontinues Maintenance Services for any Covered Itron Equipment and thereafter wishes to add or restore such equipment as Covered Itron Equipment, Itron may, prior to such equipment being included as Covered Itron Equipment, inspect such equipment at Itron's then current

rates to determine whether it is in Operating Condition and/or charge Itron's then current re-certification fee, in addition to prorated Equipment Maintenance Fees for the then-current Billing Cycle (the "Re-initiation Costs"). At Customer's request, Itron will provide Customer with a quote for estimated Re-initiation Costs for equipment that Customer wishes to add or restore as Covered Itron Equipment under this section.

**9.4.6. Equipment Responsibilities.** Itron shall make available, and Customer shall obtain, a copy of the Documentation for Covered Itron Equipment and Customer will be responsible to perform preventive maintenance for each such item in accordance with such Documentation. Customer shall also keep accurate records of Covered Itron Equipment serial numbers and locations to assist Itron with performing Maintenance Services.

**9.4.7. Support for Third Party Equipment.** Itron shall provide first tier Global Support Services for Third Party Covered Equipment by handling all Customer inquiries, attempting to identify the component involved in the problem and obtaining appropriate documentation of such inquiry or problem. In addition, Itron shall make commercially reasonable efforts to facilitate Customer's receipt of maintenance and support for such Third-Party Covered Equipment consistent with the third-party maintenance terms made available to Customer by Itron. Notwithstanding anything else to the contrary, Itron's sole obligation under this Addendum with respect to Third Party Covered Equipment shall be as set forth in this section.

**9.5. End of Support.** Itron may discontinue Maintenance Services for any Covered Itron Equipment, effective as of the end of the applicable Billing Cycle, by giving Customer written notice of such discontinuance no less than one hundred eighty (180) days prior to the end of such Billing Cycle. The end of support date for a Covered Third-Party Equipment shall be the date specified by the applicable third-party service provider, which date will be promptly communicated by Itron to Customer following the date of receipt. If the end of support date is scheduled within a subsequent Billing Cycle, Equipment Maintenance Fees for that subsequent Billing Cycle will be pro-rated through the end of support date. At Customer's request, Itron may elect to provide custom support for Equipment for which Maintenance Services have been discontinued at Itron's then-current rates. Unless otherwise agreed by the Parties in accordance with the foregoing sentence, Itron shall have no obligation to provide Maintenance Services with respect to Equipment for which Itron has discontinued Maintenance Services. Periodically, Itron will make available product plan publications, including product information letters (PIL), product newsletters or written technology roadmaps which outline Itron's general plans for continued support and end of support of applicable Covered Products. Product publications are used as general guidelines for Customer communications and planning, which may be updated from time to time.

**10. Warranty Disclaimer.** EXCEPT FOR THE LIMITED ITRON EQUIPMENT WARRANTIES SET FORTH IN SECTION 8.4 ("ITRON EQUIPMENT WARRANTY), ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND EQUIPMENT AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT, AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION VIA CUSTOMER OR THIRD PARTY WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DISCONTINUANCE, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

## **11. Intellectual Property.**

**11.1. Reservation of Intellectual Property.** Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right,

title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

**11.2. Customer Suggestions.** Itron shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

## **12. Third-Party Claims.**

**12.1. General Claims.** The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

**12.2. Infringement Claims.** Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party's Intellectual Property Rights within the Territory ("**IP Claims**"). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

**12.3. Conditions to Defense.** As a condition to the Defending Party's obligations under Section 12.1 or Section 12.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

**12.4. Exclusions to Infringement Claim Defense.** Itron will have no obligation under Section 12.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative of Itron, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer, or (vii) use of any Customer or third-party wireless data services. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

**12.5. EXCLUSIVE REMEDY.** THIS SECTION 12 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

**13. Data Protection.** The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that,

during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party.

**14. Confidentiality.** Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

**15. Termination.** Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

**16. Survival.** The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 10 ("Warranty Disclaimer"), 11 ("Intellectual Property"), 14 ("Confidentiality"), 16 ("Survival"), 17 ("Limitation of Liability"), 18 ("Disputes"), 19 ("Governing Law"), and 25 ("Miscellaneous").

**17. Limitation of Liability.** Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under the applicable Order Document or Statement of Work during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

**18. Disputes.** The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "**Dispute**") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("**Dispute Notice**"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("**Escalation to Executive Notice**"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("**Executive(s)**"). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the "**Escalation to Mediation Date**"), either Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the



mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may initiate legal proceedings in a court of competent jurisdiction. Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

**19. Governing Law.** This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the jurisdiction where Customer's primary business address is located, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**20. Legal Compliance.** Each Party must comply with all applicable laws. Itron's products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

**21. Publicity.** Neither Party may issue a press release related to this Agreement or their relationship without the other Parties' prior written consent. The Parties will create and approve for publication a press release announcing their relationship under this Agreement. Itron may use Customer's name and logo as a part of Itron's normal marketing materials.

**22. Sub-contractor and Outsourcer.** Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

**23. Independent Contractor.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

**24. Force Majeure.** Neither Party (the "Impacted Party") shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer's obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including, without limitation: (a) acts of God; (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "Force Majeure").

**25. Miscellaneous.** (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any

such deleted terms. (b) Section numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any references to a particular section of this Agreement will be deemed to include reference to any and all subsections thereof. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron's prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

## 26. Cellular AMI Use Restrictions.

**26.1. Limitations.** Customer's use of Cellular AMI (Water & Gas) shall be permitted as follows:

**26.1.1. Conventional AMI Use Cases.** Unless otherwise approved in writing by Itron in accordance with Section 26.1.2 below, Customer will use Cellular AMI (Water & Gas) only for the following conventional AMI use cases: (a) up to four reads per day of the following available read types: no more than twice daily retrieval of interval data, daily reading of meter registers, on-demand reads, meter pings, and (b) up to five Firmware upgrades for the life of the Endpoint. Usage beyond conventional use cases could result in premature battery failure.

**26.1.2. New Use Cases.** If Customer requests additional use cases, Itron or its designee will review any request for new use cases, study the impact on network capacity and functionality and render a decision within 90 days of the request. Itron reserves the right to charge additional fees for any new use cases.

## 27. Service Levels.

This Section 27 sets forth the read rate service levels for Cellular AMI (Water & Gas). The read rate service level commitments are outlined below and are contingent upon Customer's purchase of (and ongoing right to receive) Cellular AMI (Water & Gas) in accordance with this Agreement. The service level commitments do not apply to pilot deployments of Cellular AMI (Water & Gas).

**27.1. Service Level Definitions.** The following defined terms are applicable to Cellular AMI (Water & Gas) service levels:

**Available Endpoint** is an Endpoint that meets the following criteria: (a) the Endpoint has been properly installed, operated, and maintained according to Itron published policies and procedures; (b) Customer has provided all necessary and correct information for Itron to properly provision the Endpoint in Itron's data collection platform; (c) adequate cellular coverage signal quality is measured, as defined by applicable product specifications; (d) cellular coverage is not affected by temporary or permanent obstructions or other conditions outside of Itron's control; (e) there are no wireless carrier interruptions or gaps in cellular coverage. An Endpoint will not be considered an Available Endpoint under any of these conditions: (1) if an exception is detected by Itron or reported by Customer, but the exception cannot be resolved remotely, or (2) the Endpoint is under field investigation.

**Billing Window** means a rolling three-day period during which register read data is collected.

**Billing Window Read Rate** means the percentage of Available Endpoints from which register read data has been collected by Temetra during the Billing Window or the twenty-four (24) hours immediately preceding the Billing Window.

**27.2. Service Level Report.** Itron will deliver a monthly service level report that identifies performance against service levels. If Itron does not meet a service level, the report will give the reason the service level was not achieved and describe the corrective actions taken.

**27.3. Service Level Commitment.** Provided Customer has paid all SaaS Subscription Fees, the average monthly Billing Window Read Rate of Available Endpoints during the Subscription Term of this Service Offering will meet or exceed 98.5%. Itron records and data will be the sole basis for all Billing Read Rate measurements and calculations.

Signature page to follow

**Agreed to:**

**Itron, Inc.**

DocuSigned by:

*Joel Vach*

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Signature

Joel Vach

Printed Name

VP TAX AND CORPORATE TREASURER

Title

5/1/2024

Date

**Customer**

Signature

Shane McFarland

Printed Name

Mayor

Title

Date

DocuSigned by:

APPROVED AS TO FORM

*Adam Tucker*

42A7038E51E9401  
Adam P. Tucker, City Attorney

## – Software Maintenance &amp; Support Service Levels –

Severity Level	Response Times	Effort Level and Restoration	Escalation
<p><b>Business Impact:</b>  <b>Critical Impact / System Down.</b> A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue.</p> <p><b>Example:</b> a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down</p>	<p>During regular business-hours Itron will begin the Service Request process during Customer's initial call.</p> <p>During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process.</p> <p>Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response.</p> <p>Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties.</p> <p>Customer will respond to an Itron inquiry or request within three (3) hours.</p>	<p>Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to:</p> <p>i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4.</p> <p>Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.</p>	<p>An unresolved Service Request shall be escalated to Itron management as follows:</p> <p><b>After 30 minutes:</b> Technical Customer Support Team Lead</p> <p><b>After 8 hours:</b> Manager, Technical Client Services</p> <p><b>After 16 hours:</b> Director, Global Support Services</p> <p><b>After 48 hours:</b> Service Request. Vice President, Services and Delivery</p> <p><b>After 72 hours:</b> President, Itron</p>

<p><b>Severity Level 2*</b> <b>Business Impact:Major impact, degraded Operation.</b> An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.</p> <p><b>Example:</b> a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission</p>	<p>During regular business-hours Itron will respond to Customer regarding Service Request within one (1) business day.</p> <p>While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties.</p> <p>Customer will respond to an Itron inquiry or request within one (1) business day.</p>	<p>Itron will make diligent efforts during normal business hours to:</p> <p>i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.</p>	<p>An unresolved Service Request shall be escalated to Itron management as follows:</p> <p><b>After 1 hours:</b> Technical Customer Support Team Lead</p> <p><b>After 8 hours:</b> Manager, Technical Client Services</p> <p><b>After 24 hours:</b> Director, Global Support Services</p> <p><b>After 30 Days:</b> Vice President, Services and Delivery</p>
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<p><b>Severity Level 3**</b></p> <p><b>Business Impact: Minor Business Impact, compromised operations.</b> An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.</p> <p>Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.</p>	<p>During regular business-hours Itron will respond to Customer regarding Service Request within two (2) business days.</p> <p>While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties.</p> <p>Customer will respond to an Itron inquiry or request within two (2) business days.</p>	<p>Itron will work during normal business hours to:</p> <p>i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4</p>	
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<p><b>Severity Level 4</b></p> <p><b>Business Impact: Standard Operations intact.</b> A low or no-impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality</p> <p>Example:</p> <p>Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.</p>	<p>During regular business-hours Itron will respond to Customer regarding Service Request within three (3) business days.</p>	<p>Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.</p>	
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\* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

\*\* Service Request opened on Non-production servers / environments are entered as a Severity Level 3.

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Ordinance 24-O-12 Amendment to the International Energy Conservation Code-Amended (2nd and Final Reading)

**Department:** Building & Codes

**Presented by:** Kevin Jones, Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Amendment to City Code, § 7-15 eliminating mandatory testing for air leakage and air ducts in residential construction.

**Staff Recommendation**

Approve amendment to allow visual inspection option for energy requirements.

**Background Information**

The State Fire Marshal’s office has advised local jurisdictions to look at updating sections of their adopted energy code to closer align to the State’s currently adopted standards. This amendment would no longer require testing certificates to be submitted for Air Leakage and Duct Blast test prior to a Certificate of Occupancy. Visual inspections would still be performed and testing certificates may be requested if a visual observation warrants it. The Town of Smyrna and Rutherford County Codes have recently amended energy code sections to read similar as well.

**Council Priorities Served**

*Improve economic development*

Allows contractors/developers to save time and money by not mandating energy tests while also allowing the flexibility of optional testing or visual inspections performed by City staff.

**Fiscal Impact**

None.

**Attachments**

Ordinance 24-O-12 Energy Code-Amended



**ORDINANCE 24-O-12** amending the Murfreesboro City Code, Chapter 7, Section 7-15, International Energy Conservation Code - Amended.

**WHEREAS**, the City of Murfreesboro previously adopted by Ordinance the 2018 International Energy Conservation Code, with certain amendments, as its local energy conservation code (“Code”); and

**WHEREAS**, upon further review and recommendation by the City of Murfreesboro Building and Codes Director, it is in the best interest of the citizens of the City of Murfreesboro that certain amendments be made to the Code.

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

**SECTION 1.** Chapter 7, Section 7-15, subsection (O) R402.4.1.2 Testing, of the Murfreesboro City Code shall be deleted in its entirety and substitute in lieu thereof the following language:

(O) R402.4.1.2 Testing. Delete in its entirety and replace with 2009 International Energy Conservation Code Section 402.4.2 Air sealing and insulation, including 2009 International Energy Conservation Code Table 402.4.2; 2009 International Energy Conservation Code Section 402.4.2.1 Testing Option; and 2009 International Energy Conservation Code Section 402.4.2.2 Visual Inspection Option;

**SECTION 2.** Chapter 7, Section 7-15, subsections (Q) R403.3.3 Duct Testing (Mandatory) and (R) R403.3.4 Duct Leakage (Prescriptive), of the Murfreesboro City Code shall be deleted in their entirety and substitute in lieu thereof the following language:

(Q) R403.3.2 Sealing (Mandatory). Delete in its entirety and replace with 2009 International Energy Conservation Code Section R403.2.2 Sealing (Mandatory). Last paragraph shall be amended to read: “Exceptions: Duct tightness is not required if the air handler and all ducts are located within conditioned space or if duct sealing can be verified by visual inspection.”

**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:

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

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

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda DeRosia  
Interim City Recorder

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

SEAL

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

**Item Title:** Ordinance setting FY25 Water and Sewer Rate  
[Second Reading]

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
- Resolution
- Motion
- Direction
- Information

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## Summary

Based on MWRD’s biannual cost of service study (COSS) for FY23 along with its FY28 proforma, MWRD a water and sewer rate adjustment in the FY25 budget to maintain cost recovery is required.

## Recommendation

Adopt second reading of Ordinance 24-O-11 adjusting minimum monthly water and sewer charges for meters and increasing the water commodity (\$/1000 gal) charge. The Water Resource Board recommended approval of this matter on April 23, 2024.

## Background Information

Jackson Thornton Utilities Consultants completed MWRD’s FY23 COSS and a pro forma through FY28. The proposed rate adjustments are based on the COSS and pro forma. The average increase to the residential customer is nominal, less than one dollar per month. This nominal adjustment result in a combined overall recovery that decreases from 112.3% to 101.8%

Table 1: MWRD Water/Sewer Rate Design FY24-FY28

Fiscal Year	FY24 Current Rate	FY25 Proposed Rate	FY26 PF	FY27 PF	FY28 PF
Avg Water/Sewer Bill	\$69.44	<b>\$70.23</b>	\$71.01	\$72.83	\$74.94
Monthly \$ Increase		<b>\$0.79</b>	\$0.78	\$1.82	\$2.11
% Increase		<b>1.14%</b>	1.11%	2.56%	2.89%
Combined Overall Recovery		112.3%	107.1%	104.1%	101.8%

## Council Priorities Served

*Responsible budgeting*

Establishing costs for service in the City’s water and sewer enterprise funds is a fiduciarily responsible and minimizes rate adjustments over time to afford customers the ability to budget appropriately for future water and sewer bills.

**Fiscal Impact**

Water fund revenues are estimated to increase by \$177,000; \$59,000 in water commodity revenue and \$118,000 in proposed minimum monthly charge increases.

Sewer fund revenues are estimated to increase by \$1,365,694; \$1,117,000 in commodity revenue due to growth and \$248,000 in proposed minimum monthly charge increases.

**Attachments**

1. FY25 Water and Sewer Rate Design Report
2. Ordinance 24-O-11

## **FY25 Water and Sewer Rate Design Report**

The Murfreesboro Water Resources Department was provided a cost-of-service study (COSS) from Jackson Thornton Utilities Consultants for FY2023. Jackson Thornton has also provided staff a pro forma for FY2028. The following table proposes the water and sewer rate design to support the FY25 budget and FY28 pro forma. The FY28 pro forma anticipates a \$120M in debt service to cover a plant expansion as well as several other capital projects as identified on the 2023 sewer allocation report.

**Table 1: MWRD Water/Sewer Rate Design**

Fiscal Year	2024 Current Rate	2025 Proposed Rate	2026 PF	2027 PF	2028 PF
<b>Sewer</b>					
Residential Min. Monthly Charge	\$10.72	<b>\$11.00</b>	\$11.25	\$11.75	\$12.25
Commodity Charge (\$/kgal)	\$5.50	<b>\$5.50</b>	\$5.50	\$5.55	\$5.60
Sewer Over/Under Recovery (Less Add'l Fees)		<b>116.4%</b>	109.9%	105.6%	102.0%
Sewer Over/Under Recovery (if No Rate Change)		<b>115.8%</b>	108.9%	103.0%	98.1%
Avg Sewer Bill @ 4,900 gal/month		<b>\$37.95</b>	\$38.20	\$38.95	\$39.69
<b>Water</b>					
Residential Min. Monthly Charge	\$10.72	<b>\$11.00</b>	\$11.25	\$11.75	\$12.25
Commodity Charge (\$/kgal)	\$3.66	<b>\$3.70</b>	\$3.75	\$3.85	\$4.00
Water Over/Under Recovery (Less Add'l Fees)		<b>105.0%</b>	101.9%	101.2%	101.3%
Water Over/Under Recovery (if No Rate Change)		<b>103.8%</b>	99.4%	96.3%	93.3%
Avg Water Bill @ 5,750 gal/month		<b>\$32.28</b>	\$32.81	\$33.89	\$35.25
Combined Recovery		FY23 COSS			
<b>Avg Combined Water/Sewer Bill</b>	<b>\$69.44</b>	\$70.23	<b>\$71.01</b>	\$72.83	\$74.94
% Increase		<b>1.14%</b>	1.12%	2.56%	2.89%
Combined Recovery		<b>112.3%</b>	107.1%	104.1%	101.8%
Combined Recovery (if No Rate Change)		<b>111.5%</b>	105.6%	100.8%	96.5%

Table 1 shows MWRD's rates from current FY24, proposed FY25 and future FY26-FY28. The table also shows the anticipated over/under recovery based on the rate design adjustments. The minimum monthly fees for residential customers is increasing by \$0.28 per month for both water and sewer (\$0.56 total) and the water commodity fee is proposed to go from \$3.66 per thousand gallons to \$3.70 per thousand gallons. This is expected to increase the average water bill by \$0.23 per month.

A proposed rate design for meter sizes 5/8" to 2" below by adjusting the minimum annually as tabulated below is estimated to recover 100.7% for FY24. Making the adjustments through FY26 in the table above estimates the water rate recovery at 99.9%.

**Table 2: Proposed Minimum Monthly Water Charge Adjustments**

<b>Meter Size (INCH)</b>	<b>FY24 Total minimum</b>	<b>FY25 Proposed minimum</b>	<b>Difference</b>	<b># of Accounts</b>	<b>Added Revenue</b>
5/8"	\$10.72	\$11.00	\$0.28	25714	\$86,399
1"	\$22.37	\$23.04	\$0.67	568	\$4,574
1-1/2"	\$46.39	\$47.78	\$1.39	333	\$5,561
2"	\$72.49	\$74.66	\$2.17	436	\$11,378
3"	\$164.40	\$169.33	\$4.93	74	\$4,380
4"	\$328.80	\$338.66	\$9.86	22	\$2,604
> 6"	\$685.00	\$705.55	\$20.55	14	\$3,453
<b>Total</b>				<b>27,161</b>	<b>\$118,349</b>

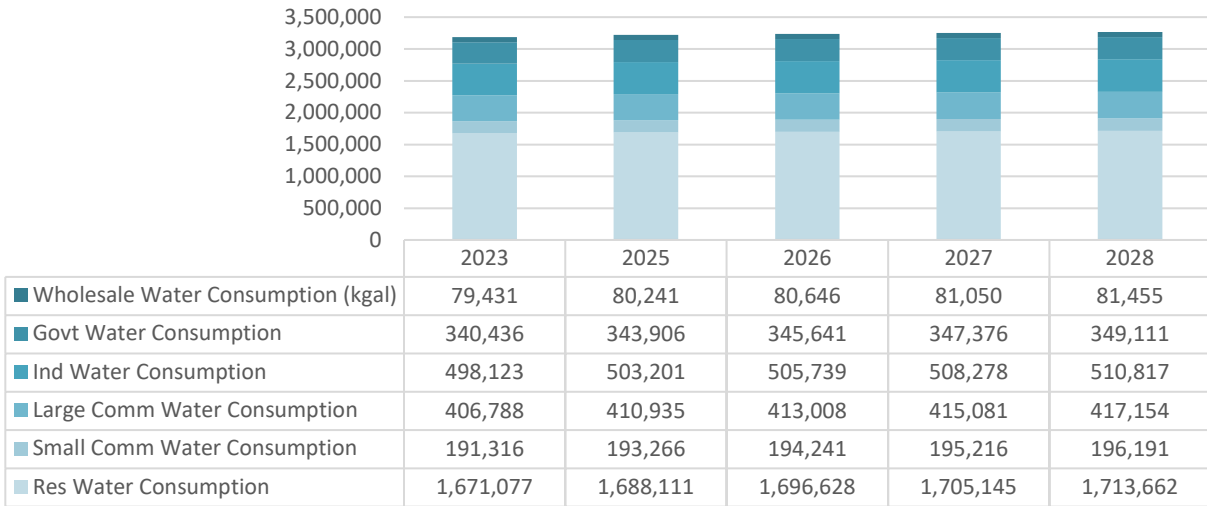
**Table 3: Proposed Minimum Monthly Sewer Charge Adjustments**

<b>Meter Size (INCH)</b>	<b>FY24 Total minimum</b>	<b>FY25 Proposed minimum</b>	<b>Difference</b>	<b># of Accounts</b>	<b>Added Revenue</b>
5/8"	\$10.72	\$11.00	\$0.28	49913	\$167,708
1"	\$27.98	\$28.82	\$0.84	1020	\$10,274
1-1/2"	\$61.90	\$63.76	\$1.86	368	\$8,201
2"	\$100.06	\$103.06	\$3.00	697	\$25,107
3"	\$252.70	\$260.28	\$7.58	79	\$7,187
4"	\$507.10	\$522.31	\$15.21	28	\$5,112
> 6"	\$1,058.30	\$1,090.05	\$31.75	65	\$24,764
<b>Total</b>				<b>52,170</b>	<b>\$248,352</b>

The proposed sewer rate for FY25 involves an increase in the minimum monthly fee for all meter sizes, an approximate 3% increase. No proposed commodity rate for sanitary sewer is being proposed; keeping it at its current rate of \$5.50 per thousand gallons.

The proposed water rate for FY25 involves an increase in the minimum monthly fee for all meter sizes, an approximate 3% increase. A minor commodity rate for water is being proposed; changing it from its current rate of \$3.66 per thousand gallons to \$3.70 per thousand gallons.

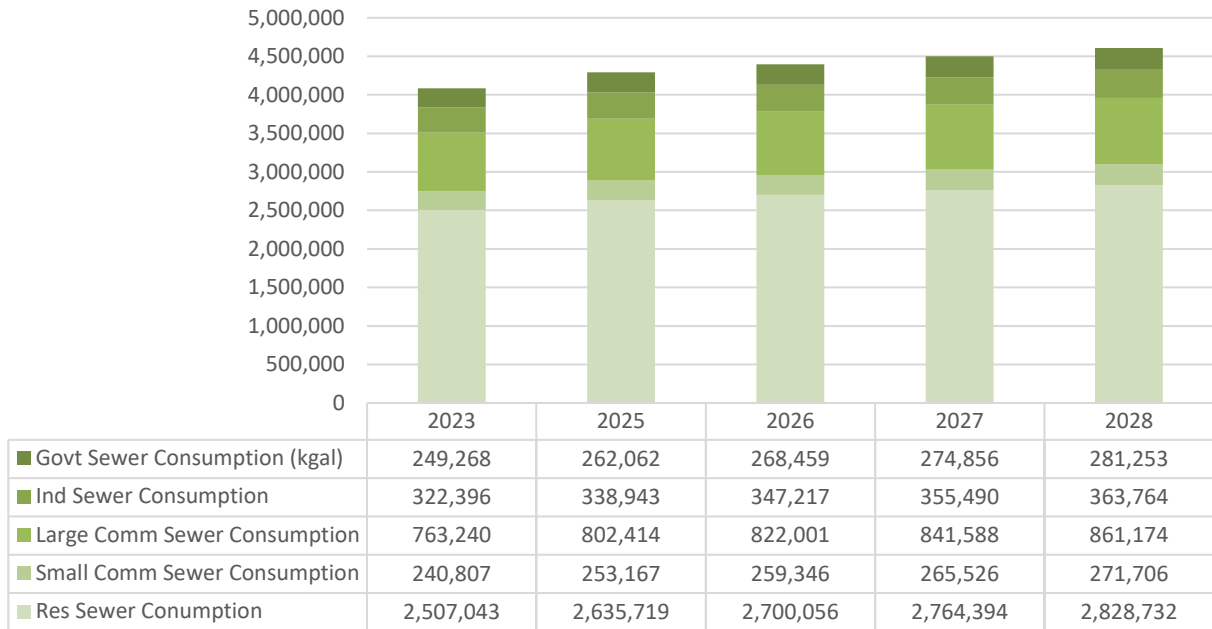
Annual Customer Class **Water** Consumption Growth, FY23 COSS, FY28 PF



**Table 4: Projected FY25 Water Commodity Revenue**

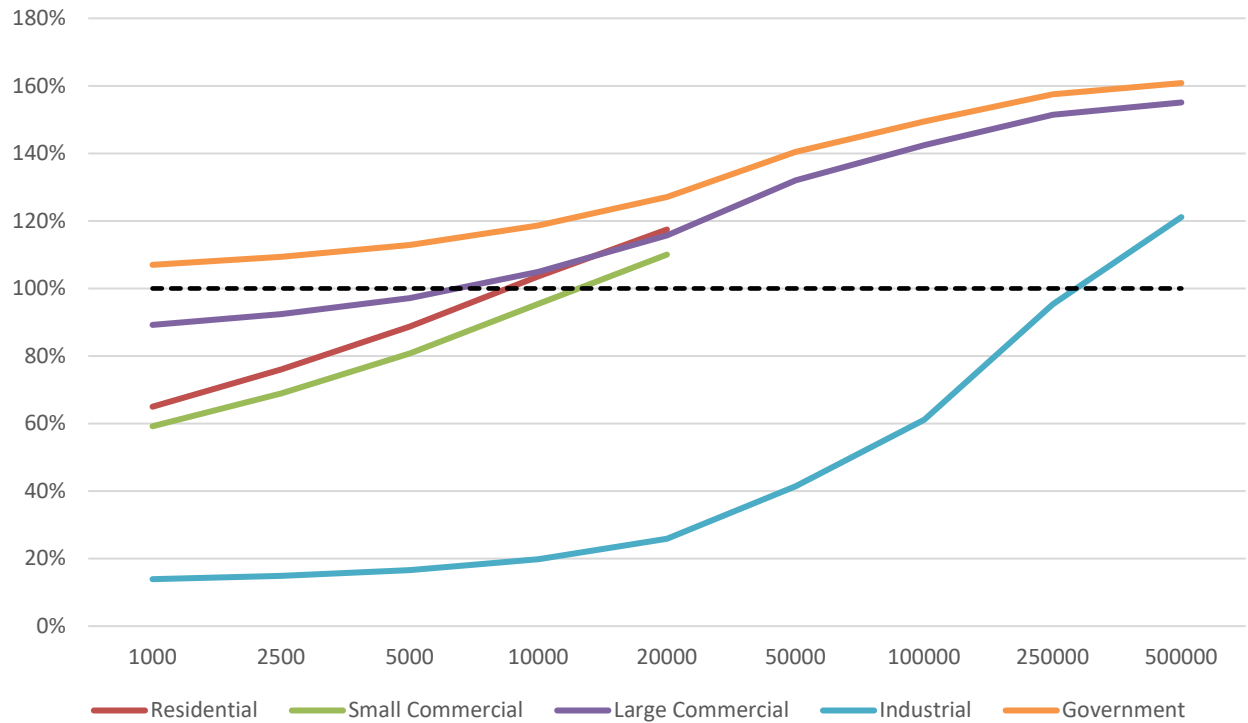
	<i>Residential</i>	<i>Small Commercial</i>	<i>Large Commercial</i>	<i>Industrial</i>	<i>Gov't</i>	<b>TOTAL</b>
<i>kgal/yr</i>	8,517	975	2,073	2,539	1,735	<b>15,839</b>
<i>\$/yr</i>	\$31,513	\$3,608	\$7,671	\$9,393	\$6,420	<b>\$58,605</b>

Annual Customer Class **Sewer** Consumption Growth, FY23 COSS, FY28 PF



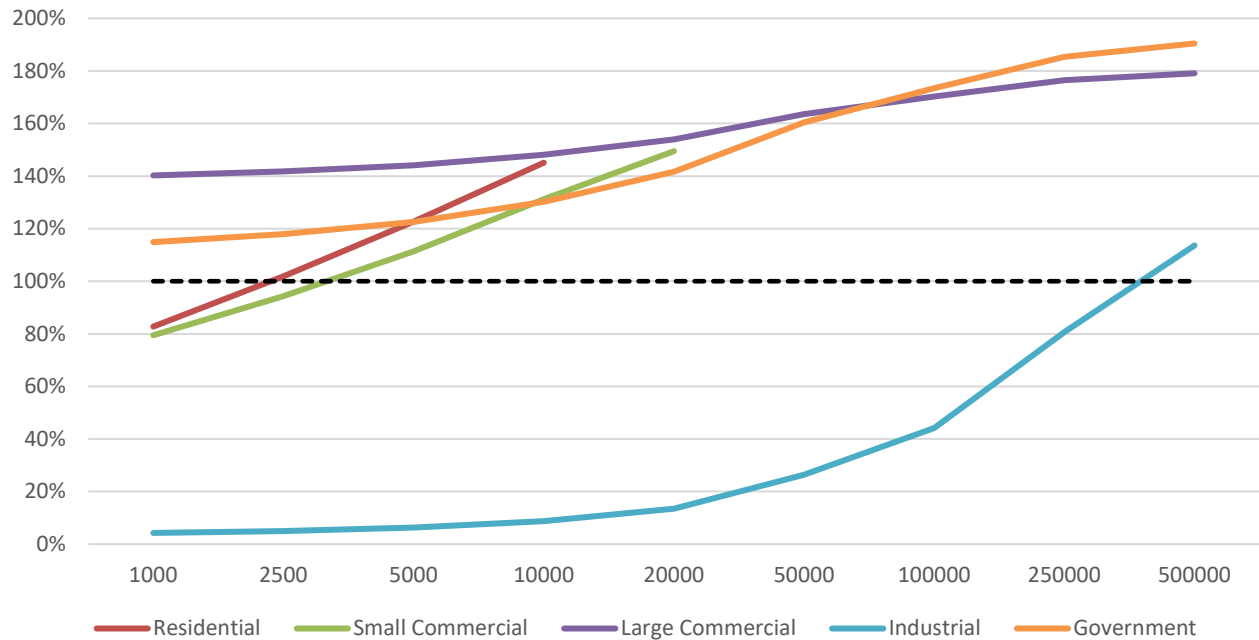
**Table 5: Projected FY25 Sewer Commodity Revenue**

	<i>Residential</i>	<i>Small Commercial</i>	<i>Large Commercial</i>	<i>Industrial</i>	<i>Gov't</i>	<b>TOTAL</b>
<i>kgal/yr</i>	64,338	6,180	19,587	8,274	104,775	203,153
<i>\$/yr</i>	\$353,857.93	\$33,988.83	\$107,727.92	\$45,504.76	\$576,262.50	<b>\$1,117,342</b>



**Table 6: Water Consumption and Billing Amounts (Averages & Needed for 100% Cost Recovery)**

	Residential	Small Commercial	Large Commercial	Industrial	Government
Water gal/month for 100% Recovery (FY23 COSS Rate Design)	8,791	13,143	6,824	270,278	0
Avg. gal/month (FY23 COSS)	5,749	7,285	61,756	619,556	76,160
Monthly Water Bill to cover 100% (FY23 COSS)	\$36.35	\$46.22	\$216.46	\$1,865.85	\$251.87
Prop Avg. Monthly Bill (FY25)	\$33.31	\$40.90	\$293.26	\$2,389.80	\$368.18
Avg. Recovery	92%	88%	135%	128%	146%



**Table 7: Sewer Consumption and Billing Amounts (Averages & Needed for 100% Cost Recovery)**

	Residential	Small Commercial	Large Commercial	Industrial	Government
Sewer gal/month for 100% Recovery (FY23 COSS Rate Design)	2,271	3,333	0	396,821	0
Avg. gal/month (FY23 COSS)	4,328	7,788	72,414	451,535	71,608
Monthly Sewer Bill to cover 100% (FY23 COSS)	\$30.04	\$47.26	\$333.67	\$2,319.34	\$306.29
Prop Avg. Monthly Bill (FY25)	\$35.45	\$58.59	\$558.29	\$2,523.02	\$512.98
Avg. Recovery	118%	124%	167%	109%	167%



The combined monthly residential water and sewer bill is \$70.23. This falls between a 2- and 3-person family household and is well under the affordability indexes illustrated in Chart 5 below (purple dots). The proposed FY24 rate design, when plotted against the combined recovery curves in Chart 5 below, demonstrates how the minimum fee is raised and the commodity fee slope is reduced.

**Residential Rate Design Curves – Existing, Proposed, COSS and Pro Forma**

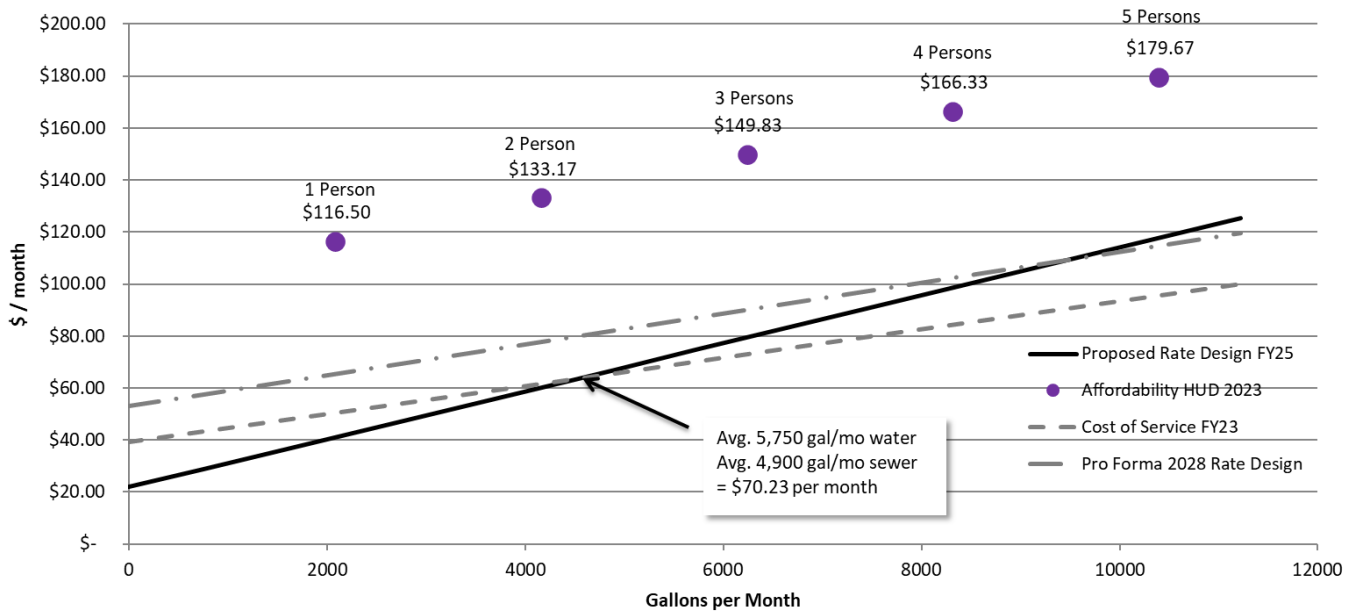


Chart 3 also demonstrates that MWRD’s current rate design meets the affordability index for 1-person through 5-person homes. The good news is that the pro forma for FY28 also meets the current 2023 HUD affordability indexes. Note however that the cost of service for FY23 and pro forma for FY28 do show the need to increase the minimum monthly fees rather substantially and flatten out the commodity charges.

The affordability limits above represent 4% of a very low-income earner (50% of median income) in Murfreesboro. The table below illustrates 2023 HUD housing limits. Median family income of 4 is established at \$99,800 per year, so 50% of median for a family of four is established as \$49,900 per year.

**Table 8: HUD Very Low Income (50% Median) for 1-5 person households**

	1 person	2 persons	3 persons	4 persons	5 persons
50% Median Family Income	\$34,950	\$39,950	\$44,950	\$49,900	\$53,900
4% annual	\$1,398	\$1,598	\$1,798	\$1,936	\$2,156
4% monthly	\$116.50	\$133.17	\$149.83	\$166.33	\$179.67

Staff is not recommending any changes to the system development charges (a.k.a., connection fees) for residential or nonresidential uses.

**ORDINANCE 24-O-11** amending Chapter 33, Water Resources, Section 33-1 of the Murfreesboro City Code, dealing with water resources rates and charges.

**WHEREAS**, the City of Murfreesboro should have water and sewer rates, fees and charges which will generate sufficient funds to retire indebtedness for existing and planned capital improvements of the Water Resources Department and to meet its normal operating expenses; and,

**WHEREAS**, the City of Murfreesboro Cost of Service Study and Pro Forma prepared by Jackson Thornton Utilities determined the water rates were insufficient in meeting the system’s future revenue requirements; and,

**WHEREAS**, the Water Resources Board studied and decided to recommend these charges to the City Council on April 23, 2024.

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

SECTION 1. Section 33-1, Water Resources Rates and Charges, of the Murfreesboro City Code is hereby amended at subsection (B) Water rate and minimum bill, by deleting in its entirety and substituting in lieu thereof the following:

(B) *Water rate and minimum bill.* The water rate shall be \$3.70 per 1,000 gallons of metered water consumption (\$0.0037 per gallon) over the stated allowance per meter size. The minimum monthly bills applicable to all customers shall be based upon the following table:

**MINIMUM MONTHLY WATER CHARGES**

<b>Meter Size</b>	<b>Charge*</b>	<b>Allowance, gallons</b>
<b>5/8 inch</b>	<b>\$11.00</b>	-
<b>1 inch</b>	<b>23.04</b>	-
<b>1 1/2 inch</b>	<b>47.78</b>	-
<b>2 inch</b>	<b>74.66</b>	-
<b>3 inch</b>	<b>169.33</b>	-
<b>4 inch</b>	<b>338.66</b>	-
<b>6 inch</b>	<b>705.55</b>	-

\*Tax not included

SECTION 2. Section 33-1, Water Resources Rates and Charges, of the Murfreesboro City Code is hereby amended at subsection (G) Sewer rates, by amending the table in subsection (1) as follows:

**MINIMUM MONTHLY SEWER CHARGES**

<b>Meter Size</b>	<b>Charge</b>	<b>Allowance, gallons</b>
<b>5/8 inch</b>	<b>\$11.00</b>	-
<b>1 inch</b>	<b>28.82</b>	-
<b>1 1/2 inch</b>	<b>63.76</b>	-
<b>2 inch</b>	<b>103.06</b>	-

<b>3 inch</b>	<b>260.28</b>	-
<b>4 inch</b>	<b>522.31</b>	-
<b>6 inch</b>	<b>1090.05</b>	-

SECTION 3. That this Ordinance shall take effect for bills printed on or after July 1, 2024 on its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

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

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

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

ATTEST:

APPROVED AS TO FORM:

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

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

SEAL

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** FY25 Public Hearing and Related Ordinances

**Department:** Budget

**Presented by:** Erin Tucker

**Requested Council Action:**

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

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**Summary**

Public comment regarding the proposed FY25 Budget information and consideration of ordinance adopting the FY25 Budget.

**Staff Recommendation**

Conduct public hearing regarding the FY25 Budget.

Approve and adopt the Appropriations Ordinance 24-O-14 and the Tax Rate Ordinance 24-O-15.

**Background Information**

The FY25 Budget was submitted to Council on May 14, 2024. Council held a special budget review session on May 23, 2024, regarding the significant assumptions and economic factors surrounding the FY25 Budget and expectations.

**Council Priorities Served**

*Responsible budgeting*

The FY25 Budget addresses the economic conditions and necessary expenditures of the City. Staff will continue to keep City Council informed of the economic conditions of the City and any expected deviations from the budget expectations.

**Operational Issues**

FY25 Budget approval is required before June 30, 2024, in order to continue operations beginning July 1, 2024.

**Fiscal Impact**

The FY25 Budget projects the one-time use of General Fund's Unassigned Fund Balance of \$1.7 million and use of \$83 million of Assigned/Restricted Fund Balances. In addition, operating revenues exceed operating expenditures by \$1.1 million.

**Attachments**

1. FY25 Appropriations Ordinance 24-O-14
2. FY25 Tax Rate Ordinance 24-O-15

**ORDINANCE 24-O-14** adopting a budget and appropriations ordinance providing for appropriations out of the general and special funds of the City of Murfreesboro, Tennessee, of certain sums to defray the current, necessary and special expenses of said City for Fiscal Year 2025 (hereafter “FY2025”), and for other purposes.

**WHEREAS**, the Municipal Budget Law of 1982, T.C.A. §6-56-201 et. seq., requires adoption of an annual budget ordinance and balanced financial plans for intragovernmental service funds; and,

**WHEREAS**, information on the anticipated revenues of the City and the estimated expenditures for the last preceding fiscal year, the current fiscal year, and the coming fiscal year must be included in the annual budget ordinance; and,

**WHEREAS**, state law requires that the proposed annual operating budget be published and a public hearing be held before final adoption of the budget ordinance; and,

**WHEREAS**, the City Charter also requires publication of a tentative budget and public hearing prior to passage of an appropriation ordinance; and,

**WHEREAS**, the City Manager has, pursuant to the City Charter, submitted to the City Council a budget covering in line-item detail, by department and fund, estimates of the expenditures and revenues of the City, which budget shall be revised as necessary to support and be consistent with this budget and appropriations ordinance and other actions of the City Council; and,

**WHEREAS**, the Council has carefully considered the budget as recommended by the City Manager and previously discussed by the City Council, and comments made at the public hearing held on June 6, 2024 and is prepared to adopt its financial plan for FY2025.

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

SECTION 1. The amounts hereinafter listed are the estimated revenues and the budgeted expenditures of the City of Murfreesboro, Tennessee, and the amounts specified are hereby appropriated for the purpose of meeting the expenses of the various departments, agencies, and programs of the City of Murfreesboro, Tennessee for the fiscal year beginning July 1, 2024 and ending June 30, 2025, including the payment of principal of and interest on bonds and other obligations of the City maturing in FY2025, for the City’s General Fund and its special and intergovernmental service funds, to wit:

**PLEASE SEE ATTACHED EXHIBIT A**

(The FY 2022-2023 and 2023-2024 columns are shown for informational purposes only.)

SECTION 2. The Personnel Costs authorized for expenditure in Section 1 are based on the current, previously adopted, compensation and classification plan of the City and the staffing levels hereinafter listed:

**PLEASE SEE ATTACHED EXHIBIT B**

SECTION 3. City Council herein certifies that the condition of its sinking funds, if applicable, are compliant pursuant to its bond covenants, and recognizes that the City has Outstanding Bonded and Other Indebtedness as follows:

**PLEASE SEE ATTACHED EXHIBIT C**

SECTION 4. All capital expenditures for which appropriations have been previously made but not yet fully expended are hereby reauthorized to allow completion of previously approved projects.

SECTION 5. All unassigned and unencumbered fund balances are hereby reappropriated to their respective funds.

SECTION 6. That all payments made before the effective date of this Ordinance, on account of and in pursuance of the appropriations hereinbefore made and provided by this Ordinance in meeting the expenses and obligations of the City for the FY2025, shall be charged against and be deducted from the respective sums appropriated hereinbefore for the respective departments and accounts of the City's government and for the payment of the principal of and interest on obligations of the City to be paid during the FY2025, the intention of this Ordinance in part being to authorize and provide for the payment of the expenses and obligations of the City for that part of the FY2025 that may have already transpired at the taking effect date of this Ordinance as well as for the entire FY2025.

SECTION 7. That any appropriation made by this Ordinance, except appropriations to meet the principal of and interest on bonds and other obligations to be paid in the FY2025 as hereinbefore provided for, shall be subject to reduction, or to the transfer from one appropriation or fund to another, at any time by a resolution of the City Council as to the unexpended portion of such appropriation or funds.

SECTION 8. That this Ordinance take effect immediately upon and after its passage upon second and final reading, as an emergency Ordinance, an emergency existing, and it being imperative to provide for the necessary expenses, general and special, of said City of Murfreesboro for the FY2025 at the earliest practicable time, the welfare of the City requiring it.

Passed:

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

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

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

ATTEST:

APPROVED AS TO FORM:

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Amanda DeRosia  
Interim City Recorder

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

SEAL

Ordinance 24-O-14  
Exhibit A

City of Murfreesboro  
2024 - 2025

	Actual 2022 - 2023	Estimated 2023 - 2024	Proposed 2024 - 2025
<b>GENERAL FUND:</b>			
<b>REVENUES</b>			
Local Taxes	\$156,640,100	\$158,943,882	\$162,218,002
State of Tennessee	29,850,577	38,511,327	37,950,002
Federal Government	10,392,624	17,258,433	25,084,719
Other Sources	42,940,386	41,829,324	43,391,997
Reimbursements from Other Funds	7,416,833	2,866,000	5,043,460
Transfers In	-	-	2,068,060
<b>Total Revenue &amp; Transfers In</b>	<b>\$247,240,519</b>	<b>\$259,408,966</b>	<b>\$275,756,239</b>
<b>EXPENDITURES</b>			
Personnel Costs	99,371,540	111,866,479	122,844,258
Other Costs:			
Legislative	127,568	163,000	191,200
City Manager	1,080,137	1,123,725	4,337,325
Finance	339,180	371,895	502,880
Purchasing	14,388	19,680	27,300
Legal	832,456	2,140,911	2,434,750
Human Resources	208,364	318,647	375,500
Planning	94,412	153,886	965,298
Engineering	203,307	254,211	265,521
Facilities Maintenance	445,040	579,791	912,396
State Street Aid	5,128,273	5,565,290	5,325,060
Infrastructure	986,359	3,178,400	57,335,250
Transportation	1,513,334	8,408,343	12,433,414
Information Technology	2,018,395	2,215,747	3,356,785
GIS	289,325	326,673	417,325
Communications	186,125	221,255	205,270
Building and Codes	153,348	129,712	195,375
City Court	121,555	112,236	339,450
Police	9,272,828	13,678,141	14,876,956
Fire	2,962,267	3,739,658	5,550,234
Street	3,601,864	4,070,740	4,926,031
Civic Plaza	111,813	50,130	58,162
Parking Garage	217,437	65,040	144,200
Fleet Services	(884,052)	(1,278,301)	(1,418,215)
Park & Recreation	4,562,594	5,354,113	22,424,261
Golf	1,000,608	931,685	1,135,807
Solid Waste	4,174,585	4,639,807	5,453,133
Community Development	4,464,403	1,196,127	1,409,555
Strategic Partnerships	1,592,605	1,644,155	1,494,155
Transfers Out	49,648,242	18,377,642	19,676,055
Debt Service - Transfer Out	42,186,948	42,623,314	44,070,680
Miscellaneous	8,688,684	7,383,730	27,038,771
<b>Total Expenditures &amp; Transfers Out</b>	<b>\$244,713,933</b>	<b>\$239,625,861</b>	<b>\$359,304,142</b>
Beginning Fund Balance	\$198,278,021	\$200,804,607	\$220,587,711
Ending Fund Balance	\$200,804,607	\$220,587,711	\$137,039,808
Use of Reserved, Restricted, and Assigned Fund Balance	(\$7,415,784)	(\$349,854)	(\$82,946,303)
Use of Unassigned Fund Balance	\$9,942,370	\$20,132,959	(\$601,600)
<b>DEBT SERVICE FUND:</b>			
<b>REVENUES</b>			
Other Sources	\$3,813	\$5,688	\$0
Transfers In	42,779,908	45,190,951	44,638,282
<b>Total Revenue &amp; Transfers In</b>	<b>\$42,783,721</b>	<b>\$45,196,639</b>	<b>\$44,638,282</b>
<b>EXPENDITURES</b>			
Other Costs	\$38,015,158	\$38,202,855	\$39,607,267
Payment on Refunded Debt			
Transfers Out	4,668,134	4,888,069	4,931,023
<b>Total Expenditures &amp; Transfers Out</b>	<b>\$42,683,292</b>	<b>\$43,090,924</b>	<b>\$44,538,290</b>
Beginning Fund Balance	\$804,646	\$905,075	\$3,010,790
Ending Fund Balance	\$905,075	\$3,010,790	\$3,110,782



City of Murfreesboro  
2024 - 2025

	Actual 2022 - 2023	Estimated 2023 - 2024	Proposed 2024 - 2025
<b><u>AIRPORT IMPROVEMENT FUND:</u></b>			
<b>REVENUES</b>			
State of Tennessee	\$2,072,051	\$838,306	\$87,950
Federal Government	327,212	1,396,975	1,314,000
Transfers In	195,332	231,970	1,445,818
Other Sources	3,739,215	3,315,683	4,041,300
Total Revenue	<u>\$6,333,810</u>	<u>\$5,782,934</u>	<u>\$6,889,068</u>
<b>EXPENDITURES</b>			
Personnel Costs	\$566,277	\$708,930	\$722,487
Other Costs	4,191,278	5,804,060	6,023,968
Transfers Out	150,000	150,000	150,000
Total Expenditures & Transfers Out	<u>\$4,907,555</u>	<u>\$6,662,990</u>	<u>\$6,896,455</u>
Beginning Fund Balance	\$678,359	\$2,104,614	\$1,224,558
Ending Fund Balance	\$2,104,614	\$1,224,558	\$1,217,171
<b><u>DRUG FUND:</u></b>			
<b>REVENUES</b>			
Other Sources	\$160,391	\$276,000	\$116,000
Transfers In	38,231	25,000	25,000
Total Revenue & Transfers In	<u>\$198,622</u>	<u>\$301,000</u>	<u>\$141,000</u>
<b>EXPENDITURES</b>			
Other Costs	\$74,793	\$338,200	\$486,500
Total Expenditures	<u>\$74,793</u>	<u>\$338,200</u>	<u>\$486,500</u>
Beginning Fund Balance	\$605,124	\$728,954	\$691,754
Ending Fund Balance	\$728,954	\$691,754	\$346,254
<b><u>INSURANCE FUND:</u></b>			
<b>REVENUES</b>			
Other Sources	6,877,224	\$9,263,500	\$9,805,630
Transfers In	14,482,138	13,810,000	14,443,000
Total Revenue	<u>\$21,359,361</u>	<u>\$23,073,500</u>	<u>\$24,248,630</u>
<b>EXPENDITURES</b>			
Other Costs	\$20,959,945	\$22,859,700	\$24,248,630
Total Expenditures	<u>\$20,959,945</u>	<u>\$22,859,700</u>	<u>\$24,248,630</u>
Beginning Fund Balance	\$3,917,630	\$4,317,046	\$4,530,846
Ending Fund Balance	\$4,317,046	\$4,530,846	\$4,530,846
<b><u>RISK MANAGEMENT FUND:</u></b>			
<b>REVENUES</b>			
Other Sources	\$4,825,589	\$4,306,819	\$4,581,037
Total Revenues	<u>\$4,825,589</u>	<u>\$4,306,819</u>	<u>\$4,581,037</u>
<b>EXPENDITURES</b>			
Other Costs	\$3,957,056	\$4,327,653	\$4,544,000
Total Expenditures	<u>\$3,957,056</u>	<u>\$4,327,653</u>	<u>\$4,544,000</u>
Beginning Fund Balance	\$3,991,712	\$4,860,245	\$4,839,412
Ending Fund Balance	\$4,860,245	\$4,839,412	\$4,876,449

City of Murfreesboro  
2024 - 2025

	Actual 2022 - 2023	Estimated 2023 - 2024	Proposed 2024 - 2025
<u>OTHER CAPITAL SOURCES FUND:</u>			
REVENUES			
Other Sources	\$287,993	\$354,218	\$350,000
County Shared Bond Proceeds	-	4,457,832	-
Total Revenue	<u>\$287,993</u>	<u>\$4,812,050</u>	<u>\$350,000</u>
EXPENDITURES			
Other Costs	\$1,943,417	\$820,000	\$9,855,332
Total Expenditures	<u>\$1,943,417</u>	<u>\$820,000</u>	<u>\$9,855,332</u>
Beginning Fund Balance	\$10,017,860	\$8,362,436	\$12,354,486
Ending Fund Balance	\$8,362,436	\$12,354,486	\$2,849,154
<u>LOAN/BOND FUND:</u>			
REVENUES			
Other Sources	\$3,050,846	\$2,620,063	\$2,800,000
Issuance of Debt	0	0	55,000,000
Total Revenue & Debt Issuance	<u>\$3,050,846</u>	<u>\$2,620,063</u>	<u>\$57,800,000</u>
EXPENDITURES			
Other Costs	\$28,817,250	\$30,857,392	\$65,000,000
Transfers Out	5,018,668	2,036,425	0
Total Expenditures & Transfers Out	<u>\$33,835,917</u>	<u>\$32,893,817</u>	<u>\$65,000,000</u>
Beginning Fund Balance	\$134,717,173	\$103,932,101	\$73,658,347
Ending Fund Balance	\$103,932,101	\$73,658,347	\$66,458,347

Ordinance 24-O-14

EXHIBIT B

2024-2025 FUNDED POSITION COUNT

DESCRIPTORS	2022/2023		2023/2024		2024/2025	
	NUMBER OF EMPLOYEES		NUMBER OF EMPLOYEES		NUMBER OF EMPLOYEES	
	FULL TIME	PART TIME	FULL TIME	PART TIME	FULL TIME	PART TIME
<b>DEPARTMENTS</b>						
Mayor & Council	7		7		7	
City Manager	15		11		12	
Finance	21		23		24	
Legal	10		10		9	
City Court	7		7		7	
Purchasing	3		3		3	
Information Technology	20		23		24	
GIS	4	1	4	1	5	1
Communications	7	1	8		8	
Human Resources	11		11		11	
Facilities Maintenance	13	1	16	1	16	1
Fleet Services	21		22		24	
Police	393	46	397	46	417	46
Fire	243	1	243	1	245	1
Building & Codes	26		26		26	
Planning	17	12	17	14	17	14
Community Development	4		4		4	
Transportation	28	7	28	7	34	7
Engineering	14		14		16	
Street	54	9	54	9	56	8
Civic Plaza	1		1		1	
Recreation	100	304	105	305	108	307
Golf	16	39	16	39	16	43
Solid Waste	47		48		48	
<b>Total General Fund</b>	<b>1082</b>	<b>421</b>	<b>1098</b>	<b>423</b>	<b>1138</b>	<b>428</b>
Airport Fund	4	10	6	9	6	9
	4	10	6	9	6	9
	<b>1086</b>	<b>431</b>	<b>1104</b>	<b>432</b>	<b>1144</b>	<b>437</b>

Ordinance 24-O-14

Exhibit C

Bonded or Other Indebtedness	Debt Authorized and Unissued	Principal Outstanding at June 30, 2024	FY2025 Principal Payment	FY2025 Interest Payment
<b>Bonds -</b>				
5/14/14 - 2014 Bond		11,580,000	2,150,000	394,388
4/25/16 - 2016A Bond		42,550,000	5,625,000	1,159,500
8/12/16 - 2016B Bond		7,020,000	3,480,000	105,600
4/10/18 - 2018 Bond		47,935,000	4,545,000	1,692,913
9/30/20 - 2020C Refunding Bond		11,185,000	2,675,000	335,550
2/26/21 - 2021 Bond		53,200,000	4,400,000	2,039,100
4/22/22 - 2022 Bond		43,200,000	3,250,000	1,693,750
<b>Loan Agreements</b>				
3/1/19 - 2019 SunTrust Loan		41,305,000	3,630,000	1,189,355
State of TN - Schools Energy		885,461	180,588	6,024
<b>Notes -</b>				
<b>Capital Leases</b>				
[enter each series individually]				
		<b>\$ 258,860,461</b>	<b>\$ 29,935,588</b>	<b>\$ 8,616,180</b>

**ORDINANCE 24-O-15** providing for the levy and collection of a tax for the year 2024 upon all property, real, personal and mixed, within and subject to the jurisdiction of the City of Murfreesboro that is now taxable under the laws and Constitution of the State of Tennessee and the Charter of said City, and for the interest and costs to be added to such taxes after certain dates.

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

**SECTION 1.**

(a) That the City Council having received from the City Manager the statement of the valuation and assessment of taxable property within the City of Murfreesboro for the year 2024, and the estimates of revenues to be received by the City of Murfreesboro for the year 2024, pursuant to Section 83 of the Charter of said City, there be and is hereby levied upon and assessed against every species of property—real, personal, and mixed—within the corporate limits and subject to the jurisdiction of the City of Murfreesboro that is taxable by said City of Murfreesboro under the laws and Constitution of the State of Tennessee (including the Charter of the City of Murfreesboro), for the year 2024, the sum of 95.26/100 Dollars (\$0.9526) on every hundred dollars worth of said property.

(b) The individual ad valorem property tax amounts shall be rounded to the nearest dollar. Such rounding shall be applied uniformly to all property tax bills in the City for real and personal property, and shall be accomplished by rounding amounts ending in \$0.01 to \$0.49 down to the nearest dollar and amounts ending in \$0.50 to \$0.99 up to the nearest dollar. Such rounding shall also apply to any interest added to delinquent taxes.

**SECTION 2.** That all such taxes shall be collected in the manner provided by the Charter and Ordinances of the City of Murfreesboro and the laws of the State of Tennessee not in conflict therewith.

**SECTION 3.**

(a) That all such taxes shall be and become past due and delinquent on and after January 1, 2025, and interest at the rate of one and one-half percent (1.5%) per month, as authorized by T.C.A. § 67-5-2010, shall be applied and added to the amount of such taxes on and after January 1, 2025. Such interest shall be added to the amount of the said taxes, and shall be paid by the taxpayer.

(b) All taxes remaining unpaid and delinquent on January 1, 2025, shall be promptly certified to the City's attorney handling tax collections as provided by the Charter of the City of Murfreesboro, unless such certification shall be delayed by resolution of the City Council for a period or periods of time beyond said date of January 1, 2025; and the costs fixed by the law of the State for collection of delinquent State or County taxes, shall be applied and added to the amount of such taxes, to be paid by the taxpayer on and after January 1, 2025, or on and after such period or

periods of time to which said certification of such taxes to the City’s attorney may be delayed or deferred by such resolution of the City Council.

SECTION 4. That this Ordinances take effect from and after its passage upon second and final reading as an emergency Ordinance, an emergency existing, and it being necessary that this Ordinance take effect at the earliest possible moment in order to allow taxpayers to pay their taxes at the earliest possible time, and in order to make available the revenues to be derived from the taxes herein levied to meet current expenditures of the City, the public welfare and the welfare of the City requiring it.

Passed:

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

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

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda DeRosia  
Interim City Recorder

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

SEAL

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Ordinance 24-O-19 setting Murfreesboro School Board Member compensation

**Department:** Legal

**Presented by:** Adam F. Tucker, City Attorney

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Adjustment of compensation provided Murfreesboro City School Board

**Staff Recommendation**

Adopt on second reading Ordinance 24-O-19 setting the compensation of School Board Members at \$800 per month and providing for the Board Chair to receive an addition al\$100 per month.

**Background Information**

At its April 11, 2024 Workshop Meeting, City Council requested that staff prepare an ordinance amending the City Code to increase the compensation of School Board Members. Ordinance 24-O-19 is consistent with that request.

Currently, School Board Members are paid \$200 for the first meeting of the month and \$100 for the second meeting of the month. The Board Chair also receives an additional \$50 per meeting. The monthly compensation for Board Members is capped at \$300 and \$400 for the Board Chair, regardless of how many times the Board meets each month.

Ordinance 24-O-19 would set compensation for School Board members at \$800 per month, with the School Board Chair to receive an additional \$100 per month. Under the proposed ordinance, compensation would not be contingent on the number of times the Board meets per month.

**Council Priorities Served**

*Improve Economic Development*

Relocating MWRD’s administration allows the Department to address its current needs and affords the City the opportunity to redevelop the land in its current location, thereby improving the amenities to the downtown area.

**Fiscal Impact**

The new compensation structure would begin on July 1, 2024. Funding for the proposed compensation is included in the Murfreesboro City Schools FY2025 Budget.

**Attachments**

Ordinance 24-O-19.

**ORDINANCE 24-O-19** amending the Murfreesboro City Code, Chapter 25—Schools, Section 25-2 regarding compensation of School Board Members.

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

SECTION 1. Section 25-2 of the Murfreesboro City Code is hereby amended by deleting the last three sentences and substituting in lieu thereof the following sentences:

“Members of the Board shall be compensated eight hundred dollars (\$800.00) per month. The Board Chair shall receive an additional one hundred dollars (\$100.00) per month.”

SECTION 2. That this Ordinance shall take effect on July 1, 2024, following its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

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

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

ATTEST:

\_\_\_\_\_  
Amanda DeRosia  
Interim City Recorder

APPROVED AS TO FORM:

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

SEAL



# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Ordinance 24-O-17 City Code Ch. 33-2 & 50 Changes

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Staff is requesting revisions to Chapter 33 of the City Code to clarify water and sewer connection fees as it relates to Assisted/Senior Living as well as large Commercial Buildings over 35,000 square feet.

**Staff Recommendation**

Approve the revisions to Chapter 33 of the City Code by Ordinance 24-O-17. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

Assisted/Senior Living developments are increasingly becoming popular and there is typically justifiable rationale by the developers that these facilities use less water and sewer than an Apartment. In meeting with the Legal Department, it has been decided that best practice would be to define Assisted/Senior Living and add it to the Connection Fee Chart with Hospital/Nursing Home as a charge per "bed" as shown in the attached Ordinance.

Legal and staff have defined Assisted/Senior Living, for water and sewer purposes, as residences that do not have individual oven, stove, or laundry equipment within the residence.

In addition, Legal and staff propose to modify Chapter 33-Section 2(D) related to water connection fees and Chapter 33-Section 50(A)(3) related to sewer connection fees. These sections currently require any Industrial use or Commercial space over 35,000 sf to be established by City Council upon recommendation of the Water Resources Board. The request is to remove the Commercial space requirement as most Commercial spaces of this size are either large retail spaces that use small amounts of water or large office space which is a routine calculation based on historical usage and square footage. The process of approval of fees for Industry will remain the same.

**Council Priorities Served**

*Responsible budgeting*

It is fair and best practice to charge customers water and/or sewer connection fees as accurately as possible based on normal daily water and sewer consumption.

**Fiscal Impact**

There is no fiscal impact to the FY25 operating budget in setting this new connection fee structure.

**Attachments**

Ordinance 24-O-17

**ORDINANCE 24-O-17** amending the Murfreesboro City Code, Chapter 33, Section 33-2, Charges for taps made by City; and Section 33-50, Sanitary sewer connection or tapping fees and house services fees or charges.

**WHEREAS**, the City of Murfreesboro previously adopted by Ordinance Section 33-2 Charges for taps made by City; and Section 33-50 Sanitary sewer connection or tapping fees and house services fees or charges, as its local water and sewer tapping fees and house service fees (“Code”); and

**WHEREAS**, upon further review and recommendation by the City of Murfreesboro Water Resources Director, it is in the best interest of the citizens of the City of Murfreesboro that certain amendments be made to the Code.

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

**SECTION 1.** Chapter 33-2, Charges for taps made by City, subsection (A) shall be deleted in its entirety and substitute in lieu thereof the following language:

- (A) The charges for water taps made by the Water Resources Department shall be as hereinafter set forth:
- (1) The charges for a three-fourths (3/4) or one-inch (1”) water service line stub installed for a developer in a street under construction or a water line easement shall be \$675.00.
  - (2) In areas where the service line stub has been installed by a developer, the charge for a three-fourths (3/4) or one-inch (1”) meter connection shall be \$540.00.
  - (3) In areas where the water service line stub has not been installed, the charge for a three-fourths (3/4) or one-inch (1”) water tap outside of the roadway shall be \$1,215.00, and inside the roadway shall be \$1,915.00.
  - (4) Charges for taps and service lines installed larger than one-inch, or where gang meter vaults are deemed necessary by the Director due to limited right-of-way and/or green-space, or to avoid private utility infrastructure over public utility infrastructure, shall be the costs of labor, equipment, and materials.
  - (5) In addition to the foregoing, the following additional charges apply as indicated:

<b>Customer Description</b>	<b>Connection Fee</b>
Single-Family residence	\$950.00 per unit prior to March 1, 2012 and, on and after March 1, 2012, \$1,200.00 per unit
Multifamily/Condominiums/Apartments/Mobile Homes	\$1,200.00 per unit
Restaurants	\$65.00 per seat
Hotel/Motel	\$350.00 per room
Retail shop and service establishments	\$1,200.00 per unit
Hospital/Nursing Home/Assisted Living/Senior Living Facilities	\$540.00 per bed
Schools	\$16.00 per student
Commercial Space/Office Complex	\$1,200.00 per SFU Equivalent
Industrial (with Board recommendation and Council approval)	\$1,200.00 per SFU Equivalent
Laundries	\$1,200.00 per SFU Equivalent

Car wash:	
Automatic Nylon Brush	\$10,800.00 per bay
Full Service Attended	\$10,800.00 per bay
Brushless Automatic	\$10,800.00 per bay

- (6) For purposes of Section 33-2, Assisted Living is defined as a building, establishment, complex, or distinct part thereof licensed with the State of Tennessee Department of Health as an assisted-care living facility and which accepts primarily aged persons for domiciliary care and provides on-site to its residents room, board, non-medical living assistance services appropriate to the residents' respective needs, and limited medical services as prescribed by each resident's treating physician.
- (7) For purposes of Section 33-2, Senior Living is defined as a residential complex containing multifamily dwelling units designed for and principally occupied by senior citizens, wherein each individual dwelling unit does not include laundry equipment. Such facilities may include a congregate meals program in a common dining area, but exclude institutional care such as medical or nursing care.
- (8) If there is a car wash associated with a convenience store, the above car wash water connection fee shall apply plus connection fees for one retail shop and service establishment, or multiple thereof, if more than one shop.

**SECTION 2.** Chapter 33-2, Charges for taps made by City, subsection (D) shall be deleted in its entirety and substitute in lieu thereof the following language:

- (D) The water connection fee for water service to any industrial use shall be fixed and established by the City Council by Resolution upon recommendation of the Water Resources Board after considering and taking into account the location, size, extent, nature and requirements of such customer, and the estimated costs of furnishing such water service to the customer and further considering the estimated usage, occupancy and plumbing fixtures to be installed.

**SECTION 3.** Chapter 33-50, Sanitary sewer connection or tapping fees and house service fees or charges, subsection (A)(1) table shall be deleted in its entirety and substitute in lieu thereof the following table:

<b>Customer Description</b>	<b>Connection Fee</b>
Single-Family residence	\$1,800.00 per unit prior to March 1, 2012 and, on and after March 1, 2012, \$2,500.00 per unit
Multifamily/Condominiums/Apartments/Mobile Homes	\$2,550.00 per unit
Restaurants	\$110.00 per seat
Hotel/Motel	\$800.00 per room
Retail shop and service establishments	\$2,550.00 per unit
Hospital/Nursing Home/Assisted Living/Senior Living Facilities	\$800.00 per bed
Schools	\$24.00 per student
Commercial Space/Office Complex	\$2,550.00 per SFU Equivalent
Industrial (with Board recommendation and Council approval)	\$2,550.00 per SFU Equivalent
Laundries	\$2,550.00 per SFU Equivalent
Car wash:	
Automatic Nylon Brush	\$16,800.00 per bay and per SFU

	Equivalent for Special Sanitary Sewer Assessment Districts
Full Service Attended	\$16,800.00 per bay and per SFU Equivalent for Special Sanitary Sewer Assessment Districts
Brushless Automatic	\$16,800.00 per bay and per SFU Equivalent for Special Sanitary Sewer Assessment Districts
If there is a car wash associated with a convenience store, the above car wash sewer connection fee shall apply plus connection fees for one retail shop and service establishment, or multiple thereof, if more than one shop.	
Any of the categories itemized above that discharge into a Decentralized Wastewater Treatment Facility (e.g., Recirculating Sand Filter) whose effluent is land applied through a drip irrigation system and whose assets have been dedicated to MWSD will not be subject to any sanitary sewer connection fees. Sewer connection fees may be assessed as set by resolution on a case-by-case basis should the decentralized wastewater treatment system be funded by MWSD and system development charges (i.e., capacity buy-in fees) required for recoupment of rate payer funded assets.	
House service charges based on ROW width:	
Right-of-way less than 50 feet	\$1,000.00 where existing laterals exist to edge of ROW. For new taps and laterals, O&M material and labor costs recouped.
Over 50 feet and less than 60 feet	\$1,000.00 where existing laterals exist to edge of ROW. For new taps and laterals, O&M material and labor costs recouped.
Over 60 feet and less than 80 feet	\$1,000.00 where existing laterals exist to edge of ROW. For new taps and laterals, O&M material and labor costs recouped.
80 feet and greater	\$1,000.00 where existing laterals exist to edge of ROW. For new taps and laterals, O&M material and labor costs recouped.
Notwithstanding the foregoing, the house service charges for customers (i) paying monthly sewer charges on the effective date of this section for the property in question, (ii) who are not actually connected to the public sewers, and (iii) who have a house service line already in place to serve the subject property may connect to the public sewers before January 1, 2002, and pay the house service charges in effect before adoption of this section.	
Sewer Clean Our Connection	\$170.00

SECTION 4, Chapter 33-50, Sanitary sewer connection or tapping fees and house service fees or charges, subsection (A)(3) shall be deleted in its entirety and substitute in lieu thereof the following language:

- (A)(3) The sewer connection fee for sewer service to any industrial use shall be fixed and established by the City Council by Resolution upon recommendation of the Board after considering and taking into account the location, size, extent, nature and requirements of such customer, and the estimated cost of furnishing such sewer service to the customer, and further considering the estimated usage, occupancy and plumbing fixtures to be installed.

SECTION 5, Chapter 33-50, Sanitary sewer connection or tapping fees and house service fees or charges, subsection (A) shall add subsection (6) stating as

follows:

(6) For purposes of Section 33-50, Assisted Living is defined as a building, establishment, complex, or distinct part thereof licensed with the State of Tennessee Department of Health as an assisted-care living facility and which accepts primarily aged persons for domiciliary care and provides on-site to its residents room, board, non-medical living assistance services appropriate to the residents' respective needs, and limited medical services as prescribed by each resident's treating physician.

SECTION 6. Chapter 33-50, Sanitary sewer connection or tapping fees and house service fees or charges, subsection (A) shall add subsection (7) stating as follows:

(7) For purposes of Section 33-50, Senior Living is defined as a residential complex containing multifamily dwelling units designed for and principally occupied by senior citizens, wherein each individual dwelling unit does not include laundry equipment. Such facilities may include a congregate meals program in a common dining area, but exclude institutional care such as medical or nursing care.

SECTION 7. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

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

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

ATTEST:

\_\_\_\_\_  
Amanda DeRosia  
Interim City Recorder

APPROVED AS TO FORM:

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

SEAL

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Schools FY24 Budget Amendment #10

**Department:** City Schools

**Presented by:** Trey Duke, Director

**Requested Council Action:**

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

**Summary**

Schools budget amendment #10 to the FY24 General Purpose, Federal Projects, and Indigent Children’s fund. In General Purpose, we are budgeting new revenue from Career Ladder, Paid Parental Leave, Interest Income, and TISA. The corresponding expenditures for these new revenues will be budgeted in salaries, career ladder, substitute teachers, other fringe benefits, contracts with private agencies, and maintenance and equipment line items. In Federal Projects, new revenue for Paid Parental Leave and final revenue allocations for Title funds I, II, and III will offset salaries and benefits, instructional materials, and staff development. The new revenue for Indigent Children’s fund recognizes new contributions and gifts and it will offset other charges within the same fund.

**Staff Recommendation**

Approve Resolution 24-R-21 amending the FY24 General Purpose, Federal Projects, and Indigent Children’s fund as presented.

**Background Information**

On May 14<sup>th</sup> the Murfreesboro City School Board approved the Federal Projects Title I, II, and III final allocations to recognize an increase in Title II of \$15,493 and Title III of \$20,000, and a decrease in Title I of \$66,490.

- Title I decrease will be adjusted within categories of medical insurance, supplies & materials, and staff development, but other salaries and benefits were adjusted to meet the final allocation for FY24.
- Title II increase will be recognized in staff development and indirect costs for FY24.
- Title III increase will be recognized in other supplies & materials and indirect costs for FY24.

On May 28<sup>th</sup> the Murfreesboro City School Board approved new revenue for Paid Parental Leave for FY24 in the Federal Projects fund. Paid Parental Leave is reported to the State and reimbursed for licensed employees who utilize six paid workweeks after a birth or stillbirth of the employee’s child or employee’s adoption of a newly placed minor child.

- The revenue will be recorded in Paid Parental Leave for \$23,961 and the expenditures related to the lines for coverage: speech pathologist, social security, retirement, Medicare, other fringe benefits, social workers, medical & dental insurance, and other salary & wages.

On May 28<sup>th</sup>, the Murfreesboro City School Board approved new revenue for Interest Earned, TISA, Career Ladder, and Paid Parental Leave in the General Purpose fund. The Interest Income of \$165,000 and TISA of funding \$278,072 will align with the final projections and allocations for FY24 in each of the accounts. The Career Ladder will align with the States final report of \$1,146. Paid Parental Leave of \$245,000 is new revenue for FY24. Paid Parental Leave is reported to the State and reimbursed for licensed employees who utilize six paid workweeks after a birth or stillbirth of the employee's child or employee's adoption of a newly placed minor child.

- Interest Earned and TISA revenue and allocations will be expensed in Maintenance of Plant for other contracted services, maintenance & repair of building and equipment, and other supplies & materials for year-end projects in FY24.
- Career Ladder allocation will be used for Office of Superintendent career ladder, social security, state retirement, and Medicare.
- Paid Parental Leave allocation will offset expenditures for teachers, career ladder, substitute teachers, state retirement, and contract with private agencies in FY24.

On May 28<sup>th</sup>, the Murfreesboro City School Board approved new revenue of \$1,730 for contributions and gifts within the Indigent Children's fund.

- This revenue will offset other charges within the same fund.

### **Council Priorities Served**

#### *Responsible budgeting*

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

### **Fiscal Impact**

The total decrease in revenue of \$7,036 will be adjusted within the Federal Projects fund to recognize final allocations and new revenues to offset related expenditures.

The total increase in revenue of \$689,218 in General Purpose fund will be recognized as new revenue and will be associated with related expenditures.

The total increase in revenue of \$1,730 in Indigent Children's fund will be recognized as new revenue and will be associated with related expenditures.

### **Attachments**

1. Resolution 24-R-21
2. Exhibit A: MCS Budget Amendment #10



**RESOLUTION 24-R-21** amending the Fiscal Year 2024 (hereafter "FY2024") Murfreesboro City Schools Budget (10th Amendment).

**WHEREAS**, the City Council adopted Resolution 23-R-15 on June 8, 2023 to implement the FY2024 Murfreesboro City Schools Budget; and

**WHEREAS**, it is now desirable and appropriate to adjust and modify the FY2024 Murfreesboro City Schools Budget by this Resolution to incorporate expenditure decisions made by the Murfreesboro City School Board.

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

**SECTION 1.** The FY2024 Murfreesboro City Schools Budget as adopted by the City Council is hereby revised as shown on attached Exhibit A.

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

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

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda DeRosia  
Interim City Recorder

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

Schools Federal Projects Fund 142  
 Fiscal Year 2023-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Title I	1,957,493	1,891,003	(66,490)
<hr/>			
Total Increase in Revenues	\$ 1,957,493	\$ 1,891,003	\$ (66,490)
<hr/>			
<u>Expenditures</u>			
Title I			
Teachers	584,707	586,410	1,703
Social Security	48,157	48,339	182
State Retirement	62,321	62,370	49
Medical Insurance	102,884	100,874	(2,010)
Other Fringe	12,000	12,250	250
Instructional Supplies & Materials	363,461	328,544	(34,917)
Other Student Support	48,819	48,201	(618)
State Retirement	22,748	23,719	971
In-Service/Staff Development	88,000	55,500	(32,500)
Indirect Cost	48,144	48,544	400
<hr/>			
Total Increase in Expenditures	\$ 1,381,240	\$ 1,314,751	\$ (66,490)
<hr/>			
CHANGE IN FUND BALANCE (CASH)			0

This amendment is to budget expenditures from estimated to actual and to budget the final budget allocation decrease of \$66,490.

Schools Federal Projects Fund 142  
 Fiscal Year 2023-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Title II	659,731	675,225	15,493
<hr/>			
Total Increase in Revenues	\$ 659,731	\$ 675,225	\$ 15,493
<hr/>			
<u>Expenditures</u>			
Title II			
In-Service/Staff Deveopment	291,019	306,092	15,073
Indirect Cost	18,032	18,452	420
<hr/>			
Total Increase in Expenditures	\$ 309,051	\$ 324,544	\$ 15,493
<hr/>			

CHANGE IN FUND BALANCE (CASH) (0)

This amendment is to budget the final allocation for FY24 Title II funds that includes an increase in funds of \$15,493.

Schools Federal Projects Fund 142  
 Fiscal Year 2023-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Title III	212,560	232,560	20,000
<hr/>			
Total Increase in Revenues	\$ 212,560	\$ 232,560	\$ 20,000
<hr/>			
<u>Expenditures</u>			
Title III			
Other Supplies & Materials	6,976	26,626	19,650
Indirect Cost	3,650	4,000	350
<hr/>			
Total Increase in Expenditures	\$ 10,626	\$ 30,626	\$ 20,000
<hr/>			

CHANGE IN FUND BALANCE (CASH)

This amendment is to budget the transfer of \$20,000 from the additional Title IV reallocation by the Tennessee Department of Education.

Schools Federal Projects Fund 142  
 Fiscal Year 2023-24

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Paid Parental Leave	0	23,961	23,961
<hr/>			
Total Increase in Revenues	\$ -	\$ 23,961	\$ 23,961
<hr/>			
<u>Expenditures</u>			
Paid Parental Leave			
Speech Pathologist	-	7,789	7,789
Social Security	-	465	465
Retirement	-	619	619
Medicare	-	109	109
Other Fringe Benefits	-	210	210
Social Workers	-	8,379	8,379
Social Security	-	425	425
Retirement	-	1,020	1,020
Medical Insurance	-	2,785	2,785
Dental Insurance	-	35	35
Medicare	-	99	99
Other Salaries & Wages	-	1,563	1,563
Social Security	-	87	87
Retirement	-	124	124
Medical Insurance	-	225	225
Dental Insurance	-	6	6
Medicare	-	20	20
<hr/>			
Total Increase in Expenditures	\$ -	\$ 23,961	\$ 23,961
<hr/>			

CHANGE IN FUND BALANCE (CASH) -

This amendment budgets the FY24 Paid Parental Leave revenue from the State for FY24 and it will be used to cover extra expenditures within the Federal Projects including: salaries, benefits, insurance.

Schools General Purpose School Fund  
Fiscal Year 2023-24

Exhibit A to Resolution 24-R-21

Interest Earned/Checking & TISA

Account Description	BUDGET	AMENDED	AMENDMENT
	AS PASSED OR	BUDGET	INCREASE
	PREV AMENDED		(DECREASE)
<u>Revenues</u>			
Interest Earned/Checking	60,000	225,000	165,000
TISA	59,713,965	59,992,037	278,072
<b>Total Increase in Revenues</b>	<b>\$ 59,773,965</b>	<b>\$ 60,217,037</b>	<b>\$ 443,072</b>

<u>Expenditures</u>			
Other Contracted Services	75,000	130,000	55,000
Maint. & Rep. of Building	822,493	1,047,493	225,000
Maint. & Rep. of Equip.	443,887	573,887	130,000
Other Supplies & Materials	101,219	134,291	33,072
<b>Total Increase in Expenditures</b>	<b>\$ 1,442,599</b>	<b>\$ 1,885,671</b>	<b>\$ 443,072</b>

CHANGE IN FUND BALANCE (CASH)

This amendment budgets an additional \$165,000 in Interest Earned/Checking and \$278,072 of TISA funding for FY24 to align with the year end actual revenue. The expenditures will be in Support - Maintenance of Plant: other contracted services, maintenance and repair of buildings, maintenance and repair of equipment, and Other Supplies. There is no change to fund balance.

Schools General Purpose School Fund  
Fiscal Year 2023-24

Exhibit A to Resolution 24-R-21

CEO supplement

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Career Ladder	56,000	57,146	1,146
<b>Total Increase in Revenues</b>	<b>\$ 56,000</b>	<b>\$ 57,146</b>	<b>\$ 1,146</b>
<u>Expenditures</u>			
Career Ladder	-	1,000	1,000
Social Security	16,925	16,987	62
State Retirement	24,650	24,719	69
Medicare	3,960	3,975	15
<b>Total Increase in Expenditures</b>	<b>\$ 45,535</b>	<b>\$ 46,681</b>	<b>\$ 1,146</b>

CHANGE IN FUND BALANCE (CASH) -

This amendment budgets an additional \$1,146 in Career Ladder for FY24 to align with the State's end of year Career Ladder report. This will be expensed in the Office of Superintendent for career ladder, social security, state retirement, and medicare. There is no change to fund balance.

Schools General Purpose School Fund  
Fiscal Year 2023-24

Exhibit A to Resolution 24-R-21

Paid Parental Leave

Account Description	BUDGET	AMENDED	AMENDMENT
	AS PASSED OR	BUDGET	INCREASE
	PREV AMENDED		(DECREASE)
<u>Revenues</u>			
Paid Parental Leave	-	245,000	245,000
<b>Total Increase in Revenues</b>	<b>\$ -</b>	<b>\$ 245,000</b>	<b>\$ 245,000</b>
<u>Expenditures</u>			
Teachers	4,539,000	4,614,000	75,000
Career Ladder	4,000	7,000	3,000
Substitute Teachers	150,000	207,000	57,000
State Retirement	698,035	768,035	70,000
Contracts w/Private Agencies	245,000	285,000	40,000
<b>Total Increase in Expenditures</b>	<b>\$ 5,636,035</b>	<b>\$ 5,881,035</b>	<b>\$ 245,000</b>

CHANGE IN FUND BALANCE (CASH) -

This amendment budgets the FY24 Paid Parental Leave revenue from the State for FY 24 and it will be used to cover extra expenditures in Special Education Program including: Teacher salary (extra hired), career ladder, substitute teachers, state retirement, and contracts w/ private agencies.



Schools Indigent Children's Fund 147  
Fiscal Year 2023-24

Exhibit A to Resolution 24-R-21

Contribution and Gifts

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Contributions and Gifts	-	1,730	1,730
<b>Total Increase in Revenues</b>	<b>\$ -</b>	<b>\$ 1,730</b>	<b>\$ 1,730</b>
<u>Expenditures</u>			
Other Charges	-	1,730	1,730
<b>Total Increase in Expenditures</b>	<b>\$ -</b>	<b>\$ 1,730</b>	<b>\$ 1,730</b>

CHANGE IN FUND BALANCE (CASH) -

This amendment recognizes new money for a contribution for the Indigent Children's Fund 147.  
The new revenue will be used in other charges for the fund.

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** WRRF Biosolids Dryer Construction Costs Reimbursement Resolution

**Department:** Water Resources

**Presented by:** Darren Gore

**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**

Approval of a reimbursement resolution allowing MWRD to recoup construction costs involved with the Water Resource Recovery Facility (WRRF) full-scale biosolids thermal drying project.

**Staff Recommendation**

Approve reimbursement resolution 24-R-20. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

The construction amount associated with the thermal drying project has been tagged as a debt funded project on MWRD's 5-yr capital improvement plan. Therefore, the construction contract amount of \$33,100,000 is requested to be reimbursed through the next debt issuance marketed by the City. MWRD will use cash-on-hand available in its working capital reserves account to pay for the construction progress anticipated for the next 9 to 12 months.

**Council Priorities Served**

*Responsible Budgeting*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product removes Murfreesboro's reliance on landfilling, a means of disposal that is expected to increase in costs significantly over time.

*Establish Strong City Brand*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product establishes Murfreesboro's brand as a leader in sustainability and environmental stewardship.

**Fiscal Impact**

The project costs, \$33,100,000, will be funded by MWRD working capital reserves (i.e., cash on hand) and requested for reimbursement when the City markets a future general obligation bond debt issuance.

**Attachments**

Resolution 24-R-20

**RESOLUTION 24-R-20** expressing official intent that certain expenditures to be incurred in connection with certain public works projects, and related expenditures to Water Resources Recovery Facility Biosolids Dryer Equipment and Appurtenances, be reimbursed from proceeds of notes, bonds, or other indebtedness to be issued or incurred by the City of Murfreesboro, Tennessee.

**WHEREAS**, the City of Murfreesboro, Tennessee (“City”), is in the process of causing certain capital expenditures to be made with respect to certain public works projects, including specifically Water Resources Recovery Facility Biosolids Dryer Equipment and Appurtenances, such purchase hereinafter referred to as the “Project”; and,

**WHEREAS**, the Murfreesboro City Council of the City wishes to declare its official intent that certain of the expenditures related to the Project and certain other related expenditures be reimbursed out of notes, bonds, or other indebtedness to be issued or incurred in the future by the Municipality.

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

SECTION 1. The Murfreesboro City Council hereby finds and determines as follows:

(a) that it is in the best interest of the City to proceed immediately with the Project, thereby incurring certain capital expenditures;

(b) that the City has certain funds available which may be used temporarily for this purpose, pending the issuance of bonds, notes, or other indebtedness of the Municipality;

(c) that the City Council anticipates that the City will issue its bonds, notes, or other indebtedness for the purpose of financing the Project;

(d) that the City Council reasonably expects to reimburse such amounts to such fund or source from which the expenditures may be made on a temporary basis as soon as proceeds from issuance of such bonds, notes, or other indebtedness are available; and,

(e) that this declaration of official intent is consistent with the budgetary and financial circumstances of the Municipality.

SECTION 2. The City Council of the City hereby establishes its official intent to issue bonds, notes, or other indebtedness to finance the costs of the Project and other related expenditures in an amount not to exceed Thirty-Three Million, One Hundred Thousand and NO/100 Dollars (\$33,100,000). Pending the issuance of such bonds, notes, or other indebtedness, funds necessary to finance such costs shall be advanced from such sources of funds on hand and available for such purpose, and any amounts so advanced shall be reimbursed from the proceeds of the tax-exempt

bonds, notes, or other indebtedness when issued or incurred.

SECTION 3. The City will comply with the applicable state or local law governing the public availability of records relating to its official acts with respect to this Resolution.

SECTION 4. All actions of the officers, agents, and employees of the City that are in conformity with the purposes and intent of this Resolution, whether taken before or after the adoption hereof, are hereby ratified, confirmed, and adopted.

SECTION 5. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

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

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda DeRosia  
Interim City Recorder

DocuSigned by:  
*Adam F. Tucker*  
\_\_\_\_\_  
43A2035E51E9401...  
Adam F. Tucker  
City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Updated Commercial Operator Lease Agreement with Mike Jones Aircraft Sales

**Department:** Airport

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Approve updated Commercial Operator Lease Agreement with Mike Jones Aircraft Sales for Hangar One.

**Staff Recommendation**

Approve the updated Commercial Operator Lease Agreement with Mike Jones Aircraft Sales for Hangar One at the Murfreesboro Municipal Airport.

**Background Information**

In 2019, the City received a \$2 million Airport Economic Development Grant for the construction of hangar, shop, and office space to assist with the expansion of Mike Jones Aircraft Sales at the Airport. In 2022, Council approved a Lease Agreement with Mike Jones Aircraft Sales that included a list of restrictions regarding various types of work and activities that could be performed in that hangar.

The restrictions have caused hardship on the tenant and its ability to complete aircraft maintenance tasks efficiently and effectively. Those restrictions were reviewed by Staff and modifications were presented and approved by the Construction Board of Adjustments and Appeals. Clarification of the restriction allow the tenant’s mechanics to perform aircraft maintenance services as requested. The modifications are listed in the updated Lease Agreement signed by the tenant.

**Council Priorities Served**

*Improve economic development*

State grants assist in decreasing the local cost of construction and provides local businesses opportunities resulting in the generation of additional jobs and revenue benefiting the business as well as the community.

**Fiscal Impact**

Annual lease revenue, \$107,688 with a 4% annual increase will fund Airport maintenance and improvements.

**Attachments**

Mike Jones Aircraft Sales Commercial Operator Lease Agreement



# **LEASE AGREEMENT**

**between**

**City of Murfreesboro**

**and**

**Mike Jones Aircraft Sales, Inc.**

**Hangar 1**

**1/25/2024**

# LEASE AGREEMENT

## INTRODUCTION

ARTICLE I.	DEFINITIONS
ARTICLE II.	TERM
ARTICLE III.	PRIVILEGES AND OBLIGATIONS OF LESSEE
ARTICLE IV.	RENT, FEES AND CHARGES
ARTICLE V.	IMPROVEMENTS BY CITY
ARTICLE VI.	IMPROVEMENTS BY LESSEE
ARTICLE VII.	OPERATIONAL STANDARDS
ARTICLE VIII.	MAINTENANCE
ARTICLE IX.	COMPLIANCE
ARTICLE X.	ASSIGNMENT AND SUBLEASING
ARTICLE XI.	HOLD HARMLESS AND INDEMNIFICATION
ARTICLE XII.	INSURANCE AND BONDS
ARTICLE XIII.	TERMINATION BY LESSEE
ARTICLE XIV.	TERMINATION BY CITY
ARTICLE XV.	SECURITY
ARTICLE XVI.	HOLDING OVER
ARTICLE XVII.	ATTORNEY'S FEES
ARTICLE XVIII.	AMENDMENT
ARTICLE XIX.	RELATIONSHIP OF PARTIES
ARTICLE XX.	APPROVAL BY CITY
ARTICLE XXI.	ENVIRONMENTAL PROTECTION
ARTICLE XXII.	ENVIRONMENTAL COMPLIANCE
ARTICLE XXIII.	TAXES
ARTICLE XXIV.	GENERAL PROVISIONS
ARTICLE XXV.	ENTIRE AGREEMENT



**THIS LEASE AGREEMENT** made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Murfreesboro, a municipal corporation existing under the laws of the State of Tennessee, ("City"), and Mike Jones Aircraft Sales, Inc., a Tennessee corporation, hereinafter referred to as "Lessee".

**WITNESSETH:**

**WHEREAS**, City is the owner and operator of the Murfreesboro Municipal Airport, Murfreesboro, Tennessee, together with certain air navigational facilities; and,

**WHEREAS**, Lessee wishes to conduct a commercial activity at the Murfreesboro Municipal Airport as described on **Exhibit "A"** attached hereto and made a part hereof; and,

**WHEREAS**, City wishes to lease, demise and let unto Lessee, and Lessee wishes to take and lease from City, certain improved real property, located at the Murfreesboro Municipal Airport, Murfreesboro, Tennessee (the "Airport"), as more fully described on **Exhibit "B"**, attached hereto and made a part hereof.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, City and Lessee hereby mutually undertake, promise and agree, each for itself, and its successors and assigns, as follows:

**ARTICLE I.**

**DEFINITIONS**

1.1 "Agreement" as used herein contemplates and includes the lease of City-owned property (referred to henceforth as Leased Premises) and permission for Lessee to use such City-owned property for the operation of a commercial activity as described on **Exhibit A**.

1.2 "Airport" shall mean the Murfreesboro Municipal Airport and the airfield operating area.

1.3 "Airport Director" shall mean the Airport Manager of the Murfreesboro Municipal Airport who may be designated by the City to act for it with respect to any or all matters pertaining to this Agreement.

1.4 "City" shall mean the City of Murfreesboro, Tennessee, which may act through the Murfreesboro City Council, Murfreesboro Airport Commission, its Mayor, its appointed officials, and its employees, and which shall include such public officials and public bodies as may, by operation of law, succeed to any or all of the rights, powers or duties which now lawfully reside in the City of Murfreesboro, Tennessee.

1.5 "Leased Premises" are the areas of Airport designated by this Agreement and **Exhibit B** attached hereto.

## ARTICLE II.

### TERM

2.1 This Agreement shall become effective as of the date of execution by the last party to sign. The lease term shall commence as set forth in Exhibit C.

## ARTICLE III.

### PRIVILEGES AND OBLIGATIONS OF LESSEE

3.1 The Leased Premises shall be used to conduct and operate the commercial activities described on Exhibit A and the offering of related services in compliance with Minimum Standards for Airport Operators as adopted by City ordinance. Lessee shall perform at and provide from the Leased Premises the minimum services and facilities set forth in the Minimum Standards for Airport Operators and as they may hereafter be amended, modified, or supplemented by the City, incorporated herein by reference, and shall comply with all the terms and provisions contained therein. Further, any subsequent changes to applicable Federal regulations and/or City ordinances, rules and regulations shall automatically serve to amend, modify or supplement the Agreement. City shall give notice of any such changes to Lessee and, to the extent permitted by applicable state and federal law, shall provide a reasonable time for compliance with any City changes. It is expressly understood and agreed that Lessee, without prior written approval from City, is not permitted the right to perform any service nor equip facilities that would constitute a business separate and apart from that listed on Exhibit A. It is expressly understood that the purpose of the Lease Agreement is to permit Lessee to operate a commercial activity as provided for above. Should any other use be made of the Leased Premises without prior written approval of City, then Lessee agrees that City shall be entitled to seek and obtain an injunction prohibiting such use, as Lessee acknowledges that such unapproved use would cause immediate and irreparable injury to City. Such injunctive relief shall be in addition to any other remedies, including declaring a default, which City may possess.

3.2 City also grants to Lessee, upon and subject to the terms and provisions contained in the Lease and the rules and regulations applicable thereto, the use, in common with others so authorized to use, of the Airport and appurtenances, together with all facilities, equipment, improvements, and services which are now, or may hereafter be, provided at or in connection with, the Airport from time to time, including without limitation, the landing field and any extensions thereof, or additions thereto, roadways, runways, taxiways, flood lights, landing lights, beacons, signals, radio aids, or other conveniences for flying, landing and takeoff of aircraft of Lessee and/or aircraft of any of Lessee's patrons or invitees.

## ARTICLE IV.

### RENT, FEES AND CHARGES

4.1 Commencing on a date set forth on Exhibit C, Lessee covenants to pay to City as rent for the Leased Premises, together with any other additional charges and payments to be made by Lessee, as hereinafter provided, the sum more particularly set forth on Exhibit C.

4.2 All rent shall be payable to City in advance and without notice or demand on or before the first (1st) day of each month.

4.3 Lessee shall pay for any utilities which are separately metered to the Leased Premises. In the event that any part of the Leased Premises becomes jointly occupied with another entity. Lessee shall pay its pro rata share of such utilities on a "per square foot" basis.

4.4 As further consideration for the Leased Premises, Lessee agrees to pay City a fuel flowage fee on any fuels and oils sold, dispensed, or consumed from, on, or about the Leased Premises, as such fees may be established by City from time to time, provided however that Lessee is not authorized to sell automobile, aviation, or jet fuel at the Airport, such right belonging exclusively to City. The amount and method of the fuel flowage fee shall be as set forth on Exhibit C.

4.5 Without waiving any other right of action available to City in the event of default in payment of any and all fees, charges or taxes hereunder, in the event that Lessee is delinquent for a period of ten (10) days or more in paying to City any fees payable to City pursuant to this Agreement, Lessee shall pay to City interest thereon at the maximum rate allowable by law per annum from the date such item was due and payable until paid. Such interest shall not accrue with respect to disputed items being contested in good faith by Lessee.

## ARTICLE V.

### IMPROVEMENTS BY CITY

5.1 All leasehold improvements made by City as set forth in Exhibit D, will be considered an integral part of Leased Premises and title to such leasehold improvements will remain the property of the City upon termination or expiration of this Agreement, free and clear of any claims, liens or encumbrances of Lessee whatsoever.

5.2 Lessee represents that Lessee has inspected and examined Leased Premises and accepts it in its present condition and agrees that City shall not be required to make any other improvements, repairs or modifications whatsoever in or upon Leased Premises hereby leased or any part thereof.

## ARTICLE VI.

### IMPROVEMENTS BY LESSEE

6.1 Lessee shall, without cost to City, provide Leased Premises with all improvements necessary for Lessee's operation.

6.2 Lessee shall have the right to make improvements, alterations, changes, and additions to the Leased Premises provided, however, that any and all such improvements, alterations, changes and additions shall only be commenced after plans and specifications thereof have been submitted to and approved in writing by the Airport Director.

6.3 The Airport Director shall either approve or disapprove the plans and/or specifications submitted by Lessee. The Airport Director's approval of any plans and specifications refers only to the conformity of such plans and specifications for Leased Premises to existing improvements at Airport and such approval shall not be unreasonably withheld. Where required by applicable law or ordinance, such plans and specifications shall be approved by a licensed engineer or architect before they are submitted the Airport Director for approval. Lessee expressly waives any claim against the City and agrees to indemnify, defend, and hold harmless the City for any defect or error in any plans or specifications approved by the Airport Director and for any defect in any structure or improvement constructed according to such plans and specifications. The Airport Director reserves the right to reject any designs submitted and shall state the reasons for such action.

6.4 In the event of rejection by the Airport Director, Lessee may submit necessary modifications and revisions.

6.5 No changes or alterations shall be made to said plans and specifications after approval by the Airport Director. One reproducible final copy of the plans for all improvements or subsequent changes therein or alternations thereof to Leased Premises shall be signed by Lessee and submitted to the Airport Director within thirty (30) days following completion of the project.

6.6 All improvements and equipment constructed or installed by Lessee, its agents, or contractors, including the plans and specifications shall conform to all applicable statutes, ordinances, building codes, and rules and regulations.

6.7 All improvements made by Lessee to Leased Premises shall be of high quality and appearance. Furthermore, they shall be safe, fire resistant, and acceptable to City. All charges including installation cost, meter deposits and all service charges for water, electricity and other utility services to and within Leased premises shall be paid by Lessee.

6.8 The ultimate control over the quality and acceptability of the improvements in Leased Premises will be retained by City, and all improvements and finishes shall require the written approval of the Airport Director.

6.9 Upon completion of improvements, a duly authorized officer of Lessee must prove to the satisfaction of City by certified written statement, and any other means or devices deemed necessary by City: (1) the amount of total construction costs; (2) that the improvements have been constructed in accordance with plans and specifications previously approved by City and in strict compliance with all applicable building codes, laws, rules, ordinances and regulations including

the Americans with Disabilities Act; and (3) that no liens exist on any or all of the construction and that all contractors and subcontractors have been paid all amounts due and owing to them.

6.10 Lessee shall not remove or demolish, in whole or in part, any improvements upon Leased Premises without the prior written consent of the Airport Director, which may be conditioned upon the obligation of Lessee to replace the same by an improvement specified in such consent.

6.11 All improvements, additions, and alterations made to Leased Premises by Lessee shall be and remain the property of Lessee until the expiration of the term of this Agreement, as set forth in Article II, or upon termination of this Agreement (whether by expiration of the term, termination, forfeiture, or otherwise), whichever first occurs; at which time the said improvements shall become the property of City, provided, however, that any trade fixtures, signs and other personal property of Lessee not permanently affixed to Leased Premises shall remain the property of Lessee and shall so remain unless Lessee shall fail within ten (10) days following the termination of this Agreement to remove its trade fixtures, signs and other personal property of Lessee not permanently affixed to Leased Premises in which event, at the option of City, title to same shall vest in City, at no cost to City, or City may elect to exercise its rights set forth in Paragraph 14.6 of this Agreement. Before affixing a fixture, trade fixture, sign, or other personal property to the Leased Premises, Lessee shall notify the Airport Director of its intent to do so in order that Lessee and City may determine prior to its installation whether a particular item is a leasehold improvement, addition, or alteration which will become the property of City upon the expiration or termination of the Agreement. In the event that Lessee shall fail to obtain the Airport Director's written agreement that an affixed item will be Lessee's, the item shall be the City's.

6.12 Lessee shall be responsible for immediately making repairs at its sole expense for any damage resulting from the removal by Lessee of its said furniture, trade fixtures, etc.

## ARTICLE VII.

### OPERATIONAL STANDARDS

7.1 Lessee agrees to operate and maintain Leased Premises in a safe, clear, orderly and inviting condition.

7.2 The management, maintenance and operation of Leased Premises shall at all times be under the supervision and direction of an active, qualified, competent manager who shall at all times be subject to the direction and control of Lessee.

7.3 The operations of Lessee, its employees, invitees, suppliers, and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb or be offensive to others. All employees of Lessee must conduct themselves at all times in a courteous manner toward the public.

7.4 Lessee shall make its commercial activities available to the public without unlawful discrimination. Lessee shall not charge excessive, discriminatory or otherwise unreasonable charges or fees for its services.

## ARTICLE VIII.

### MAINTENANCE

8.1 City shall not be required to make improvements of any kind beyond those expressly identified in this Article VIII.

8.2 City shall have the right to construct or install over, in, under or through Leased Premises new lines, pipes, mains, and wires, provided however, that such installation or construction shall not unreasonably interfere with Lessee's use of Leased Premises. City will repair, at its sole cost, any damage resulting from such activities.

8.3 Lessee agrees to keep and maintain its Leased Premises in a clean, neat and sanitary condition, and attractive in appearance. Lessee agrees to provide, at its own expense, such janitorial services and supplies as may be necessary or required in the operation or maintenance of Leased Premises.

8.4 Lessee shall be solely responsible for all routine repairs and maintenance within the Leased Premises. This includes but is not limited to cleaning and properly maintaining all floor surfaces, replacing light bulbs and ballasts in the office and shop areas if necessary, clean and occasionally paint walls, clean and maintain all ceiling tiles and vents, clean and maintain windows and any screens, clean and maintain restroom facilities addressing simple repairs, leaks, and clogs and clean and maintain walk through doors and locks which may include access control mechanisms and cameras. Lessee agrees to immediately notify the Airport Director if repair of any airport facility not maintained by Lessee is required. The City will be responsible for replacing the lightbulbs and ballasts in the hangar area of the leased premises and cleaning and conducting routine maintenance of hangar doors as prescribed by the manufacturer.

8.5 Prior to making any structural repairs, modifications, or additions to the interior, Lessee shall submit plans to and obtain the written approval of the City's Airport Director who will contact City Building and Codes Department to arrange for appropriate or required inspections, approvals, and permits. Obtaining such inspections, approvals, and permits will be the responsibility of the Lessee unless other arrangements have been made. All such work performed by or for Lessee must be inspected and approved by the Airport Director and, if necessary, by the City Building and Codes Department.

8.6 All repairs, modifications, or additions done by Lessee or on its behalf to the interior of the Leased Premises shall be of high quality in both materials and workmanship so as to be consistent with the Leased Premises as constructed. All repairs shall be made in conformity with the rules and regulations prescribed from time to time by governments having jurisdiction over the work in the Lessee's Leased Premises.

8.7 Lessee shall provide, in a timely manner, for the adequate sanitary handling and removal of all trash, garbage and other refuse caused as a result of Lessee's operations. Lessee agrees to provide and use suitable covered or sealed receptacles for all garbage, trash and other refuse in Leased Premises. Piling of boxes, cartons, barrels or similar items shall not be permitted.

8.8 Lessee shall have the right, but shall not be obligated, to provide security protection as it may desire at its own cost. Such right, whether or not exercised by Lessee, shall not in any way be construed to limit or reduce the obligations of Lessee hereunder.

8.9 The City, including but not limited to, the Airport Director, shall have the right to enter the Lessee's Leased Premises to:

- a. Inspect the Leased Premises at reasonable intervals during Lessee's regular business hours, or at any time in case of emergency, to determine whether Lessee has complied with and is complying with the terms and conditions of this Agreement. The Airport Director may require the Lessee to affect repairs required of Lessee at Lessee's own cost.
- b. Perform any and all things which Lessee is obligated to do, but has failed to do after 30-days' notice, including: maintenance and repairs to Lessee's Leased Premises. The cost of all labor and materials required to complete the work will be paid by Lessee to City within ten (10) days following demand by Airport Director for said payment. City's receipts and invoices shall be conclusive and binding on Lessee as to the cost of performance of such obligations by City.

8.10 City agrees to make any necessary structural repairs to the exterior of the Leased Premises and to keep and maintain in the current or an improved condition the electrical, mechanical, heating, plumbing, roofing, and other systems located on Leased Premises, provided that Lessee shall be fully responsible for repairs to any such systems as are damaged by the negligence of Lessee or Lessee's employees. The City shall have no obligation to install or maintain any access control, security, telephone, data, and or communication system wiring.

## ARTICLE IX.

### COMPLIANCE

Lessee, its officers, agents, servants, employees, contractors, licensees and any other person whom Lessee controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules and regulations of the United States of America, the State of Tennessee, Rutherford County, the City of Murfreesboro and their respective agencies, departments, authorities or commissions which may either directly or indirectly affect Lessee or its operations on or in connection with Leased Premises or Airport including specifically the City's Standards for Airport Operators which are incorporated herein as fully as though copied. If the City incurs any fines or penalties due to Lessee's violation of any such present or future laws, ordinances, orders, directives, rules and regulations, it is mutually agreed by both parties that any such fine or penalty shall be directly passed on to Lessee by City, and same shall become the sole responsibility of Lessee. In the event Lessee fails to pay the fine or penalty, Lessee shall reimburse City in full for any such fine or penalty paid by the City. Lessee's failure to pay any for such fine or penalty or to reimburse the City for payment made by the City shall constitute a material breach of this Agreement.

## ARTICLE X.

### ASSIGNMENT AND SUBLEASING

10.1 Lessee shall not assign this Agreement or allow same to be assigned by operation of law or otherwise, or sublet Leased Premises or any part thereof without the prior written consent of City. No assignment or sublease for the purpose of performing a commercial activity will be

approved if the proposed assignee or sublessee does not meet the Airport Minimum Standards, codified in Section 3 of the Murfreesboro City Code. City reserves the right to deny any assignment or subletting by Lessee for any reason it deems in the best interest of City. Any purported assignment or sublease in violation hereof shall be void.

10.2 In no case may the activities, uses, privileges and obligations authorized herein on Leased Premises or any portion thereof be assigned, for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Lessee.

10.3 In the event City consents to any assignment or subletting on the part of Lessee for any rights or privileges granted in this Agreement, Lessee shall be and remain responsible for any and all payments due City as a result of operations from the assignment or subletting and for the performance of any and all of Lessee's obligations hereunder.

10.4 In the event that Lessee subleases or assigns the Leased Premises, or a portion thereof, for an amount of rent which exceeds the amount of rent Lessee pays City for the Leased Premises, City may condition its consent to such assignment or sublease upon receiving an amount equal to up to one half of such excess amount.

## ARTICLE XI.

### HOLD HARMLESS AND INDEMNIFICATION

11.1 Lessee shall protect, defend, indemnify and hold harmless the City and the Murfreesboro Airport Commission, their officers, and employees from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising from or incident to Lessee's performance of this Agreement, its operations in Leased Premises or the acts or omissions of Lessee's officers, employees, agents, contractors, subcontractors, licensees or invitees regardless of where the injury, death or damage may occur. City shall give Lessee reasonable notice of any such claims or actions. Lessee in carrying out its obligations hereunder shall use legal counsel reasonably acceptable to City. Additionally, the City, at its sole discretion, may select its own legal counsel for defense purposes.

11.2 Lessee acknowledges that City is a governmental entity under the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101 et. seq. which has governmental immunity for certain acts and a statutory limit on financial liability for those acts for which the government is not immune. Lessee agrees that the City shall be entitled to such immunities and such statutory limits of liability in the event of any claim arising against City.

11.3 The provisions of this article shall survive the expiration or earlier termination of this Agreement.



## ARTICLE XII.

### INSURANCE AND BONDS

12.1 Lessee shall maintain other insurance as specified on Exhibit E attached hereto and made a part hereof. Such insurance policies must name the City, the Murfreesboro Airport Commission, City officers, and City employees as additional insureds to the full extent of Lessee's insurance coverage but in no event less than the required minimum coverage limit amount. Such insurance shall include contractual liability insurance to insure Lessee's obligation to indemnify and hold harmless the City, its officers and its employees in accordance with the indemnification provisions of this Agreement. Such insurance shall include coverage of any aircraft present upon the premises for any purpose, including by virtue of any sublease entered into between Lessee and any other party.

12.2 Lessee agrees that all insurance policies shall contain a severability of interest or cross-liability provision endorsement which shall read generally as follows:

"In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase the limits of liability."

12.3 Lessee agrees that all insurance policies shall provide that they will not be altered or canceled without thirty (30) days advance written notice to City. Such insurance must provide that it will be considered primary insurance as respects any other valid and collectible insurance, or self-insured retention, or deductible City may possess. Any other insurance or self-insured retention of City shall be considered excess insurance only.

12.4 Lessee shall obtain all insurance required from an insurance company or companies licensed to do business in the State of Tennessee. The insurance company must be acceptable to City; approval may be denied a company with an A.M. Best's rating that is less than excellent or other indication of financial inadequacy.

12.5 Lessee shall provide to City such evidence of compliance with City's insurance requirements as City may from time to time request. At a minimum Lessee shall provide, at the commencement of this Lease and at least annually thereafter a certificate of insurance. All such certificates shall be completed to show compliance with Lessee's obligations hereunder, specifically as to the indemnification and notice provisions, and shall include copies of the declaration page, insurance policy, and any endorsements thereto.

12.6 If Lessee or its insurance company fails to promptly respond to City's request for adequate evidence of compliance with the insurance provisions, the City may, in addition to all its other remedies, charge Lessee an additional rent in an amount equal to ten percent (10%) of the rent required hereunder until such evidence is provided.

12.7 If Lessee shall at any time fail to insure or keep insured as aforesaid, or have reason to believe that required insurance will lapse, be cancelled or amended, Lessee shall immediately notify City. The City may do all things necessary to effect or maintain such required insurance, and all monies expended by City for that purpose shall be repayable by Lessee as additional rent in the month or months as premium or premiums are paid by City. If any insurance policies required

hereunder cannot be obtained for any reason, City may require Lessee to cease any and all operations until coverage is obtained. If such insurance coverage is not obtained within a reasonable period of time, to be determined solely by City, City may terminate this Agreement.

12.8 Prior to commencing any work or construction in Leased Premises, Lessee agrees to provide, or cause to be provided, City with a Construction Bond and Labor and Materials Bonds, for any construction or capital improvements undertaken by Lessee during the term of this Agreement in a sum equal to the full amount of the construction contract award. City may, at its discretion, waive this requirement for work on construction with a value of Ten Thousand Dollars (\$10,000.00) or less.

12.9 Lessee agrees to keep all insurance policies in effect through surrender of Leased Premises.

### ARTICLE XIII.

#### TERMINATION BY LESSEE

13.1 In the event of City default, and in addition to all other remedies available to Lessee, this Agreement shall be subject to termination by Lessee should City breach any of the material terms, covenants, or conditions of this Agreement to be kept, performed, and observed by City, provided City fails to cure such breach within sixty (60) days of City's receiving written notice of such breach from the Lessee, or if more than sixty (60) days to cure the breach is permitted under this Agreement due to the nature of such breach, if City shall fail to commence within sixty (60) days of its receiving written notice of such breach to cure such breach and thereafter diligently pursue such cure. Lessee's right to terminate this Agreement is subject to the City's right to challenge the alleged breach by commencing a lawsuit within sixty (60) days of the City's receiving written notice of an alleged breach. The City's cure period and Lessee's right to terminate shall be automatically stayed until any such litigation is resolved by order of the court or agreement of the parties.

13.2 In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted to City with respect to any condition of default in any form or instance) Lessee, then, or at any time thereafter, while such condition of default is continuing, shall have the right, at its election, to terminate this Agreement by giving at least thirty (30) days written notice to City at which time Lessee will then quit and surrender Leased Premises to City, and this Agreement will terminate, but Lessee shall remain liable for rent and obligations incurred prior to termination as herein provided.

13.3 This Agreement shall be subject to suspension by Lessee in the event any one or more of the following suspension event(s) occur:

- a. The issuance by any court of competent jurisdiction of any injunction that remains in force for at least sixty (60) days and prevents or restrains the use of Airport in such a manner as to substantially restrict Lessee's use of Leased Premises, provided only the issuance of such injunction is not based on or arise from any act or omission of Lessee; or
- b. The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of Airport and its facilities in such a

manner as to substantially restrict Lessee's use of Leased Premises if such restriction be continued for a period of sixty (60) days.

13.4 In the event of any occurrence provided for in this Article XIII, Lessee shall be released from its obligation to pay the rent, fees and charges as identified in Article IV, until the cessation of the suspension event, at which time this Lease Agreement will resume and continue under the existing terms and conditions.

#### ARTICLE XIV.

##### TERMINATION BY CITY

14.1 This Agreement shall be subject to termination by City should any one or more of the following conditions of default occur:

- a. If Lessee shall neglect or fail to perform or observe any of the material terms, provisions, conditions or covenants herein contained and on Lessee's part to be performed and observed and if such neglect or failure should continue for a period of thirty (30) days after receipt by Lessee of written notice or such neglect or failure (except for the failure or neglect to pay any installment of monthly rent or additional rent wherein such neglect or failure must be cured within ten (10) days after receipt by Lessee of written notice of such neglect or failure) or, if more than thirty (30) days is permitted under this Agreement because of the nature of the default, if Lessee shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default; or
- b. If the estate hereby created shall be taken by execution or by other process of law; or
- c. The taking by a court of jurisdiction of Lessee and its assets pursuant to proceedings under the provisions of any federal or state reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act; or
- d. If any court shall enter a final order with respect to Lessee, providing for modification or alteration of the rights of creditors; or
- e. If Lessee shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, the State of Tennessee, Rutherford County, or, the City of Murfreesboro; or
- f. If Lessee shall fail to take possession of Leased Premises; or
- g. If Lessee shall abandon all or any part of Leased Premises or shall discontinue the conduct of its operations in all or any part of Leased Premises for a period in excess of ten (10) days.

14.2 In the event any condition of default shall occur (notwithstanding any waiver, license, or indulgence granted by City with respect to any condition of default in any form or instance) City, then, or at any time thereafter, while such breach is continuing, shall have the right,

at its election, either: (a) to terminate this Agreement by giving at least thirty (30) days written notice to Lessee at which time Lessee will then quit and surrender Leased Premises to City, but Lessee shall remain liable as hereinafter provided; or (b) to enter upon and take possession of Leased Premises (or any part thereof), without at least 30 days' notice demand or notice, and repossess the same as of the City's former estate, expelling Lessee and those claiming under Lessee, forcibly, if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Lessee or those claiming under Lessee for such repossession.

14.3 City's repossession of Leased Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rent or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention is given to Lessee, or unless such termination is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by City because of any default by Lessee, City may at any time after such reletting elect to terminate this Agreement for any such default.

14.4 Upon repossession, City shall in good faith attempt to relet Leased Premises or any part thereof for such period or periods (which may extend beyond the term of this Agreement) at such rent and upon such other terms and conditions as City may, in good faith, deem advisable. City shall in no event be liable (and Lessee's liability shall not be affected or diminished) in any way whatsoever for failure to relet Leased Premises, or in the event same are relet, for failure to collect any rent or other sums due under such reletting.

14.5 In the event that City shall elect to relet, then rent received by City from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from Lessee to City; second, to the payment of any cost of such reletting; and third, any remaining amount shall be held by City and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rent received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to City. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such reletting not covered by the rent received from such reletting of Leased Premises.

14.6 If City shall terminate this Agreement or take possession of Leased Premises by reason of a condition of default, Lessee, and those holding under Lessee, shall forthwith remove their personal property from Leased Premises. If Lessee or any such claimant shall fail to effect such removal forthwith, City, at its option and without liability to Lessee or those claiming under Lessee remove such goods and effects and may store the same for the account of Lessee or of the owner thereof at any place selected by City, or, at City's election, and upon given fifteen (15) days written notice to Lessee of date, time and location of sale, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as City may in good faith deem advisable. If, in City's judgment, the cost of removing and storing or the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sale price thereof, as the case may be, City shall have the right to dispose of such goods in any manner City may deem advisable.

14.7 Lessee shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds shall remain after such reimbursement City may deduct from

such surplus any other sum due to City hereunder and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable hereunder.

14.8 If City shall enter into and repossess Leased Premises for reason of default of Lessee in the performance of any of the terms, covenants or conditions herein contained, then and in that event Lessee hereby covenants and agrees that Lessee will not claim the right to redeem or re-enter Leased Premises to restore its operations hereunder and Lessee hereby waives the right to such redemption and re-entrance under any present or future law, and hereby further, for any party claiming through or under Lessee, expressly waives its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Lessee shall have made default under any of the covenants of this Agreement and to claim any subrogation of the rights of Lessee under these presents, or any of the covenants thereof, by reason of such payment.

14.9 All rights and remedies of City herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed advisable.

14.10 If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby Lessee shall be permitted to retain possession of Leased Premises, then such proceeding shall not constitute a waiver of any condition or Agreement contained herein or of any subsequent breach thereof.

14.11 Any amount paid or expense or liability incurred by City for the account of Lessee may be deemed to be additional rent and the same may, at the option of City, be added to any rent then due or there after falling due hereunder.

14.12 Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause, or in the event of City obtaining possession of Leased Premises by reason of the violation by Lessee of any of the covenants and conditions of this Agreement or otherwise. The rights given to City herein are in addition to any rights that may be given to City by any statute or otherwise.

14.13 Lessee agrees that title to all permanent improvements constructed on Leased Premises by Lessee shall vest in City, free and clear, without further process of law, upon expiration or termination of this Agreement.

## **ARTICLE XV.**

### **SECURITY**

Upon issuance of a Certificate of Occupancy or a Temporary Certificate of Occupancy, and prior to moving equipment into the Hangar, Tenant shall install, at Tenant's sole expense, epoxy coating on all the Hangar floors (office and shop areas excepted). The epoxy shall be of a quality and type acceptable to the Airport Director. In consideration of completion of this installation by Tenant, the City waives the usual requirement of a cash security deposit or a personal guaranty by Tenant.

**ARTICLE XVI.**

**HOLDING OVER**

Any holding over by Lessee after the expiration or termination of this Agreement, without the written consent of City, except for the period provided for herein for removal of property, shall not be deemed to operate as an extension or renewal of this Agreement, but shall only create a tenancy from month to month which may be terminated by City at any time. In the event of such holding over, City shall be entitled to collect from Lessee, as liquidated damages for such holding over, double the amount of the monthly rent in effect immediately prior to the commencement of such holding over.

**ARTICLE XVII.**

**ATTORNEY'S FEES AND LITIGATION EXPENSES**

In the event that City brings any action under this Agreement, and prevails in said action, then City shall be entitled to recover from Lessee its reasonable expenses incurred as a result of said action. Such fees shall include, but not be limited to, expert witnesses fees, court reporter fees, court costs, and the value of reasonable attorney's fees.

**ARTICLE XVIII.**

**AMENDMENT**

This Agreement constitutes the entire Agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

**ARTICLE XIX.**

**RELATIONSHIP OF PARTIES**

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. The parties shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.

**ARTICLE XX.**

**APPROVALS BY CITY**

Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval of the City Council, City Manager, or Airport Director as City policy may require.

**ARTICLE XXII**

**ENVIRONMENTAL COMPLIANCE AND PROTECTION**

22.1 Lessee shall not cause or permit any "Hazardous Substance" as defined in Paragraph 22.4 of the Agreement to be used, stored or generated on the Leased Premises, Airport, or City

property, except for Hazardous Substances of types and quantities customarily used or found in Lessee's business so long as said Hazardous Substances are used, stored and/or generated in full compliance with all laws. Lessee shall not cause or permit the release [as "Release" is defined in 42 U.S.C. Section 9601 (22) (as amended)] of any Hazardous Substance, contaminant, pollutant, or petroleum product in, on or under the Leased Premises, Airport, or City property, or into any ditch, conduit, stream, storm sewer, or sanitary sewer connected thereto or located thereon. Lessee shall fully and timely comply with all applicable federal, state, and local statutes and regulations relating to protection of the environment, including, without limitation, 42 U.S.C. Sections 6991-6991i.

22.2 Compliance Upon Termination - Upon the termination of this Agreement or vacation of the Leased Premises, Lessee shall, at Lessee's sole expense, remove or permanently clean all Hazardous Substances that Lessee, or anyone for whom Lessee is responsible, including, but not limited to, a customer, invitee, employee, agent, or person having a contractual relationship with the Lessee, caused to be situated on, at, in or under the Leased Premises. This shall be done in compliance with all applicable federal, state and local laws, regulations and ordinances and shall include the performance of any necessary cleanup or remedial action. Lessee shall provide City with copies of all records related to any Hazardous Substances that are required to be maintained by any applicable federal, state, or local laws or regulations.

Lessee shall, at Lessee's sole expense, clean up, remove and remediate (1) any Hazardous substances in, on, or under the Leased Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations and (2) all contaminants and pollutants, in, on, or under the Leased Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or remediated by any applicable federal, state, or local law, regulation, standard or order. This obligation does not apply to a Release of Hazardous Substances, pollutants, contaminants or petroleum products that existed on the Leased Premises prior to the execution of the Agreement or caused solely by the act or omission of City or a third party for whom the Lessee is not responsible, e.g., not a customer, invites, employee, agent, or person having a contractual relationship with the Lessee.

22.3 Indemnity for Non-Compliance - Lessee shall defend, indemnify and hold harmless the City and its consultants, agents, officers, directors and employees from and against all claims, damages, losses and expenses, whether direct, indirect or consequential, including but not limited to attorneys' and consultants' fees, arising out of or resulting from the Lessee's use of the Leased Premises or acts or omissions of others on the Leased Premises for whom Lessee is responsible. Without limiting the generality of the foregoing, the above indemnification provision extends to liabilities, damages, suits, penalties, judgments, and environmental cleanup, removal, response, assessment, or remediation costs, arising from actual, threatened or alleged contamination of the Leased Premises or actual, threatened or alleged release of any Hazardous Substances, pollutant, contaminant or petroleum in, on or under the Leased Premises, provided that said actual, threatened or alleged contamination or release occurs after execution of the Agreement and is not caused by contamination that existed at the Leased Premises prior to execution of the Agreement. Lessee's obligations under this paragraph shall survive termination or expiration of the Agreement.

22.4 Definition of Hazardous Substances - As used herein, the term "Hazardous Substances" means and includes any and all substances, chemicals, wastes, sewage or other materials which are now or hereafter regulated, controlled or prohibited by any local, state, or federal law or regulation requiring removal, warning or restrictions on the use, generation, disposal or transportation thereof including, without limitation, (a) any substance defined as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", or "air pollutant" in the

Comprehensive Environmental Response Compensation and Liability Act (CERLA), 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901, et seq., the Federal Water Pollution Control Act (FQPCA), 33 U.S.C. Section 7401, et seq., all as amended and amended hereafter, and (b) any hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical, or compound described in any other federal, state, or local statute, ordinance, code, rule, regulation, order, decree or other law now or at any time hereafter in effect regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous substance, chemical, material, compound, or waste. As used herein, the term "Hazardous Substances" also means and includes, without limitation, asbestos; flammable, explosive or radioactive materials; gasoline, oil; motor oil; waste oil; petroleum (including without limitation, crude oil or any fraction thereof); petroleum-based products; paints and solvents; lead, cyanide; DDT, printing inks; acids; pesticides, ammonium compounds; polychlorinated biphenyls; and other regulated chemical products.

22.5 City's Representation - To the best of the City's current actual knowledge and belief as of the date of Agreement execution, the City is not aware of any disposal of any Hazardous Substances in the Leased Premises or on the underlying land prior to the date of Agreement execution. City has provided Lessee with an opportunity to inspect the Leased Premises prior to the date of possession.

22.6 Lessee agrees to comply with all laws, and to obey all rules, regulations, or administrative orders of agencies of the City of Murfreesboro, Rutherford County, the State of Tennessee, and the United States as these laws, rules, regulations and administrative orders may now exist and as they may be hereafter adopted relating to protection of the environment.

## ARTICLE XXIII.

### TAXES

23.1 Lessee shall pay on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon Leased Premises, or upon Lessee, or upon the business conducted on Leased Premises or upon any of Lessee's property used in connection therewith; and shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee.

23.2 Lessee has the right to legally protest to any proper taxing authority, at its own expense, by whatever legal means, any tax, levy, assessment or other governmental or similar charge it deems inappropriate or unlawful.

23.3 Lessee covenants to furnish to City, promptly upon request, proof of the payment of any tax, assessment, and other governmental or similar charge, which is payable by Lessee as provided herein.



ARTICLE XXIV.

GENERAL PROVISIONS

24.1 Exclusive Right - Nothing herein contained shall be deemed to grant Lessee any exclusive right or privilege to conduct any activity on Airport, except that, subject to the terms and provisions hereof, Lessee shall have the exclusive right to possess the Leased Premises under the provisions of this Agreement.

24.2 Subordination to Agreements With the United States Government - This Agreement is subject and subordinate to the provisions of any Agreement heretofore or hereafter made between City and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport. City covenants that it has no existing Agreements with the United States Government in conflict with the express provisions hereof.

24.3 Nonwaiver of Rights - No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

24.4 Notices - All notices to City required by this Agreement shall be in writing addressed to:

**Airport Director  
Murfreesboro Municipal Airport  
P. O. Box 4145  
Murfreesboro, Tennessee 37133-4145**

**copies sent to:**

**City Attorney  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130**

and all notices to Lessee so required shall be addressed to:

**Mike Jones Aircraft Sales, Inc.  
1926 Memorial Boulevard  
Murfreesboro, Tennessee 37129**

or any other address furnished to either party by the other. Any notice required or desired to be given under this Agreement may be personally served or given by mail. Any notice given by mail shall be sent certified mail with return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party and shall be deemed served on the date that such notice shall be deposited in the United States mail in the manner described herein.

24.5            Captions - The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

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

24.7            Waiver of Claims - The Lessee hereby waives any claim against City and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof, from being carried out.

24.8            Right to Develop Airport - The parties hereto further covenant and agree that City reserves the right to further develop or improve Airport as it may see fit, regardless of the desires or view of Lessee and without interference or hindrance.

24.9            Incorporation of Exhibits - All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

24.10           Incorporation of Required Provisions - The parties incorporate herein by this reference all provisions lawfully required to be contained herein by applicable federal, state, or local law, regulation, or ordinance.

24.11           Nonliability of Agents and Employees - No official, agent, or employee of the City shall be charged personally or held contractually liable by or to the other party under the terms of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

24.12           Successors and Assigns Bound - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

24.13           Right to Amend - In the event that the Federal Aviation Administration, or its successors, or the State of Tennessee, requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, or otherwise, Lessee shall make such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required. Any expenses resulting from such amendments, modifications, revisions, supplements or deletions, shall be borne solely by Lessee.

24.14           Time of Essence - Time is of the essence in the performance and/or satisfaction of the duties and/or conditions of this Agreement.

24.15           Gender - Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

24.16 Force Majeure - Neither City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, terrorism, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, epidemics, pandemics, or any other circumstances for which it is not responsible or which are not within its control.

24.17 Governing Law - The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that Lessee may provide.

24.18 Venue - Any action between the parties arising from this Agreement shall be maintained in the courts of Rutherford County, Tennessee.

## ARTICLE XXV.

### ENTIRE AGREEMENT

25.1 The parties hereto understand and agree that this instrument contains the entire Agreement between the parties hereto. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability for cause for termination shall be asserted by either party against the other, and such party shall not be liable by reason of, the making of any representations or promise not expressly stated in this Agreement, any other written or oral Agreement with the other party being expressly waived.

25.2 The individuals executing this Agreement personally warrant that they have full authority to executed this Agreement on behalf of the entity for whom they are acting herein.

25.3 The parties hereto acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received competent advice and counsel which was necessary for them to form a full and complete understanding of all rights and obligations herein.

25.4 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first written above.

AUTHORITY

ATTEST:

CITY OF MURFREESBORO

BY:

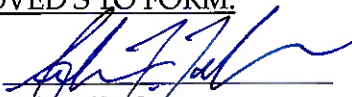
\_\_\_\_\_  
Amanda DeRosia  
City Recorder

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

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

APPROVED S TO FORM:

BY:

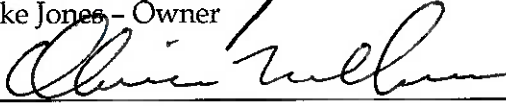
  
\_\_\_\_\_  
Adam Tucker  
City Attorney

LESSEE: Mike Jones Aircraft Sales, Inc.

By:

  
\_\_\_\_\_  
Mike Jones - Owner

5/24/24  
DATE

  
\_\_\_\_\_  
Milt Owens - Owner

5/24/24  
DATE

APPROVED BY CITY COUNCIL: 11-17-2022

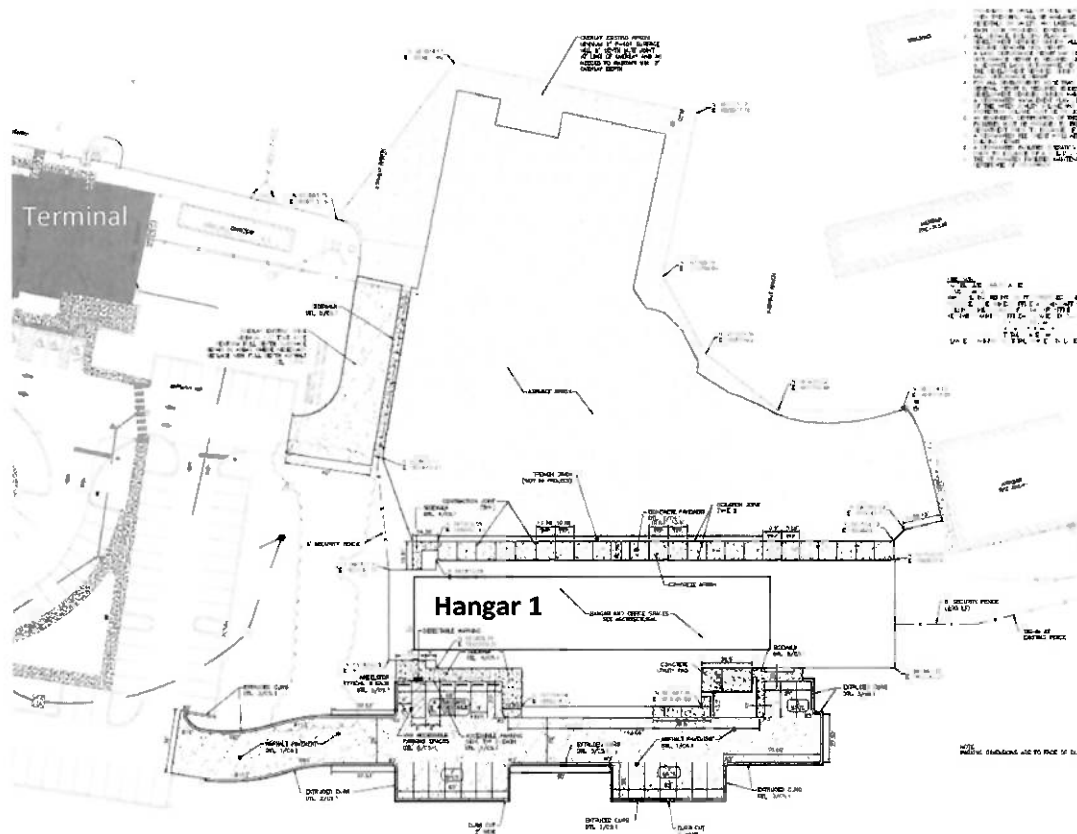
RECOMMENDED BY AIRPORT COMMISSION: 5-16-2022

## EXHIBIT A

### COMMERCIAL OPERATOR BUSINESS DESCRIPTION

1. City hereby grants Lessee approval to conduct the following Commercial Activities on the Leased Premises:
  - a. Aircraft Sales
  - b. Aircraft Storage
  - c. Aircraft Radio and Instrument Services
  - d. Aircraft Maintenance and Repair
2. City's approval is contingent upon Lessee's continuing compliance with applicable laws and regulations.
3. Lessee has a duty to promptly inform the Airport Director of any material change in the information on the Aeronautics Economic Development Fund Application submitted to the City or which relates to its ability to perform the permitted commercial activities.
4. Lessee shall promptly provide Airport Director with such evidence as Airport Director may reasonably request as to Lessee's continuing qualifications to perform any activity (e.g. information on personnel, licenser, certification, equipment, supplies, and financial capacity).
5. Lessee shall not perform any commercial activity not specified on this Exhibit A without the advance written approval of the City as evidence by amendment of this Agreement.
6. Annual Reports: The Project is being funded through an Airport Economic Development Grant from the Tennessee Department of Transportation - Division of Aeronautics which requires annual reports which requires that specific information regarding annual gross sales, annual fuel purchased, number of employees, and other information that may be provided. These reports will be completed in July at the completion of each fiscal year. Lessee has an affirmative obligation to provide information necessary to formulate the reports as requested by the Airport Director.

**EXHIBIT B**  
**AREA LEASED - PREMISES**



*Premises Overview*

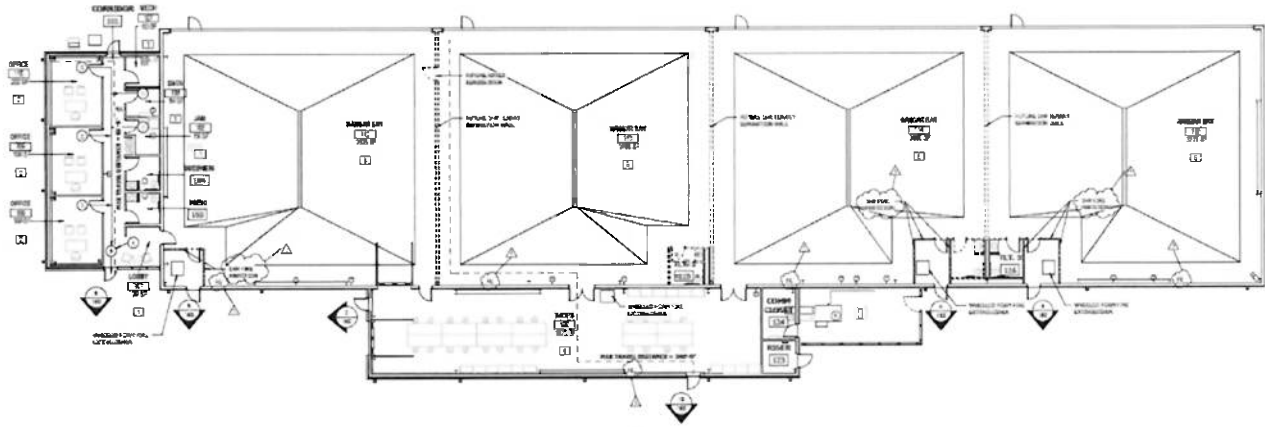
Hangar One has a total square footage of 19,750 square feet and includes the following areas:

- Office Area: 1,394 square feet (Consisting of three offices, lobby area, 2 restrooms, janitor's closet, data closet, mechanical room, and hallway area)
- Shop Space: 2,163 square feet
- Hangar Bays: 4,048 square feet per bay, 16,192 square feet all four bays

Items/actions not allowed inside the four hangar bays:

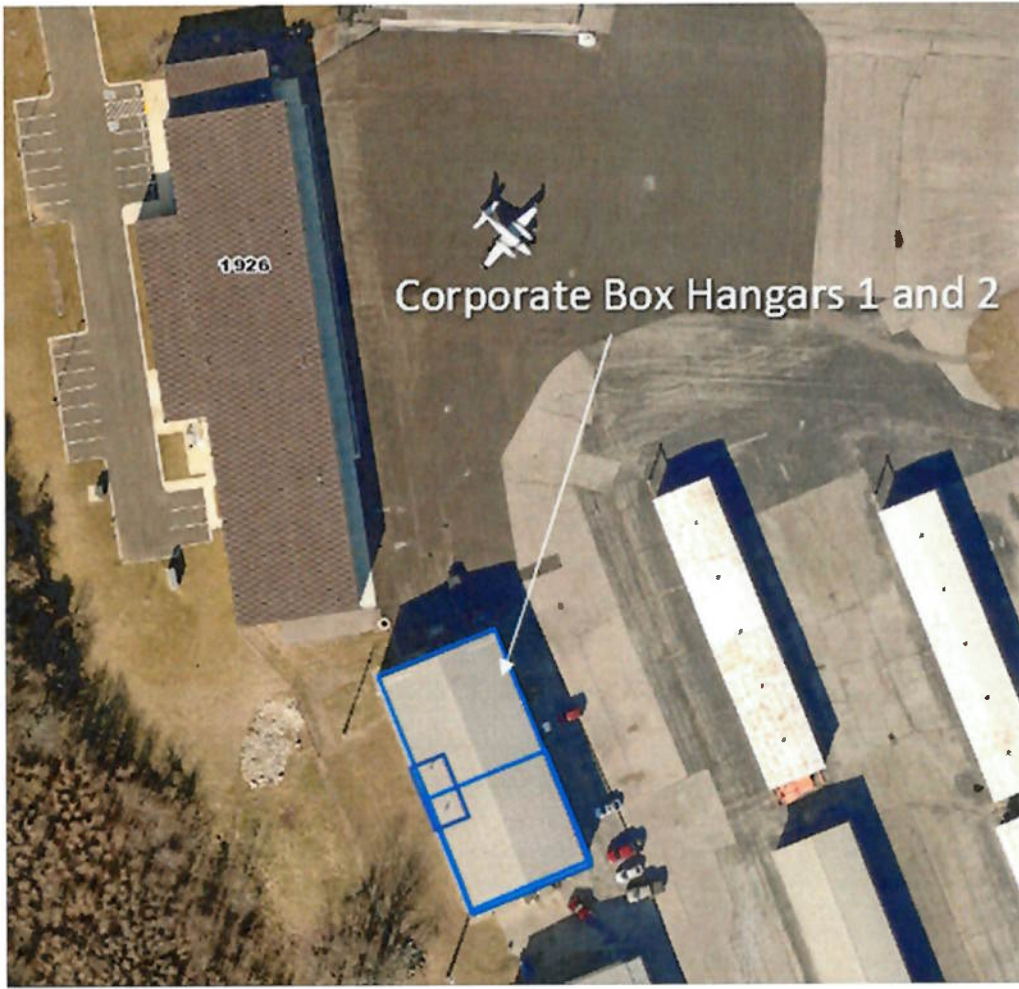
1. Fuel tank work is allowed when fuel product is removed from tank as part of working on aircraft systems. Fuel tank work must be performed in accordance with the adopted International Fire Code and aviation standards for fuel tank work.
2. Working on oxygen/breathing system allowed as part of working on aircraft systems as long as the aircraft is grounded, and fire extinguisher is placed near the aircraft at the ready. All oxygen work must be in accordance with the International Fire Code and shall be conducted in accordance with NFPA 410 (Standard on Aircraft Maintenance).

3. No welding.
4. Fuel transfers is allowed as long as aircraft is grounded, fire extinguisher is placed near the aircraft at the ready, and appropriate fueling/ defueling equipment with low volume and flow capabilities is used and grounded as part of work on aircraft systems. Fuel transfers must be performed in accordance with the adopted International Fire code and NFPA 410 (Standard on Aircraft Maintenance).
5. No open flame.
6. No doping.
7. No painting or misting of any type of flammable liquid.
8. Welding is allowed, but the extend would need to be known.
9. No open flammable liquids.



*Hangar Bays*

Corporate Box Hangars 1 and 2 each consist of one large hangar bay area (62 ft x 65 ft) located south of the Murfreesboro Municipal Airport Business Center and Terminal and west of the T-hangar complex on the south end of the airport. Corporate Box Hangars 1 and 2 include bi-fold electric doors, electricity, and washroom facilities.



*Corporate Box Hangars 1 and 2*



**EXHIBIT C  
PAYMENTS DUE CITY**

Rent is as follows:

Year	Rent Per Month	Hangar 1		Corporate Box(es)	
		Hangar Space Shop and Storage Areas	Office	Corp. Box 1	Corp. Box 2
1	\$12,599	\$7,773	\$1,560	\$1,633	\$1,633
2	\$13,101	\$8,083	\$1,622	\$1,698	\$1,698
3	\$13,626	\$8,407	\$1,687	\$1,766	\$1,766
4	\$14,172	\$8,743	\$1,755	\$1,837	\$1,837
5	\$14,738	\$9,093	\$1,825	\$1,910	\$1,910
6	\$15,327	\$9,457	\$1,898	\$1,986	\$1,986
7	\$15,921	\$9,835	\$1,974	\$2,056	\$2,056
8	\$16,557	\$10,228	\$2,053	\$2,138	\$2,138
9	\$17,218	\$10,637	\$2,135	\$2,223	\$2,223
10	\$18,084	\$11,062	\$2,220	\$2,401	\$2,401

1. Any tie down spaces or T-hangar units used by Lessee are the subject of separate agreements and payment amounts.
2. Term: The term shall be for ten (10) years with a ten-year option. The term will commence July 1, 2023 and conclude June 30, 2033 unless the option is exercised for an additional ten (10) year term and agreed to by both parties.
3. Rental Rate adjustments: The rental rate adjustment shall be 4% per fiscal year during the initial term.
4. Fuel Flowage: Payable in arrears in accordance with the City ordinance and rules on fuel brought onto the Airport by Lessee for use in Lessee's own aircraft, if any, and on oil brought onto the Airport by Lessee.
5. Utilities: Hangar 1 and Corporate Box Hangar(s): Lessee is responsible for all electrical, water, and sewer fees.
6. Annual Reports: The construction of Hangar One was funded through an Airport Economic Development Grant from the Tennessee Department of Transportation – Division of Aeronautics which requires annual reports be completed and submitted that ask for specific information regarding annual gross sales, annual fuel purchased, number of employees, and other information that may be provided. These reports will be completed in July at the completion of each fiscal year.

**EXHIBIT D  
CITY IMPROVEMENTS TO RENTAL SPACE**

The City is responsible for the construction of the building and the associated airside apron area and landside automobile parking areas.

The City will include the following equipment in Hangar 1 shown in Exhibit B:

- 4 exhaust fans, one for each hangar bay
- 1 fire sprinkler system throughout building
- Office area
- Shop and storage area
- Restroom facilities, one in the office area and three in the hangar
- Insulated hangar ceiling and walls
- Three phase electricity available throughout hangar building
- Bi-fold electric doors, or equivalent, installed on airside of hangar
- Install hard surface and fence for exterior storage area on south end of hangar

EXHIBIT E

INSURANCE REQUIREMENTS

Lessee is required to maintain the minimum insurance as stated below:

<b>SERVICE</b>	<b>INSURANCE</b>	<b>AMOUNT</b>
<b>Aircraft Sales</b>	Premises Liability	\$1,000,000.00
	Hangar Keepers	\$250,000.00 per aircraft \$500,000.00 aggregate
	Building Insurance	Legal Liability Coverage Endorsement for Hangar One
<b>Aircraft Maintenance and Radio and Instrument Services</b>	Premises Liability	\$1,000,000.00
	Hangar Keepers	\$250,000.00 per aircraft \$500,000.00 aggregate
	Products Liability	\$1,000,000.00
	Building Insurance	Legal Liability Coverage Endorsement for Hangar One

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Amended Contract for Professional Management & Administrative Services

**Department:** Community Development

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Contract amendment to provide management and administrative services by BluLynx to assist Community Development in FY 25 CBDG and HOME Grant activities.

**Staff Recommendation**

Approve Amended and Restated Agreement with BluLynx.

**Background Information**

In 2021, BluLynx was contracted to assist Community Development in management and administrative services for both the CBDG and HOME Grant Programs. The services provided by BluLynx continue to be valuable to the Community Development staff. Therefore, it is proposed to extend the contract with BluLynx for an additional year through FY25.

**Council Priorities Served**

*Responsible Budgeting*

Utilizing federal funds to provide community-based assistance is a cost-effective means of addressing the needs of the community.

**Fiscal Impact**

The expenditure, \$82,800, is funded by CDBG and Home funds allocated for Administration of these grants.

**Attachment**

Contract Amendment and Proposal.

FIRST AMENDMENT  
TO THE AMENDED AND RESTATED CONTRACT  
BETWEEN THE CITY OF MURFREESBORO  
AND  
BLULYNX SOLUTIONS, LLC

This First Amendment ("First Amendment") to the Amended and Restated Contract entered into May 5, 2023 ("First Restated Contract"), is effective as of \_\_\_\_\_, by and between the **City of Murfreesboro** ("City"), a municipal corporation of the State of Tennessee and **Blulynx Solutions, LLC** ("Contractor"), a Limited Liability Company of the State of Georgia.

**RECITALS**

WHEREAS, on May 5, 2023, the City entered into the First Restated Contract with Contractor for professional management and administrative services related to the implementation of the Community Development Block Grant program and other programs; and,

WHEREAS, the term of the First Restated Contract between the City and Contractor is currently from May 5, 2023, to June 30, 2024, and,

WHEREAS, the City and Contractor wish to extend the First Restated Contract term pursuant to provision 2 of the First Restated Contract for an additional year, and,

WHEREAS, the City agrees to a Cost Proposal for additional services of Contractor for \$82,800.00 for 720 hours of services as outlined in the Cost Proposal (Exhibit A);

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

1. **Extension:** The term of the current Contract is hereby extended for a period from June 30, 2024 until June 30, 2025.
2. **Cost Adjustment:** The cost in provision 3 of the Contract is hereby amended to include an additional \$82,800.00, for a total of \$173,075.00.
3. **No Other Amendment or Modification:** Except as provided herein, the parties make no other modifications or amendments, and all other terms of the Contract shall continue in full force and effect.

IN WITNESS WHEREOF, the parties enter this First Amendment as of the Effective date first written above.

**CITY OF MURFREESBORO**

**BLULYNX, LLC**

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

DocuSigned by:  
*Kimberly Roberts*  
By: \_\_\_\_\_  
**Kimberly Roberts, Principal**

**Approved as to form:**

DocuSigned by:

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

43A2035E51F9401...

# **FY25 COST PROPOSAL**

**JULY 1, 2024 - JUNE 30 ,2025**

**PROFESSIONAL MANAGEMENT &  
ADMINISTRATIVE SERVICES RELATED TO THE  
COMMUNITY DEVELOPMENT BLOCK GRANT  
for  
Murfreesboro, TN**

***For Submission To***

Ms. Jessica Cline  
Assistant Director Development Services  
Community Development  
P.O. Box 1139  
211 Bridge Ave.  
Murfreesboro, TN 37133  
Telephone: (615) 890-4660

**BluLynx Solutions**

8343 Roswell Rd, Suite 154, Atlanta, GA30350  
Phone: 404-907-1802  
info@blulynxsolutions.com

## BluLynx Solutions Cost Proposal

For the performance of the scope of services detailed below, should the City engage BluLynx to perform the services

### SCOPE OF SERVICES

The consultant's scope of services shall include the following activities. The Consultant shall, as authorized, undertake the necessary analyses, applications, and related activities to accomplish the following activities:

#### 1. Reporting

- Provide assistance with annual, semi-annual, quarterly, and monthly reporting required by HUD including Davis Bacon reporting, Section 3 reporting and compliance, Cash on Hand, and Beneficiary reporting, & preparation of the CAPER..
- Maintain monthly budgets, financial status reports, and expenditure tracking mechanisms.

#### 2. Assist City in preparing 5 Year Consolidated Plan/Annual Action Plan and Analysis to Impediments to Fair Housing Choice

- Undertake necessary grant planning activities related to HUD grant programs (CDBG and HOME) to prepare the City's Consolidated Plan, Annual Action Plan and Analysis to Impediments to Fair Housing Choice and assist with new program objectives, budgets for the completion of final document for submission to IDIS.
- Conduct all needs assessment workshops, public hearings and prepare public notice postings related to Consolidated Plan/Annual Action Plan and Analysis of Impediments to Fair Housing Choice.

#### 3. Policy & Procedure Development

- Provide assistance in developing revising written CDBG and HOME procedures manual outlining implementation procedures.
- Provide assistance in developing HOME program Resale/Recapture, HOME Underwriting procedures outlining provisions to resale HOME properties or recapture HOME funds.

#### 4. Provide General Consulting and Technical Assistance Training

- Provide CDBG and HOME general consulting and advisory services throughout the term of the contract relative to management practices remotely and onsite.
- Assist the City in maintaining annual files, expenditure plans, financial status reports, and other tracking mechanisms to ensure grant compliance.
- Assist the City in developing a monitoring plan at the beginning of the program year to effectively match available resources with the needs and capacity of subrecipients.

#### 5. Training

- Provide grant management training to include project setup, project funding, program income, and beneficiary compliance eligibility documentation in accordance with CDBG and HOME regulations.
- Provide CDBG and HOME programmatic training for City's CD staff and subrecipients to ensure full compliance with CDBG and HOME regulations to include, Environmental Review, Davis Bacon, Project Service Area Determination, Income Verification, etc.

**FEE SCHEDULE**

BluLynx proposes to provide following itemized services to the City of Murfreesboro. Based on the scope of work as identified in this Proposal.

TASK NO.	SERVICE DESCRIPTION	PERSON PERFORMING TASK	HOURLY RATE	NO. OF HOURS SPENT ON CDBG PROJECT	NO. OF HOURS SPENT ON HOME PROJECT	TOTAL HOURS	TOTAL COST
1	Reporting - Monthly and Annual Reporting (CAPER)	Principal	\$115.00	80	30	110	\$12,650
2	Assist City in preparing Consolidated Plan/Annual Action Plan/ Analysis of Impediment to Fair Housing Choice	Principal	\$115.00	220	50	270	\$31,050
3	Policy & Procedure Development	Principal	\$115.00	20	20	40	\$4,600
4	Provide General Consulting and Technical Assistance (i.e. Timeliness, Environmental, Underwriting)	Principal	\$115.00	200	55	255	\$29,325
5	Training	Principal	\$115.00	20	25	45	\$5,175
<b>TOTAL</b>				<b>540</b>	<b>180</b>	<b>720</b>	<b>\$82,800</b>



**COUNCIL COMMUNICATION**  
**Meeting Date: 06/06/2024**

---

**Item Title:** Contract Amendment – Patterson Park Ductwork Replacement

**Department:** Facilities

**Presented by:** Brad Hennessee, Facilities Manager

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Contract amendment for the Patterson Park Ductwork Replacement.

**Staff Recommendation**

Approve the contract amendment with Trinity Geothermal, LLC.

**Background Information**

In April 2024, the City entered into an agreement with Trinity for replacement of the non-insulated metal HVAC ductwork with fabric at Patterson Park. The original contract sum was \$121,483. During demolition of the old ductwork, it was discovered that the return air flow is restricted by a heavy accumulation of dirt and other debris. Trinity has submitted a proposal in the amount of \$3,126 to clean the return air boxes at the ceiling. The new contract sum including this change order will be \$124,609.

**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, \$3,126, is funded by the FY21Patterson Park CIP budget.

**Attachments**

Contract Amendment with Trinity Geothermal, LLC

# AIA® Document G701® – 2017

## Change Order

<b>PROJECT:</b> <i>(Name and address)</i> Patterson Park Ductwork Replacement  Patterson Park Community Center 521 Dr. Martin Luther King Jr. Blvd Murfreesboro, TN	<b>CONTRACT INFORMATION:</b> Contract For: Patterson Park Ductwork Replacement Date: April 19, 2024	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 001  Date: May 31, 2024
<b>OWNER:</b> <i>(Name and address)</i> City of Murfreesboro 111 West Vine Street Murfreesboro, TN 37130	<b>ARCHITECT:</b> <i>(Name and address)</i> CMTA, Inc. 407 Broad Street Suite 203 Chattanooga, TN 37402	<b>CONTRACTOR:</b> <i>(Name and address)</i> Trinity Geothermal, LLC 8858 Lebanon Road Mt. Juliet, TN 37122

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

See attached Exhibit A for description of change order.

Contractor will provide all labor and material for the following change order request.

1. Remove a portion of the return air plenum boxes to the roof-top HVAC unit serving both the youth and adult gymnasiums. Access openings will need to be cut and then resealed to access these areas. Vacuum and clean the inside of these plenums, spray with disinfectant. See attached photos.
2. Work performed during normal working hours and will be coordinated with the Patterson Park Community Center's schedule to prevent as little disruption as possible. Work will be completed before moving to the second gym.
3. Price \$1,525.00 each AC unit's horizontal plenum and vertical riser.
4. \$3,050.00 for both gym units.
5. Bond increase \$76.25.
6. Total \$3,126.25.

The original Contract Sum was	\$	121,483.00
The net change by previously authorized Change Orders	\$	0.00
The Contract Sum prior to this Change Order was	\$	121,483.00
The Contract Sum will be increased by this Change Order in the amount of	\$	3,126.25
The new Contract Sum including this Change Order will be	\$	124,609.25

The Contract Time will be increased by Zero (0) days.  
The new date of Substantial Completion will be unchanged.

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

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

N/A	Trinity Geothermal, LLC	City of Murfreesboro
ARCHITECT <i>(Firm name)</i>	CONTRACTOR <i>(Firm name)</i>	OWNER <i>(Firm name)</i>
N/A	William D. Stalker	
SIGNATURE	SIGNATURE	SIGNATURE
N/A	William D. Stalker, Member	Shane McFarland, Mayor
PRINTED NAME AND TITLE	PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
N/A	5/31/2024	
DATE	DATE	DATE
		Adem F. Tucker
		City Attorney

Exhibit A

**TRINITY GEOTHERMAL LLC**

05-30-2024

Licensed General Mechanical Plumbing Electrical Contractor  
8858 Lebanon Road  
Mt. Juliet, Tennessee 37122  
615-715-6003 cell  
615-330-3235 cell  
Mailing address,  
P.O. Box 1937  
Mount Juliet, Tennessee 37121  
Trinitygeo@comcast.net

Patterson Park

Ref: HVAC change order request #1, 05-30-2024

Trinity will provide all labor and material for the following change order request.

1. Remove a portion of the return air plenum boxes to the roof-top HVAC unit serving both the youth and adult gymnasiums. Access openings will need to be cut and then resealed to access these areas. Vacuum and clean the inside of these plenums, spray with disinfectant. See attached photos.
2. Work is performed during normal working hours and will be coordinated with the Community Center's schedule to prevent as little disruption as possible. Work will be completed before moving to the second gym.
3. Price \$1,525.00 each AC unit's horizontal plenum and vertical riser.
4. \$3,050.00 for both gym units
5. Bond increase \$76.25
6. Total \$3,126.25

The above prices, specifications, and conditions are satisfactory and hereby accepted:

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

Respectfully submitted by: William Stalker

State of Tennessee Contractors License  
66579  
Expiration Date: 07/31/2025  
CMC









**COUNCIL COMMUNICATION**  
**Meeting Date: 06/06/2024**

---

<b>Item Title:</b>	Professional Services Contract Amendment - Old Fort Park Tennis Court Renovations	
<b>Department:</b>	Facilities	
<b>Presented by:</b>	Brad Hennessee, Facilities Manager	
<b>Requested Council Action:</b>	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 Park Tennis Court Renovations.

**Staff Recommendation**

Approve the contract amendment with Wold Architects & Engineers.

**Background Information**

In July 2023, the City entered into an agreement with Wold for planning and design services for the Old Fort Park Tennis Court Renovations project in the amount of \$75,170. Upon entering into this agreement, staff anticipated oversight of construction administration in-house. Due to the complexity of engineering submittals related to this project, it is recommended that the project design firm's proposal for Construction Administration be accepted. Wold's proposal is for \$13,268 to complete the scope of work assigned.

**Council Priorities Served**

*Establish strong City brand*

The court renovations at Old Fort Park will provide the community a desirable and safe place to enjoy these sports.

**Fiscal Impact**

The expense, \$13,268, is funded by the American Rescue Plan Act (ARPA).

**Attachments**

Professional Services Contract Amendment from Wold



# AIA® Document G802® – 2017

## Amendment to the Professional Services Agreement

**PROJECT:** *(name and address)*  
Old Fort Park Tennis Courts  
Renovations  
922 Golf Lane  
Murfreesboro, TN 37129

**AGREEMENT INFORMATION:**  
Date: June 9, 2023

**AMENDMENT INFORMATION:**  
Amendment Number: 001

Date: May 22, 2024

**OWNER:** *(name and address)*  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

**ARCHITECT:** *(name and address)*  
Wold Architects & Engineers  
214 Centerview Drive, Suite 300  
Brentwood, TN 37027

The Owner and Architect amend the Agreement as follows:

Add Construction Administration services to the Architect's scope of services for the Old Fort Park tennis court renovation project. The services related to construction administration are further listed in the attached Exhibit A.

The Architect's compensation and schedule shall be adjusted as follows:

**Compensation Adjustment:**  
Add \$13,267.50 to the original fee.

**Schedule Adjustment:**  
Add 6 months to the contract period to include CA services for the 130 day construction period and project closeout.

**SIGNATURES:**

Wold Architects & Engineers  
ARCHITECT *(Firm name)*



SIGNATURE

James H. Gilliam, Vice President

PRINTED NAME AND TITLE

May 23, 2024

DATE

City of Murfreesboro  
OWNER *(Firm name)*



SIGNATURE

Shane McFarland, Mayor

PRINTED NAME AND TITLE

DATE


APPROVED AS TO FORM  
  
Adam F. Tucker, City Attorney

EXHIBIT A

May 16, 2024



Cathy Smith  
Purchasing Director  
111 W. Vine St  
Murfreesboro, TN 37130  
[cismith@murfreesborotn.gov](mailto:cismith@murfreesborotn.gov)

Re: Letter of Proposal  
RFQ 53-2023  
Construction Administration  
Renovations to Old Fort Tennis Courts

Dear Ms. Smith:

We are excited to have the opportunity to submit a proposal for the referenced project. Per Mr. Brad Hennessee's request, we are submitting this proposal for Construction Administration Services that will be required to complete this project for the tennis court renovations at Old Fort Park with associated site and drainage improvements within the City of Murfreesboro. The basis for the construction administration is the renovation of the existing 8 courts designed by our office.

Please find below a breakdown of the proposed services. The following compensation summary is based on design criteria as set forth by this document:

**Civil and Electrical Engineering and Architectural Services related to Construction Administration**

Work included with the proposal:

1. Schedule and administer a Pre-Construction Meeting
2. Issue Notice to Proceed
3. Create logs for: RFIs, RFPs, ASIs, Change Orders, Submittals
4. Review and respond to RFIs, RFPs, Claims
5. Prepare change orders, directives as required
6. Bi-monthly site observations with report
7. Bi-Monthly Owner, Architect, Contractor progress meetings with meeting minutes
8. Shop Drawing review and approval
9. Pay Application review and recommendation for payment
10. Perform substantial completion inspection with punch list
11. Final Inspection, review punch list for completion
12. Review contractor's record documents and data binders for completeness
13. Provide Owner project closeout documents

**Wold Architects and Engineers**  
214 Centerview Drive, Suite 300  
Brentwood, TN 37027  
woldae.com | 615 370 8500

**PLANNERS  
ARCHITECTS  
ENGINEERS**





**Excluded from this proposal:**

- Construction materials testing/inspection
- LID/BMP As-Built Certification

**Proposed Cost**

In following, with our original proposal based on the State of Tennessee formula and the 15% fee reduction for Construction Administration, we propose the original 15% credit to perform the CA services. The proposed fee is calculated as follows:

State Formula:  $35 / \text{Log}(X) - 1.15$

Where X = your total project budget we allocated a MACC to be \$1,250,000.

Fee =  $35 / \text{Log}(1,250,000) - 1.15$

Fee =  $35 / 6.0969 - 1.15$

Fee = 7.075%

Overall Fee =  $\$1,250,000 \times 7.075\% = \$88,437.50$

Overall Project Fee..... \$ 88,437.50

Design Fee Project..... \$(75,170.00)

Proposed CA Project Fee..... \$ 13,267.50

Reimbursable expenses will be billed in addition to the fee stated at a rate of direct cost plus 20% handling. Travel will be billed at actual mileage for meetings and site visits.

We can begin work immediately upon acceptance of this proposal. I trust this proposal meets with your approval, however if you would like to discuss anything, please do not hesitate to call. Thanks again for the opportunity to submit this proposal.

Sincerely,

**Wold Architects and Engineers**

Jim Gilliam, P.E.  
Principal

pc: Nate Williams, City of Murfreesboro  
Brad Hennessee, City of Murfreesboro  
Elisabeth Lund, Wold Architects & Engineers

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

---

**Item Title:** Use of Competitive Sealed Proposals for Human Resources Procurement

**Department:** Purchasing

**Presented by:** Cathy Smith, Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

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

**Staff Recommendation**

Approve the use of RFCSP process for procurement of services for Human Resources.

**Background Information**

The Human Resources Department would like to rebid our service providers for the City's FSA/Medicare HRA and EAP Services. The Purchasing Department requests to use the RFCSP form of procurement, as it allows for the evaluation of vendors' qualifications, experience, and services, in addition to pricing.

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

**Council Priorities Served**

*Responsible budgeting*

By using this procurement method, Purchasing can assist the department in achieving a more qualified pool of bid proposals, which allows staff to choose the vendor that provides both the required services and beneficial pricing.

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

---

**Item Title:** Master Services Agreements for Pre-Qualified Building Contractors and Trades Contractors

**Department:** Purchasing

**Presented by:** Cathy Smith, Purchasing Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Master Services Agreements with ten building Construction contractors for small renovation and construction projects and seven Trade contractors for use with facilities' repairs.

**Staff Recommendation**

Approval of the master services contracts with pre-qualified building construction and trades contractors.

**Background Information**

The City Purchasing Department issued an RFQ for building construction contractors to pre-qualify vendors for small City construction projects and an RFCSP for trade contractors for facilities maintenance projects. Staff evaluated the responses and chose qualified vendors to enter into master services agreements with the City.

Small construction projects are those with a total project budget of \$250,000 or less. The ability to award small construction projects or tasks to pre-qualified contractors saves significant time and money when completing City projects.

Trades contractors were chosen based on HVAC, Plumbing, Roofing, Electrical, and Residential Rehab. Having a pre-qualified pool of trade contractors increases the turnaround time for small City maintenance jobs and greatly assists Facilities with getting projects finished efficiently and quickly.

The following qualified vendors have been selected for Building Construction: Nabholz Construction, New Creations Construction, OLG Services, Rice Construction, Rock City Construction, Romach, S.M. Lawrence Co., Solomon Builders, Water Control Roofing Co., and Xenergy, Inc.

The following qualified vendors have been selected as Trades Contractors: Lee Company, Madiston PowerTel, Maxwell Roofing & Sheet Metal, Porter Roofing, Rackley Roofing, Rice Construction, and Tristar Mechanical.

The Master Services contracts with these vendors will be in place and Work Orders will be used for projects based on quoted pricing, qualifications for the project, and availability after a project has been budgeted and approved. Any Work Order over \$50,000 will still be brought before Council for approval.

## **Council Priorities Served**

### *Responsible budgeting*

Contracting with pre-qualified vendors to assist with small City facilities' renovations and construction projects ensures City buildings and facilities are maintained, renovated, or remodeled in an efficient and cost-effective manner.

## **Fiscal Impact**

Cost of services are included in the budget when each project is approved.

## **Attachments**

Master Services Contract sample

Work Order sample

**Master Services Agreement Between**  
**[REDACTED] and the City of Murfreesboro**  
**for [REDACTED]**

This Master Services Agreement (the “Master Agreement”) is entered into and effective as of [REDACTED] (the “Effective Date”), by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and [REDACTED], a Tennessee limited liability company (“Contractor”).

This Master Agreement consists of the following documents:

- This document;
- Work Order Form, attached hereto as Exhibit A;
- Contractor’s Price Proposal, attached hereto as Exhibit B;
- Insurance and Bond Requirements, attached hereto as Exhibit C; and
- RFCSP-05-2024 – Trade Contractors, issued March 5, 2024
- Any properly executed amendments to this Master Agreement.

**1. Scope of Agreement; Term.**

- 1.1. Contractor is engaged to provide [INSERT DESCRIPTION AND SCOPE OF SERVICES].
- 1.2. This Master Agreement applies to all Work Orders agreed to by the parties within the terms of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of this Master Agreement shall apply.
- 1.3. The term of this Agreement commences on the Effective Date and shall run for a period of three (3) years, unless earlier terminated as set forth in Section of 12 this Master Agreement. herein.

**2. Party Representatives**

- 2.1. The City identifies the following representative to act on the City’s behalf with respect to this Master Agreement:  
  
Name:  
Title:  
Phone Number:  
Email Address:
- 2.2. In each Work Order, the City will identify a representative authorized to act on the City’s behalf with respect to the Work Order.

- 2.3. The Contractor identifies the following representative to act on the Contractor's behalf with respect to this Master Agreement:

Name:

Title:

Phone Number:

Email Address:

- 2.4. In each Work Order, the Contractor will identify a representative authorized to act on the Contractor's behalf with respect to the Work Order.

### **3. Work Orders.**

- 3.1. The City is not required to issue any Work Orders under this Master Agreement.
- 3.2. The Contractor may decline to accept any Work Order issued by the City.
- 3.3. Contractor will provide the goods and services ("Work") set forth in each agreed upon Work Order. Each Work Order shall utilize the Work Order Form attached hereto as Exhibit A and shall include, at a minimum: a description of the nature, scope, and schedule of the Work to be provided; the term/time within which the Services will be rendered; the location(s) where the Work will be rendered; Contractor resource(s) to be used; the price for the Work calculated in accordance with Section 4 of this Master Agreement ("Work Order Price"); invoicing and payment information; and any other relevant terms and conditions relating to the Work. For purposes of this Master Agreement and any Work Order issued by the City under this Agreement, the term Work includes all labor, materials, equipment, and services to be performed or provided by the Contractor to fulfill the Contractor's obligations under a Work Order.
- 3.4. The City may request changes to any Work Order by providing Contractor with a written request that describes the desired change ("Work Order Amendment" or "Amendment"). Prior to implementing any Work Order Amendment and before the City incurs any costs associated with any Work Order Amendment, Contractor will provide the City with a written quotation which specifies any change(s) in scope, the applicable increase or decrease in the cost and/or the time that will be necessary to implement the Client requested changes specified within the Amendment. Provided that either the terms and conditions of the written quotation are acceptable to the City as presented or the terms and conditions are acceptably modified through additional negotiation, the resulting, mutually agreed upon change(s) in scope, and any associated increase or decrease in the cost and/or time required, shall be incorporated into the Amendment Work Order and, prior to Contractor performing any work based on the Amendment, the Amendment must be signed by the designated City representative responsible for the Work Order indicating City's concurrence and the Amendment must be approved/signed by authorized representatives of both Parties.
- 3.5. The Work, including any individual good provided as part of the Work, will not be considered "accepted" until an authorized agent for the City has, by inspection or test of the Work, determined that the Work complies fully with specifications set forth in a Work Order.

- 3.6. The City may cancel any Work Order at its sole convenience upon thirty (30) days' prior written notice to Contractor. In the event the City cancels any Work Order under this Section 3.6, the City shall pay Contractor the costs of any mutually agreed upon Work Order-cited Services, performed by Contractor, up to the effective date of cancellation. Such payment by the City will be made to Contractor no later than thirty (30) days from the date that an undisputed Contractor invoice is received by the City with such date of receipt of invoice to be no sooner than the effective date of cancellation of the Work Order. No later than thirty (30) days following the effective cancellation date of a Work Order, Contractor shall provide the City all Work Products, including any cited deliverables, or any parts thereof, that Contractor developed or produced via the Work Order up to the effective date of cancellation. For purposes of clarification, "Work Order" as used in this Section 3.6, shall be construed to mean a Work Order and any Amendment(s) to that Work Order. Cancellation of any Work Order shall not be deemed or construed to be a cancellation of this Agreement.

#### **4. Compensation; Payment.**

- 4.1. The City will compensate Contractor for the goods and services provided under a Work Order in accordance with the rates and prices set forth in Exhibit B. The City will compensate Contractor for materials or equipment used by Contractor in performing work under a Work Order but not listed in Exhibit B in the amount equal to Contractor's cost for such materials or equipment plus ten percent (10%).
- 4.2. The City shall pay the Contractor the Work Order Price upon Contractor's completion of the Services identified in the Work Order and Contractor's submission of an invoice to the City. Payment terms shall be net 30 days from the City's receipt of an invoice unless the City objects to all or any portion of said invoice within 30 days. Invoices should be sent to [accountspayable@murfreesborotn.gov](mailto:accountspayable@murfreesborotn.gov), with a copy to the City's representative under this Master Agreement.
- 4.3. In the event the City is in arrears with any payment due from it to Contractor at any time, whether in respect to the Proposal price or any other amount due from the City to Contractor under the terms of this Agreement, the amount in arrears shall bear interest at the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less, as from the date each amount falls due, pending actual payment thereof in full, without prejudice to any relief or remedy available to Contractor. Should the City remain in arrears more than 90 days, then upon notice to the City and without waiving any other rights or remedies to which it may be entitled, Contractor may place City's account in a credit hold and/or suspend or terminate performance of its duties and responsibilities until payment of the amount in arrears is received.

#### **5. City's Responsibilities.**

- 5.1. The City shall inform Contractor of the policies, procedures, and requirements of the City, including any safety program or policies, that are applicable to Contractor's performance of the Work under a Task Order.
- 5.2. The City shall provide all information reasonably necessary for Contractor to perform the Work. The Contractor shall be entitled to rely on the accuracy of information related to the Work furnished by the Owner but shall exercise proper precautions relation to the safe performance of the work.

5.3. The City will ensure that its representative named on a Work Order respond promptly to any reasonable requests from Contractor for instructions, information, or approvals required by Contractor to perform the Work.

**6. Contractor's Duties and Responsibilities.** In addition to the duties and responsibilities set forth elsewhere in this Master Agreement or in a Work Order, the Contractor accepts the following duties and responsibilities in connection with performing any goods and service provided pursuant to this Master Agreement.

6.1. Before the date on which the Work is to start, Contractor will obtain, and at all times during the term of this Master Agreement, maintain, all necessary licenses and comply with all relevant federal, state, and local laws applicable to the Work.

6.2. Before commencing any Work under any Work Order, Contractor will visit and inspect the work site.

6.3. Contractor will provide all supervision, supplies, labor, transportation, and equipment reasonably required for the proper execution of the Work; Contractor accepts sole responsibility for the means, methods, and techniques, sequences, and procedures, and for coordinating all activities necessary to complete the Work and for supervising the Work using Contractor's best skill and attention. Contractor will obtain and pay for any and all building permits and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

6.4. Contractor will comply with all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities and has sole and full responsibility for Work and all costs associated with correcting a failure to comply with any legal requirements.

6.5. Contractor will keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the work, and at the completion of the work Contractor will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the City. Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract documents.

6.6. Contractor will confine Contractor's equipment, the storage of materials and equipment and the operations of Contractor's workers to areas permitted by law, ordinances, permits, or the requirements of the Contract documents, and shall not unreasonably encumber the premises with materials or equipment. Contractor will not load nor permit any part of the structure to be loaded with weights that will endanger the structure, nor will Contractor subject any part of the work to stresses or pressures that will endanger it.

6.7. Contractor shall allow representatives of the City to access to the work at all times, and Contractor will provide proper facilities for such access and observation of the work and for any inspection or testing by others.

6.8. Contractor will be solely responsible 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 and comply with all applicable workplace safety requirements established by federal, state, and local law.



- 6.9. Contractor will take reasonable precautions to prevent damage, injury, or loss to employees on the Work; the Work and materials and equipment to be incorporated therein, and other property at the site and adjacent to the site. Contractor must timely remedy any damage and loss to property caused in whole or in part by Contractor or by Contractor's employees, agents, subcontractors, or materialmen.
- 6.10. In emergencies affecting the safety of persons or the work or property at the site or adjacent property, Contractor, without special instruction or authorization from the City, is obligated to act, at Contractor's discretion, to prevent threatened damage, injury, or loss.

## **7. Subcontractors.**

- 7.1. Contractor will not employ any subcontractor to perform any of the work required under the Contract documents without first obtaining the written approval of the City's designated representative to employ the subcontractor.
- 7.2. Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract documents shall create any contractual relationships between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any monies due any subcontractor, except as may otherwise be required by law. The City may furnish to any subcontractor, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.
- 7.3. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the City.

## **8. Correction of Work**

- 8.1. Contractor will correct Work rejected as failing to conform to the requirements of the Contract Documents and will bear the cost of correcting the rejected Work, including the costs of uncovering, replacement, and additional testing.
- 8.2. In addition to Contractor's other obligations including warranties under this Agreement, Contractor will, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.
- 8.3. If the Contractor fails to correct nonconforming Work within a reasonable time, the City may correct it in accordance with Section 9.3.

## **9. Suspension of Contractor's Work; City's Right to Correct Work and Award Additional Contracts.**

- 9.1. If Contractor fails to correct Work that fails to meet the requirements of this Master Agreement and the applicable Work Order or otherwise fails to carry out the Work in accordance with the Master Agreement and Work Order, the City may issue a written order to the Contractor to stop the Work, or any portion thereof.

- 9.2. In addition, if the Contractor defaults or fails to perform the Work in accordance with the Master Agreement and Work Order, and fails within a ten-day period after receipt of notice from the City to commence and proceed with the correction of such default or failure in a diligent manner, the City may, without prejudice to any other remedies the City may have, correct such default or failure by having the Work performed by City employees or by engaging a third party to perform the Work.
- 9.3. The City reserves the right to perform operations related to the Work with the City's own employees or to engage third parties to provide services, material, and equipment related to Contractor's Work.

## **10. Warranties.**

- 10.1. Contractor warrants that it will perform all Work using personnel with the requisite skill, experience, and qualifications to complete the tasks set forth in a Work Order efficiently and in a professional and skillful manner in accordance with generally accepted industry standards for similar services. Contractor further warrants that it will devote adequate resources to meet its obligations under this Master Agreement and any Work Order issued pursuant hereto.
- 10.2. Contractor warrants all labor associated with the Work under a Work Order for a period of one (1) year from the final completion of the Work.
- 10.3. Contractor warrants that all equipment, machinery, material, or other goods ("Goods") purchased by the City from Contractor pursuant to a Work Order will conform to the specifications set forth in the applicable Work Order; that title to the Goods will pass to the City free of and clear of all liens, claims, security interests, or other encumbrances no later than the time of the City's payment for the Goods; and that the Goods do not infringe or misappropriate any third party's patent or other intellectual property rights.
- 10.4. With respect to any Goods manufactured by Contractor and sold to the City pursuant to a Work Order, Contractor warrants that such items will be free from any defects in workmanship, material, and design for the longest warranty period offered by Contractor to its customer for such items.
- 10.5. In addition, Contractor hereby assigns to the City the Contractor's right, title, benefit, and interest in and to any manufacturer warranty associated with all Goods purchased by the City from Contractor pursuant to a Work Order, including the Contractor's right to receive the benefits of and to make claim under any such manufacturer warranty.
- 10.6. The warranties set forth in this Section 8 are cumulative and in addition to any other warranty set forth in a Work Order or otherwise provided by law or equity.
- 10.7. Any statute of limitation applicable to the warranties set forth in Section 10.1, 10.2, and 10.3 or any additional warranty set forth in a Work Order shall run from the date the City discovers noncompliance of the Goods or Service with these warranties.
- 10.8. If the City gives Contractor notice of noncompliance with the warranties set forth in Section 10.1, 10.2, or 10.3 or any other warranty set forth in a Work Order or otherwise provided by law or equity, Contractor shall, at its own costs and expense, within fifteen (15) days or such shorter period set forth in the applicable Work Order: (i) replace or repair

the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to the Contractor and the delivery of repaired or replacement Goods to the City; and/or (ii) correct or re-perform the applicable Work.

**11. Insurance.**

- 11.1. Contractor must maintain commercial general liability insurance for bodily injury and property damage, automobile liability insurance, and workers' compensation insurance as required by the State of Tennessee and as specified in Exhibit C- hereto.
- 11.2. Unless waived by the City in writing where a Work Order Price is more than \$100,000, Contractor must furnish both a Performance Bond and a Payment Bond in the amounts of 100% of the Work Order Price as security for the faithful payment of Contractor's entire obligation under the Work Order and as more fully specified in Exhibit C hereto.

**12. Indemnification.**

- 12.1. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- 12.2. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend, or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
- 12.3. Indemnification for Copyright, Trademark, Service Mark, or Patent Infringement.
  - a. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance, and authority from the City to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

- b. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
  - i. Procure for the City the right to continue using the products or services.
  - ii. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
  - iii. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
- c. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

**13. 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.

**14. Termination.** This Master Agreement may be terminated in whole in or part:

- 14.1. By the City, upon 30-day prior notice, for the convenience of the City; or
- 14.2. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement other than non-payment, which may be subject to suspension or termination as provided in Section 14.3, below. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- 14.3. 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.
- 14.4. 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.

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

If to the City:

If to Contractor:

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

16. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
17. **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.
18. **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.
19. **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.
20. **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.

21. **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.
22. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of the parties hereunder may be assigned or transferred in whole or in part without the prior written consent of the other party. Any such assignment or transfer does not release Contractor from its obligations hereunder unless specifically waived by the City in writing.
23. **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.
24. **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, pandemic, or other cause of similar or dissimilar nature beyond its control.
25. **Governing Law and Venue.** The validity, construction, and effect of this Agreement 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.
26. **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.
27. **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.
28. **Iran Divestment Act of Tennessee.** By submission of the Contractor's Quote , Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
29. **Non-Boycott of Israel.** By submission of the Contractor's Quote, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of

contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.

**30. Effective Date.** This Agreement is not binding upon the parties until signed by 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.

**CONTRACTOR**

**CITY OF MURFREESBORO, TENNESSEE**

\_\_\_\_\_

By:

Its:

\_\_\_\_\_

By:

Its:

Approved as to form:

\_\_\_\_\_

Adam F. Tucker, City Attorney

**EXHIBIT A**  
**WORK ORDER FORM**

Note: If a contract is awarded, all work orders must include the following language.

“This work order is pursuant and subject to the Terms and Conditions of the Master Service Agreement between Contractor and the City dated TBD”



**EXHIBIT B**  
**RATE AND PRICE SCHEDULE**

**EXHIBIT C**  
**CONTRACTOR'S INSURANCE AND BOND REQUIREMENTS**

Contractor must, as a material obligation to the City and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, the insurance and bonds required by this Exhibit.

Contractor must secure and maintain such insurance coverage and bonds, without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, in accordance with the requirements set forth below.

**1. Commercial General Liability Insurance.**

- 1.1. The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$2,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2. The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3. Each general liability policy must be endorsed or written to:
  - a. Include the per project aggregate endorsement;
  - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives, and agents (collectively, the "Additional Insureds");
  - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
  - d. Includes a severability of interest clause; and
  - e. Waive all rights of recovery against the Additional Insureds.

- 2. Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

**3. Auto Liability Insurance**

- 3.1. Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
- 3.2. This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned, or borrowed vehicles.
- 3.3. This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

**4. Umbrella Coverage.** Contractor must secure, pay for, and maintain umbrella coverage in the amount of not less than \$5,000,000 on a form acceptable to the City. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.

**5. Equipment Property Insurance.** Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the City against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.

**6. Waiver of Subrogation.** Contractor hereby waives and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the City and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.

**7. Term of Coverage**

- 7.1. The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the “Completed Operations Term”).
- 7.2. If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 7.3. Contractor will furnish certificates of insurance and other evidence that the City may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 7.4. All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

**8. Subcontractor and Lower-Tier Entities Insurance Requirements**

- 8.1. Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:

- 8.2. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, EXCEPT THAT the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
- 8.3. Timely furnish to the City proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
- 8.4. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary, and non-contributory to the insurance furnished by Contractor and Subcontractor.
- 8.5. The City has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

**9. Other Policy Provisions.** Each policy to be furnished by Contractor and each Subcontractor must:

- 9.1. Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 9.2. Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 9.3. Include the Project per aggregate endorsement;
- 9.4. Waive all rights of subrogation against the City;
- 9.5. Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the City; and
- 9.6. Be otherwise satisfactory to the City. The City agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the City is satisfied the insurance is not commercially available to the insured. In such event, the City has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the City be a loss-payee under the policy.

**10. Certificates and Endorsements**

- 10.1. Within 10 days after the execution of this Agreement, Contractor must provide the City with certificates and endorsements;
- 10.2. Upon the City request, Contractor must provide the City with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have

resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the City under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the City.

10.3. If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

**11. Reduction in Coverage.** Contractor must promptly inform the City of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The City has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

**12. Suppliers and Materialmen Coverages**

12.1. Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery, or other goods FOB Site.

12.2. With respect to any equipment, machinery or other goods for which the City or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the City and Contractor as loss payee as their interests appear.

**13. Condition Precedent to Starting Work**

13.1. Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the City certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the City that the required insurance is in place; together with the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the City to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

13.2. The City is under no obligation or duty to make any such inquiry and the City is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The City's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

**14. Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the City with certified copies of all policies and endorsements obtained in compliance with this Agreement.

- 15. **Indemnity.** The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the City and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.
- 16. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.
- 17. **Performance Bond and Payment Bond.**

17.1. The Contractor shall provide surety bonds as follows:

Type	Penal Sum (\$0.00)
Performance Bond	100% of Contract Sum
Labor and Material Payment Bond	100% of Contract Sum

- 17.2. Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the City.
- 17.3. The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within ten (10) days of execution of the Agreement, the City, in its sole discretion, may elect to terminate the Agreement and award the Project to an alternate contractor.
- 17.4. The City 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 City 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.
- 17.5. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

# DRAFT AIA® Document A121™ - 2018

## Standard Form of Master Agreement Between Owner and Contractor where Work is provided under multiple Work Orders

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)

«  
« »

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.

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

This document does not contain a description of the Contractor's scope of Work or establish payment terms or the dates of commencement of the Work or Substantial Completion. This document is intended to be used in conjunction with AIA Document A221™-2018, Work Order for use with Master Agreement Between Owner and Contractor.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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### ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 This Master Agreement shall be effective for three (3) years after the date first written above (“Date of this Master Agreement”).

§ 1.2 This Master Agreement shall apply to all Work Orders agreed to by the parties within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order.

§ 1.4 The Owner identifies the following representative authorized to act on the Owner’s behalf with respect to this Master Agreement:

«Raymond Hillis, Executive Director of Public Works»  
«City of Murfreesboro »



«111 West Vine Street »  
«Murfreesboro, TN 37130 »  
«rhillis@murfreesborotn.gov»  
«(615) 893-4380 »

§ 1.4.1 In each Work Order, the Owner will identify a representative authorized to act on the Owner's behalf with respect to the Work Order.

§ 1.5 The Contractor identifies the following representative authorized to act on the Contractor's behalf with respect to this Master Agreement:

« »  
« »  
« »  
« »  
« »  
« »

§ 1.5.1 In each Work Order, the Contractor will identify a representative authorized to act on behalf of the Contractor with respect to the Work Order.

§ 1.6 The Owner may retain a Design Professional or Engineer ("Design Professional") to perform certain services in connection with a specific Project, as enumerated in this Master Agreement and a particular Project's Work Order. If a Design Professional is not required by law, or otherwise not engaged on a Project, the Owner shall perform such duties and services identified in this Master Agreement as being the responsibility of the Design Professional.

## ARTICLE 2 WORK ORDERS

§ 2.1 The Owner is not required to issue any Work Orders under this Master Agreement.

§ 2.2 The Contractor may decline to accept any Work Order issued by the Owner.

§ 2.3 The Contractor shall execute the Work set forth in each agreed upon Work Order, consisting of AIA Document A221-2018, Work Order, or such other document as the Owner and Contractor may mutually agree upon. Each Work Order shall state the name, location, and detailed description of the Project; identify the Design Professional; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

§ 2.4 The Owner shall make the Contract Documents available to the Contractor prior to execution of the Work Order, and thereafter, upon request. The Owner may charge the Contractor for the reasonable cost to reproduce the Contract Documents provided to the Contractor.

## ARTICLE 3 PAYMENTS

### § 3.1 Contract Sum and Progress Payments

§ 3.1.1 Each Work Order shall include a Contract Sum. The Owner shall pay the Contractor the Contract Sum in current funds in accordance with each individual Contract. Where the Contract Sum is based on the Cost of the Work under Section 3.3 or 3.4 of the Work Order, the Cost of the Work is defined in Exhibit A, Determination of the Cost of the Work.

§ 3.1.2 Applications for Payment will be submitted individually for each Contract.

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

§ 3.1.4 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as set forth in the Work Order.

§ 3.1.5 Provided that a properly documented Application for Payment is received by the Design Professional in a timely manner, the Owner shall make payment of the certified amount to the Contractor within thirty (30) days after application for payment is received by the Design Professional, less only those amounts withheld in accordance with Tenn. Code Ann. § 66-34-203. . Nothing in this provision, however, shall require payment if the Design Professional has certified that the Contractor has not completed performance of the Work for which payment is sought.

§ 3.1.6 For each progress payment made prior to final payment, the Owner, in accordance with and except as prohibited by, Tenn. Code Ann. § 66-34-203, may withhold retainage from the payment otherwise due as follows: *(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)*

« Five percent (5%) until acceptance of a Certificate of Substantial Completion, and thereafter two percent (2%) until final payment. »

§ 3.1.7 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

« 6 » % «per year»

### § 3.2 Final Payment

§ 3.2.1 Final payment for individual Contracts, 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 Work except for the Contractor's responsibility to correct Work as provided in Section 16.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Design Professional in accordance with Section 13.7.1.

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

« »

## ARTICLE 4 DISPUTE RESOLUTION

### § 4.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 19.5, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[  ] Arbitration pursuant to Section 19.6 of this Master Agreement

[  ] Litigation in a court of competent jurisdiction as provided in Section 19.1.6

[  ] Other: *(Specify)*

« »

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 in a court of competent jurisdiction

## ARTICLE 5 GENERAL PROVISIONS

### § 5.1 The Work

The term “Work” means the construction and services required by the Contract Documents enumerated in a Work Order, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Work Order and related Contract. The Work may constitute the whole or a part of the Project identified in a particular Work Order.

§ 5.1.1 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.

§ 5.1.2 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.

### § 5.2 The Contract Documents

§ 5.2.1 The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); all Drawings, Specifications, and Addenda issued in connection with the Work Order; other documents listed in the Work Order; and Modifications issued after execution of the Work Order. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Professional.

§ 5.2.2 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; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 5.2.3 In the event there are conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 Amendments to a Work Order or this Master Agreement, with those of later date having precedence over those of earlier date
- .2 The Work Order
- .3 This Master Agreement;
- .4 Addenda, with those of later date having precedence over those of earlier date.
- .5 Division 1 of the Specifications, if any
- .6 Drawings and Specifications
- .7 Other documents specifically enumerated in the Master Agreement or Work Order as part of the Contract Documents.
- .8 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 Design Professional's interpretation.

### § 5.3 The Contract

The Contract Documents for each Work Order form a separate Contract for construction of the Work (“The Contract”). The Contract represents the entire and integrated agreement between the parties hereto for construction of the Work and supersedes prior negotiations, representations or agreements, either written or oral. A Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

## § 5.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Professional and the Design Professional's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

## § 5.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 5.5.1 The Instruments of Service, including Drawings and Specifications, prepared by the Design Professional and the Design Professional's consultants are for use solely with respect to the Project identified in a specific Work Order. The Contractor, subcontractors, sub-subcontractors, materialmen, and equipment suppliers are authorized to use and reproduce solely and exclusively for execution of the Work. The Design Professional's drawings, specifications, and other Instruments of Service may not be used for other projects.

§ 5.5.2 The Design Professional and the Design Professional's consultants shall be deemed the authors and owners of their respective Instruments of Service including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design Professional's or Design Professional's consultants' reserved rights.

§ 5.5.3 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 5.6 and 5.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner, Design Professional and the Design Professional's consultants.

## § 5.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## § 5.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## § 5.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

## § 5.9 Notice

§ 5.9.1 Except as otherwise provided in Section 5.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission 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.)*

<< >>

§ 5.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 5.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Master Agreement and covenants with the Owner to cooperate with the Design Professional and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## ARTICLE 6 OWNER

### § 6.1 Information and Services Required of the Owner

§ 6.1.1 Prior to commencement of the Work, at the written request by 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. If commencement of the Work is delayed under this Section 6.1.1, the Contract Time shall be extended appropriately.

§ 6.1.2 The Owner shall furnish all necessary surveys and a legal description of sites referenced in a Work Order.

§ 6.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 6.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 7.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. 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.

§ 6.1.5 The Owner will provide a digital copy in .pdf format or furnish six (6) copies of the Contract Documents to the Contractor. The Contractor may purchase additional copies of the Contract Documents at the cost of reproduction, postage, and handling.

### § 6.2 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.

### § 6.3 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 ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Design Professional and the Design Professional may, pursuant to Section 13.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for



the Design Professional's additional services made necessary by such default, neglect, or failure. 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. If the Contractor disagrees with the actions of the Owner or the Design Professional, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 19.

## **ARTICLE 7 CONTRACTOR**

### **§ 7.1 Review of Contract Documents and Field Conditions by Contractor**

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

**§ 7.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 6.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design Professional any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require. Such reports shall also be made simultaneously and directly to the Owner. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

**§ 7.1.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design Professional any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require.

**§ 7.1.4** 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.

**§ 7.1.4** 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 Design Professional. In case of any discrepancy between Drawings and Specifications, Contractor shall consult Design Professional promptly for an interpretation before proceeding with the Work.

**§ 7.1.5** The Owner is entitled to reimbursement from the Contractor, which are in addition to any Liquidated Damages, for amounts paid to the Design Professional for evaluating and responding to (i) the Contractor's requests for information that are not prepared in accordance with the Contract Documents; or (2) where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

## § 7.2 Supervision and Construction Procedures

§ 7.2.1 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 under a Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 7.2.2 The Contractor shall layout new construction lines and verify slab slope and conditions. If discrepancies between actual lines and elevations and those indicated on plans exist, notify Design Professional and obtain a decision before starting work.

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

§ 7.2.4 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.

§ 7.2.5 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work.

## § 7.3 Labor and Materials

§ 7.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

§ 7.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Design Professional and in accordance with a Modification.

§ 7.3.4 Whereas public works projects are exempt from statutory liens under Tennessee law, 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.

### § 7.3.5 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 Design Professional such materials are equal to the material specified and entirely satisfactory for use in the project. The Design Professional shall be the sole judge of acceptability of substitution.
- .2 The Design Professional will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications) ten (10) days prior to bid date. 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 except for the Design Professional's redesign costs, 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 the Design Professional for reviewing the Contractor proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

**§ 7.3.6** The use of undocumented workers is not permitted.

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

**§ 7.3.8** 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.

#### **§ 7.4 Warranty**

**§ 7.4.1** The Contractor warrants to the Owner and Design Professional 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.

**§ 7.4.2** 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 Design Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 7.4.3** 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 13.6.3.

#### **§ 7.5 Taxes**

The Contractor shall pay all taxes, levies duties, and assessments of any nature that are applicable to any Work under an individual Contract. The Contract Sum and any agreed variations thereof shall include all taxes 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.

#### **§ 7.6 Permits, Fees, Notices, and Compliance with Laws**

**§ 7.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses and inspections by government agencies necessary for proper



execution and completion of the Work that are customarily secured after execution of a Contract and legally required at the time bids are received or negotiations concluded.

**§ 7.6.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of 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 appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 7.7 Allowances**

The Contractor shall include in the Contract Sum for each Work Order all allowances stated in the Contract Documents for that Work Order. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

### **§ 7.8 Contractor's Construction Schedules**

**§ 7.8.1** The Contractor, promptly after executing a Work Order, shall submit for the Owner's and Design Professional's information a Contractor's construction schedule for the Work described in that Work Order. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 7.8.2** The Contractor must maintain an updated project schedule and shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Design Professional. If milestones are negatively impacted, the Contractor must, prior to submission of the next application for payment, provide Owner and Design Professional with a specific plan to return the Project to the project schedule.

### **§ 7.9 Submittals**

**§ 7.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Design Professional reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Design Professional that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals. Neither the Design Professional nor the Owner shall be responsible for correctness of dimensions shown on shop drawings or submittals. The Design Professional's review of Contractor's submittals will be limited to general conformance with the project scope, finish selection, and examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Design Professional for evaluation of additional submittals.

**§ 7.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

**§ 7.9.3** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Design Professional will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Design Professional will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Design Professional's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the

Design Professional will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

#### **§ 7.10 Use of Site**

The Contractor shall confine operations at the site(s) to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site(s) with materials or equipment.

#### **§ 7.11 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.

#### **§ 7.12 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under a Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project. 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.

#### **§ 7.13 Access to Work**

The Contractor shall provide the Owner and Design Professional access to the Work in preparation and progress wherever located.

#### **§ 7.14 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Design Professional harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Design Professional.

#### **§ 7.15 Indemnification**

**§ 7.15.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Design Professional, Design Professional's 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. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 7.15.1.

**§ 7.15.2** In claims against any person or entity indemnified under this Section 7.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 7.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 7.15.3** The provisions of this Section 7.15 shall survive the completion of the Work or termination of the Agreement.

#### **§ 7.15 Requests for Information**

Contractor requests for information shall be prepared and submitted in accordance with Division 1 General Requirements sections on AIA Document G716-2004. The Architect will return without action requests for information that do not conform to requirements of the Contract Documents.

## ARTICLE 8 DESIGN PROFESSIONAL

§ 8.1 As set stated in Section 1.6, the Owner may retain a Design Professional to perform certain services in connection with a specific Project, as enumerated in this Article 8 and as described elsewhere in this Master Agreement. If a Design Professional is not required by law, or otherwise not engaged on a Project, the Owner shall perform such duties and services identified in this Master Agreement as being the responsibility of the Design Professional.

§ 8.2 The Design Professional listed on each Work Order will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Design Professional issues the final Certificate for Payment for the Contract. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 8.3 Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Design Professional. Consent shall not be unreasonably withheld.

§ 8.4 The Design Professional will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will not have control over, charge of, or responsibility for, the 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 rights and responsibilities under the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Design Professional for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 8.5 On the basis of the site visits, the Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 8.6 Based on the Design Professional's evaluations of the Work and of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 8.7 The Design Professional has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 8.8 The Design Professional will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 8.9 The Design Professional will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Professional will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 8.10 The Design Professional's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

## **ARTICLE 9 SUBCONTRACTORS**

§ 9.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at a Project site.

§ 9.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after execution of a Work Order, shall notify the Owner and Design Professional of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Design Professional has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 9.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Design Professional, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

## **ARTICLE 10 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

§ 10.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to a Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 10.2 The Contractor shall afford the Owner and the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 10.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a separate contractor.

## **ARTICLE 11 CHANGES IN THE WORK**

§ 11.1 By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating this Master Agreement or a Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Design Professional, or by written Construction Change Directive signed by the Owner and Design Professional. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 11.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Design Professional, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Design Professional will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Design Professional will prepare a Change Order.

§ 11.3 The Design Professional will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Design Professional within 15 days of being notified of the change in the Work and shall not proceed to implement the change in the Work until the need for a Change Order is determined by the Design Professional in consultation with the Owner.

§ 11.4 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 equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Design Professional promptly and before conditions are disturbed.

§ 11.5 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 11.2.
- .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 12 TIME

§ 12.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Work Order, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 12.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The date of commencement of the Work is the date stated in the notice to proceed.

§ 12.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 12.4 The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 13.6.3.

§ 12.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Design Professional determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Design Professional may determine, subject to the provisions of Article 19. Contractor will not be granted extensions of time 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.

## ARTICLE 13 PAYMENTS AND COMPLETION

### § 13.1 Schedule of Values



§ 13.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall submit a schedule of values to the Design Professional before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Design Professional. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 13.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 13.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

### § 13.2 Control Estimate

§ 13.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing the Work Order. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 13.2.2 The Control Estimate shall include:

- .1 the Contract Documents enumerated in the Work order, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 13.2.3 When the Control Estimate is acceptable to the Owner and Design Professional, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 13.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Design Professional with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 13.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Design Professional of any inconsistencies between the Control Estimate and the revised Contract Documents.

### § 13.3 Applications for Payment

§ 13.3.1 Applications for Payment will be submitted individually for each Contract as set forth in this section 13.3. 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.

§ 13.3.2 At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Professional an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 13.1, for completed portions of the Work. The application shall be notarized; be supported by all data substantiating the Contractor's right to payment that the Owner or Design Professional require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 13.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which

the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 13.3.3** With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 13.3.4** Applications for Payment shall indicate retainage withheld from the total completed and stored to date as provided in Section 3.1.6. The resulting amount shall be indicated as the total earned less retainage. Applications that reduce retainage shall be accompanied by Consent of Surety.

**§ 13.3.5** 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.

**§ 13.3.6** 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.

#### **§ 13.4 Certificates for Payment**

**§ 13.4.1** The Design Professional will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional determines is properly due, or notify the Contractor and Owner of the Design Professional's reasons for withholding certification in whole or in part as provided in Section 13.4.3.

**§ 13.4.2** The issuance of a Certificate for Payment will constitute a recommendation only by the Design Professional and does not create a legal, binding obligation on the part of the Owner. The Certificate for Payment constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluations of the Work and the data in the Application for Payment, that, to the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 13.4.3** The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Section 13.4.2 cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Section 13.4.1. If the Contractor and the Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional 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 Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 7.2.2, because of

- .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 suppliers 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 repeated failure to carry out the Work in accordance with the Contract Documents;
- .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 any other reasonable basis to withhold certification due to defective Work or Contractor's failure to perform the Work for which certification is requested.

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.

**§ 13.4.4** If (a) 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, (b) there is 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, (c) the Contractor or any Subcontractor or other person under it causes damage to the Work or to any other work on the Project, or (d) the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, then the Architect 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 Architect 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.

**§ 13.4.5** The Design Professional may not withhold a Certificate for Payment in whole or in part, and the Owner shall not withhold payments to the Contractor, pertaining to one Contract to offset amounts in dispute under a separate Contract. If the Design Professional withholds certification for payment, 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 notify the Design Professional, and the Design Professional will reflect such payment on the next Certificate for Payment.

**§ 13.4.6** When either party disputes the Design Professional's decision regarding a Certificate for Payment under Section 13.4.3, in whole or in part, that party may submit a Claim in accordance with Article 19.

## **§ 13.5 Progress Payments**

**§ 13.5.1** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.



§ 13.5.2 Neither the Owner nor Design Professional shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 13.5.3 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 Contract Documents.

§ 13.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 13.6 Substantial Completion

§ 13.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that 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 Architect. 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 Architect's or the Owner's reasonable determination that Substantial Completion has not been achieved.

§ 13.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional and the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 13.6.3 Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Design Professional determines that the Work or designated portion thereof is substantially complete, the Design Professional will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; 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.

§ 13.6.4 Unless the project has phased Substantial Completion dates, the Design Professional 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.

§ 13.6.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 13.7 Final Completion and Final Payment

§ 13.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional and the Owner will promptly make such inspection and, when the Design Professional and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that to the best of the Design Professional's knowledge, information and belief, and on the basis of the Design Professional's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Professional's final Certificate for Payment will constitute a further representation that conditions stated in Section 13.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 13.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens and claims arising out of the Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 13.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment

§ 13.7.4 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 the final Application for Payment. Unless the project has phased Final Completion dates, the Design Professional will make only one such inspection to determine Final 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.

## ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY

### § 14.1 Safety Precautions and Programs

§ 14.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of a Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 14.1.2 The Contractor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations.

**§ 14.1.3** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 14.1.2 and 14.1.3, except for damage or loss attributable to acts or omissions of the Owner or Design Professional or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 7.15.

## **§ 14.2 Hazardous Materials**

**§ 14.2.1** The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. 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, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Design Professional of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

**§ 14.2.2** Subject to the provisions of the Tennessee Governmental Tort Liability Act, and to the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Design Professional, Design Professional's 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 in the affected area, if in fact: (i) the material or substance presents the risk of bodily injury or death as described in Section 14.2.1 and has not been rendered harmless; (ii) the City had actual or constructive knowledge of the hazardous material or substance; and (iii) any 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), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 14.2.3** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, to the extent permitted by law, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

## **ARTICLE 15 INSURANCE AND BONDS**

### **§ 15.1 Contractor's Insurance**

The Contractor shall purchase and maintain insurance coverage required in this Article 15, and as otherwise required for a specific project as set forth in a Work Order.

**§ 15.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 15.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Master Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 16.4, unless a different duration is stated below:

« »

§ 15.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than «One Million Dollars » (\$ «1,000,000.00 » ) 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, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 7.15.

Each general liability policy must be endorsed or written to: (a) include the per project aggregate endorsement; (b) name as additional insureds the following: "The City of Murfreesboro, Tennessee, and its elected officials, officers, employees, representatives, and agents (collectively, the "Additional Insureds"); (c) Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk-retention programs or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors; (d) include a severability of interest clause; and (e) Waive all rights of recovery against the Additional Insureds.

§ 15.1.3 Automobile Liability covering vehicles owned by the Contractor 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. The Owner and the other Additional Insureds must be a named insured on the policy.

§ 15.1.4 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 such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 15.1.2 and 15.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 15.1.5 Workers' Compensation at statutory limits.

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

§ 15.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, as set forth in the Work Order.

§ 15.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, as set forth in the Work Order.

§ 15.1.9 Coverage under Sections 15.1.7 and 15.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined limits as set forth in the Work Order.

§ 15.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 15.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 15.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 15.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.

§ 15.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 15.1 to include (1) the Owner, the Design Professional, and the Design Professional's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Design Professional and the Design Professional's Consultants, CG 20 32 07 04.

§ 15.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 15.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 15.1.14 Contractor shall also obtain such other insurance required by an individual Work Order.

## § 15.2 Owner's Insurance

### § 15.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### § 15.2.2 Property Insurance

§ 15.2.2.1 For each Work Order, the Owner shall maintain property insurance to cover the value of the Owner's property.

#### § 15.2.2.2 Waiver of Subrogation

§ 15.2.2.2.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Design Professional and Design Professional's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Master Agreement or other property insurance applicable to the Project where the loss occurred, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Design Professional, Design Professional's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 15.2.2.2 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 15.2.2.2.2 If during a Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 15.2.2.2.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 15.2.2.2.3. A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Design Professional and Contractor their just shares of



insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Design Professional and Contractor shall make payments to their consultants and Subcontractors in similar manner.

### **§ 15.3 Performance Bond and Payment Bond**

The Contractor's performance bond and payment bond obligations shall be as required in this Section 15.3 and in the Work Order.

**§ 15.3.1** Unless waived by the Owner where a Contract Sum is 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 thereunder. Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.

**§ 15.3.2** 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. In addition, upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 15.3.2** The Contractor, upon request of the Owner, 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 16 CORRECTION OF WORK**

**§ 16.1** The Contractor shall promptly correct Work rejected by the Design Professional or the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

**§ 16.2** In addition to the Contractor's obligations under Section 7.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 13.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. 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.

**§ 16.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 6.3.

**§ 16.4** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. Upon request of the Owner and prior to the expiration of one year from the date of Substantial Completion, the Design Professional will conduct and the Contractor shall attend a meeting with the Owner to review facility operations and performance.

**§ 16.5** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 16.

## **ARTICLE 17 MISCELLANEOUS PROVISIONS**

### **§ 17.1 Assignment of Contract**

Neither party to a Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. 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.

### **§ 17.2 Governing Law**

The Work Order shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 19.6.

### **§ 17.3 Tests and Inspections**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations require.

### **§ 17.4 Change of Owner's or Contractor's Representative**

Neither the Owner's nor the Contractor's representatives, for this Master Agreement or for individual Work Orders, identified in accordance with sections 1.4 and 1.5, shall be changed without ten days' prior notice to the other party.

### **§ 17.4 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.

### **§ 17.5 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.

### **§ 17.6 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.

### **§ 17.7 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.

### **§ 17.8 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.

### **§ 17.9 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.

### **§ 17.10 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.

### **§ 17.11 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.

### **§ 17.12 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.

### **§ 17.13 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 18 TERMINATION**

### **§ 18.1 Termination of a Contract**

A Contract may be terminated in accordance with this Article 18. Termination of a Contract under this Article 18 shall not be deemed a termination of any other Contract created pursuant to this Master Agreement.

### **§ 18.2 Termination by the Contractor**

If the Design Professional fails to certify payment as provided in Section 13.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 3.1.5 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

### **§ 18.3 Termination by the Owner for Cause**

#### **§ 18.3.1** The Owner may terminate a 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 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 18.3.2.** When any of the reasons described in Section 18.3.1 exists, the Owner, upon certification by the Design Professional that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice and upon Contractor's failure to cure such default within such seven-day period, terminate a Contract and take possession of the site and of all materials thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 18.3.3** When the Owner terminates a Contract for one of the reasons stated in Section 18.1.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.



§ 18.3.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

#### §18.4 Termination by the Owner for Convenience

§18.4.1 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 14 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 along with actual costs incurred by reason of such termination, including costs attributable to termination of Subcontracts.

§18.4.2 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 19 CLAIMS AND DISPUTES

§ 19.1.1 **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.

#### § 19.1.2 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.

§ 19.1.3 **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.

#### § 19.1.4 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.

#### § 19.1.5 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.

#### § 19.1.6 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:
  - 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 19.1.6 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.

§ 19.1.7 Binding Dispute Resolution. Any Claim subject to, but not resolved by, mediation per this agreement, shall be brought in the state courts in Rutherford County, Tennessee. .

#### § 19.2 Liquidated Damages.

§ 19.2.1 In the event Substantial Completion is not achieved by the date specified above, except as result only from delays for which the Owner is chargeable under the Contract Documents or from Unavoidable Delay (as defined below), the Contractor agrees that the Owner shall have the right to deduct from any sums due to the Contractor hereunder the sum of dollars (\$500.00) for each day that Substantial Completion is actually delayed, provided, however that (i) the Owner may make such deductions prior to the scheduled date of Substantial Completion in the event the Owner reasonably projects that the Project will not be completed on the scheduled date of Substantial Completion, and (ii) the Contractor shall pay to the Owner in cash any amounts which the Owner is entitled to deduct in the event the remaining amount of funds due the Contractor hereunder is less than the remaining amounts the Owner has the right to deduct. The Owner and the Contractor may agree in writing to modify the amount of liquidated damages in the case of any individual Work Order.

§ 19.2.2 The Owner and the Contractor agree and acknowledge that the Owner's actual damages for the failure of Substantial Completion would be substantial but extremely difficult to ascertain and such sum represents a fair and reasonable estimate of the costs the Owner will incur as a result of such late achievement of Substantial Completion.

§ 19.2.3 "Unavoidable Delay" means delays due to any of the following, and only the following, (provided that such delay is beyond the Contractor's reasonable control): war, insurrection, civil commotion, strikes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental moratoriums, unusually severe or abnormal weather condition that could not reasonably be projected and provided for in the project schedule, failure of utilities, or a court order which causes a delay (unless resulting from a wrongful act). In no event shall the application to the Contractor or any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. The Contractor shall use reasonable good faith efforts to notify the Owner not later than five days after the Contractor knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for a period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay and shall continue until the Contractor is able to reasonably remobilize or commence its performance of the Work, which under no circumstances shall be longer than thirty (30) days after the cessation of the cause of the Unavoidable Delay or the Parties' agreement as to means to proceed with the Work even though the cause of the delay continues to exist.

**§ 19.3 Waiver of Claims for Consequential Damage.** The Contractor and the Owner mutually waive claims against each other for consequential damages arising out of or relating to this Agreement or any Work performed hereunder. This mutual waiver includes: (1) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This mutual waiver applies, without limitation, to all consequential damages due to either party's termination in accordance with Article 18; provided, however, nothing contained this Section 19.3 shall be deemed to preclude the assessment of liquidated damages in accordance with the requirements of the Contract Documents.

## ARTICLE 20 SCOPE OF THIS MASTER AGREEMENT

**§ 20.1** This Master Agreement represents the entire and integrated Master Agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both Owner and Contractor.

**§ 20.2** This Master Agreement is comprised of the following documents listed below:

- .1 AIA Document A121™–2018, Standard Form Master Agreement Between Owner and Contractor;
- .2 Exhibit A, Determination of the Cost of the Work, if applicable.
- .3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

« »

- .4 Other documents:  
(List other documents incorporated into this Master Agreement.)

« »

This Master Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

«Shane McFarland, Mayor »« »

*(Printed name and title)*

Approved as to form:

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

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

« »« »

*(Printed name and title)*



# COUNCIL COMMUNICATION

Meeting Date: 6/06/2024

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**Item Title:** Dr. Martin Luther King Jr. Blvd. Phase 2 Sidewalk Project Amendment No. 4 TDOT Contract

**Department:** Transportation

**Presented by:** Jim Kerr, Transportation Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Amendment No. 4 to the Dr. Martin Luther King Jr. Blvd. Phase 2 with TDOT.

**Staff Recommendation**

Approve Amendment No. 4.

**Background Information**

The City received a TDOT Transportation Alternative Project (TAP) Grant for the development and implementation of a sidewalk project along Dr. Martin Luther King Jr. Blvd. from Middle Tennessee Blvd. to Minerva Dr. The TAP Grant award only covered 80% of construction cost and was capped at \$1,000,000. The City then received a TDOT Multimodal Access Grant in the amount of \$703,605 at a 95% state and 5% local match for Right of Way easement cost as well as additional construction funds. Since that time, with the development of the construction plans and the easement purchases, a shortfall in funding required to meet the project deliver was identified.

The City through the TDOT's (TAP) program received an additional \$615,713 in funds to offset the shortfall of the project. The TAP program funds projects with an 80% federal and 20% local match.

**Council Priorities Served**

*Responsible budgeting*

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

**Fiscal Impact**

The City's 20% portion of the TAP funds is estimated at \$123,143 and will be funded

from the FY21 CIP Budget for this project.

**Attachments**

1. Original Contract
2. Amendment No. 1
3. Amendment No. 2
4. Amendment No. 3
5. Amendment No. 4





STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION

PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION  
LOCAL PROGRAMS DEVELOPMENT OFFICE  
SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-5314

JOHN C. SCHROER  
COMMISSIONER

BILL HASLAM  
GOVERNOR

October 4, 2018

The Honorable Shane McFarland  
Mayor, City of Murfreesboro  
PO Box 1139  
Murfreesboro, TN 37133-1139

RE: PIN: 126616.00; Federal Project No: TAP-1(395)  
Mercury Boulevard Sidewalks-Phase 2  
Murfreesboro, Rutherford County

Dear Mayor McFarland:

Please find attached a fully executed contract for your Transportation Alternative project. This copy is for your files, and we will keep the original here in our office.

**Do not begin work on any construction aspect of this project until you have received a Notice to Proceed to Construction from this Office.** *Any work you do ahead of this authorization will not be reimbursable.*

Please note, you must receive TDOT's Notice to Proceed with Construction by July 1, 2021 or the Department reserves the right to cancel the award.

All of the procedures required throughout the implementation of this process can be found at [https://www.tn.gov/content/dam/tn/tdot/programdevelopment/localprograms/documents-and-forms/LGG\\_Manual.pdf](https://www.tn.gov/content/dam/tn/tdot/programdevelopment/localprograms/documents-and-forms/LGG_Manual.pdf) under the Local Government Guidelines Manual. In addition, all reimbursement procedures and forms can be accessed at <https://www.tn.gov/tdot/program-development-and-administration-home/local-programs/reimbursement.html>

If you have any questions, or need any additional information, please let me know.

Sincerely,

Neil Hansen  
Enhancement Coordinator

Attachment  
NH/lad

bl/cc: Mr. David Layhew, Assistant Chief of Engineering, TDOT Region 3  
Mr. Shane Hester, Director of Regional Project Delivery, TDOT Region 3  
Mr. John Kahle, w/attachment (6<sup>th</sup> flr.)

**Agreement Number: 180111**

**Project Identification Number: 126616.00**

**Federal Project Number: TAP-1(395)**

**State Project Number: 75LPLM-F3-076**

**State of Tennessee Department of Transportation**

### **LOCAL AGENCY PROJECT AGREEMENT**

THIS AGREEMENT, made and entered into this 1st day of Oct, 2018 by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and CITY OF MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

**(Mercury Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Mercury Boulevard Sidewalks-Phase 2):** Construction of sidewalks along Mercury Blvd (US 70S/SR-1) from Middle Tennessee Blvd to Apollo Drive. Project also includes ADA compliance, pedestrian signals, crosswalks and school flashing speed limit signals.

#### **A. PURPOSE OF AGREEMENT**

##### **A.1 Purpose:**

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.
- b) In the event this Agreement includes a Safe Routes to School Grant for non-infrastructure activities, a Detailed Grant Budget as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") shall provide line-item amounts as applicable only to expenses incurred during the period between the effectual date of this Agreement and the completion date shown in Section B.2(a) hereof. However, Notice to Proceed to Construction must be obtained as referenced in Section B.1(c). Expenditures, reimbursements, and payments under this Grant Agreement shall adhere to the Grant Budget. The Agency may vary from a Grant Budget line-item amount by up to fifteen percent (15%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Agreement amount detailed in the Grant Budget and provided that written approval of any such variance is received prior to the expenditure. The percentage of expenditure for non-infrastructure work versus



infrastructure work also cannot be changed. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Agreement.

**A.2 Modifications and Additions:**

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

**B. ACCOMPLISHMENT OF PROJECT**

**B.1 General Requirements:**

a)

	<b>Responsible Party</b>	<b>Funding Provided by: Agency or Project</b>
Preliminary Engineering by:	<b>Agency</b>	<b>Agency</b>
Environmental Clearance by:	<b>Agency</b>	<b>Agency</b>
Right-of-Way by:	<b>Agency</b>	<b>Agency</b>
Utility Coordination by:	<b>Agency</b>	<b>Agency</b>
Construction by:	<b>Agency</b>	<b>Project</b>

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) If this Agreement is funded with any Enhancement funds, then the Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed with the Construction Phase by **July 1, 2021**. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed with the Construction Phase by the aforesaid date, then the Department may terminate this Agreement in accordance with Section D.23.
- d) A full time employee of the Agency shall supervise the herein described and assigned phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of

this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

**B.2 Completion Date:**

- a) The Agency shall complete the herein assigned phases of the Project on or before **July 1, 2023**. The Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date. An extension of the aforesaid completion date of this Agreement may only be effected by a written amendment to the Agreement, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement. Otherwise, without an extension of the aforesaid completion date of this Agreement, the Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date.

**B.3 Environmental Regulations:**

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

**B.4 Plans and Specifications**

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved

portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

- 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

### **B.5 Right-of-Way**

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its contractor or agent during the Construction phase of the Project.
- e) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-

profit organization, the Agency shall transfer the land acquired to, or grant a conservation easement for the benefit of, a state agency or other governmental agency in perpetuity in accordance with the Agency's application.

### **B.6 Approval of the Construction Phase**

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

### **B.7 Detours**

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

**B.8 Utilities**

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
  - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
  - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

**B.9 Railroad**

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

**B.10 Safe Routes to School Requirements**

- a) If the herein described project is funded with Safe Routes to School (SRTS) funds, Section B.10 shall apply.
- b) The Agency shall provide pre and post Parent Surveys and Student Tally Sheets for each school under this Agreement:
  - 1) The Pre Parent Surveys and Student Tally Sheets are to be completed and returned with this Agreement.
  - 2) The Post Parent Surveys and Student Tally Sheets are to be sent no later than six (6) months from the completion of the infrastructure as defined herein with the final reimbursement request.
  - 3) The final reimbursement shall not be paid until the Post Parent Surveys and Student Tally Sheets are received by the Department.
  - 4) These surveys and tallies are to be completed on those specific forms sent to the Agency with the detailed instruction letter. (Required forms and instructions are available at: [www.saferoutesindo.org/resources](http://www.saferoutesindo.org/resources))

- c) The Agency shall obtain prior approval from the Department before purchasing any equipment and/or products under this Agreement. If prior approval is received, procurement shall be made on a competitive basis, in accordance with applicable state and local laws and regulations provided that the procurement conforms to applicable federal law and the standards identified in 49CFR18.36.
- d) The Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Local Programs Development Manager, for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Agency's compliance with applicable federal procurement requirements.

## **C. PAYMENT TERMS AND CONDITIONS**

### **C.1 Total Cost:**

**In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A..

### **C.2 Eligible Costs:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

### **C.3 Limits on Federal and State Participation:**

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost

incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

#### **C.4 Payment Methodology:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.
- d) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-profit organization, the Department will reimburse the Agency for only 90% of the federal share of eligible costs until such time as the Agency transfers the land, or a conservation easement therein, to a state agency or another governmental agency as provided in Section B.5 (e).

**C.5 The Department's Obligations:**

**In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.**

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:
  - 1) **Misrepresentation:**  
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
  - 2) **Litigation:**  
There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;
  - 3) **Approval by Department:**  
The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;
  - 4) **Conflict of Interests:**  
There has been any violation of the conflict of interest provisions contained herein in D.16; or
  - 5) **Default:**  
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.



**C.6 Final Invoices:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

**C.7 Offset:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

**C.8 Travel Compensation**

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

**D. STANDARD TERMS AND CONDITIONS**

**D.1 Governing Law:**

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

**D.2 General Compliance with Federal, State, and Local Law:**

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State

and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

**D.3 State Law:**

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

**D.4 Submission of the Proceedings, Agreements, and Other Documents:**

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

**D.5 Appropriations of Funds:**

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**D.6 Rights and Remedies Not Waived:**

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

**D.7 Department and Agency Not Obligated to Third Parties:**

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

**D.8 Independent Contractor:**

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

**D.9 Maintenance:**

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then The Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

- c) In the event the Project is located on State Highway Right-of-Way, the Agency shall have the sole responsibility - at its own expense - of maintaining and keeping the project in good repair and in a safe and clean condition, including picking up litter that may accrue at the site.

**D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:**

**In the event that the herein-described project is funded with federal funds, the following shall apply:**

a) **DBE Policy:**

It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) **DBE Obligation:**

The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

**D.11 Tennessee Department of Transportation Debarment and Suspension:**

- a) In accordance with the Tennessee Department of Transportation regulations governing contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subcontractor.

**D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):**

- a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.
- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties

Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

**b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:**

**The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:**

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**D.13 Equal Employment Opportunity:**

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**D.14 Title VI – Civil Rights Act of 1964:**

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

**D.15 Americans with Disabilities Act of 1990 (ADA):**

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

**D.16 Conflicts of Interest:**

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

- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provision:
  - 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

**D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):**

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

**D.18 Restrictions on Lobbying (applies to federal aid projects):**

**The Agency certifies, to the best of its knowledge and belief, that:**

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

**D.19 Records:**

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail



and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.

- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the Project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

**D.20 Inspection:**

- a) The Agency shall permit, and shall require its contractor, subcontractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any contractor, subcontractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

**D.21 Annual Report and Audit:**

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the

audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

#### **D.22 Termination for Convenience:**

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- b) In the event that the Project herein described includes the state highway system, the Department may rescind its authorization for the location of the Project upon state highway right-of-way at any time by giving the Agency at least ninety (90) days advance written notice thereof, and the Agency shall be obligated to close the Project to public use and remove it at the Agency's expense and restore the premises to the satisfaction of the Department by or before the effective date of such termination.

#### **D.23 Termination for Cause:**

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.

- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

**D.24 How Agreement is Affected by Provisions Being Held Invalid:**

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**D.25 Agreement Format:**

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**D.26 Certification Regarding Third Party Contracts:**

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of

funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

**D.27 Amendment:**

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

**D.28 State Liability:**

- a) The Department shall have no liability except as specifically provided in this Agreement.

**D.29 Force Majeure:**

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

**D.30 Required Approvals:**

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

**D.31 Estimated Costs:**

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

**D.32 Third Party Liability:**

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits

of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

- b) In the event the Agency is a private, non-profit organization, the liability of the Agency shall not be subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq.

**D.33 Deposits:**

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

**D.34 Department Activities:**

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

**D.35 Congestion Mitigation and Air Quality Requirement:**

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
  - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

**D.36 Investment of Public Funds:**

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

<b>Amount</b>	<b>=</b>	<b>Open to Public and Vehicular Traffic</b>
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

- c) In the event this Agreement is funded with Roadscapes funds, the facility on which this Project is being developed shall remain open to the public for not less than ten (10) years.
- d) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-profit organization, the Agency shall transfer the land acquired, or grant a conservation easement therein, to a state agency or other governmental agency in perpetuity in accordance with the Agency's application.

**D.37 Federal Funding Accountability and Transparency Act:**


- a) **If the Project is funded with federal funds the following shall apply:**
  - 1) The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170 and 2 CFR Part 25. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

Locally Managed Enhancement Agreement

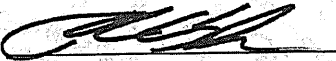
IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF MURFREESBORO

STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION

By:   
Shane McFarland  
Mayor

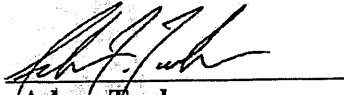
Date

By:   
John C. Schroer  
Commissioner

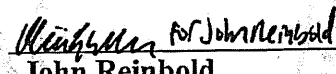
OCT 01 2018  
Date

APPROVED AS TO  
FORM AND LEGALITY

APPROVED AS TO  
FORM AND LEGALITY

By:   
Adam Tucker  
Attorney

9/10/2018  
Date

By:   
John Reinbold  
General Counsel

9-27-18  
Date

**EXHIBIT "A"**

**CONTRACT No.: 180111**

**PROJECT IDENTIFICATION No.: 126616.00**

**PROJECT DESCRIPTION:** (Mercury Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Mercury Boulevard Sidewalks-Phase 2): Construction of sidewalks along Mercury Blvd (US 70S/SR-1) from Middle Tennessee Blvd to Apollo Drive. Project also includes ADA compliance, pedestrian signals, crosswalks and school flashing speed limit signals. The purpose of the project is not location dependent. The purpose of the project shall be accomplished in accordance with the project application, budget, and/or scope of work on which approval of the project was based and AASHTO standards. The application, budget, and /or scope of work may be amended from time to time and when amended will serve as the revised project standard.

**CHANGE IN COST:** Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

**TYPE OF WORK: Bicycle and Pedestrian Facilities**

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
CONST	TAP	80%	0%	20%	\$ 1,073,332.25
CONST- CEI	TAP	80%	0%	20%	\$ 117,778.50
CONST - ENGINEERING SERVICES	TDOT TAP	80%	0%	20%	\$ 58,889.25

**INELIGIBLE COST:** One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said Federal and/or State funds is ruled ineligible at any time.

**LEGISLATIVE AUTHORITY:** Section 1122 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) established TAP in 23 U.S.C. 213.

**PROJECT FUNDING AND SCOPE LIMITATIONS:** Once the project is completed per the application and description above, all remaining federal funds will revert to the Department. Project scope revisions and /or additions outside the enhancement activity are prohibited. Limited project scope revisions consistent with the awarded activity must be reviewed and approved by the Department.

**TDOT ENGINEERING SERVICES (TDOT ES):** In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.





**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION  
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION  
LOCAL PROGRAMS DEVELOPMENT OFFICE**  
SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TN 37243-1402  
(615) 741-5314

**JOSEPH GALBATO, III**  
INTERIM COMMISSIONER

**BILL LEE**  
GOVERNOR

December 8, 2021

The Honorable Shane McFarland  
Mayor, City of Murfreesboro  
PO Box 1139  
Murfreesboro, TN 37133-1139

Re: SR-1 (Mercury Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Mercury Boulevard Sidewalks-Phase 2)  
City of Murfreesboro, Rutherford County  
PIN: 126616.00  
Federal Project Number: TAP-1(395)  
State Project Number: 75LPLM-F3-076  
Agreement Number: 180111

Dear Mayor McFarland:

I am attaching an amendment to the original contract. The amendment adds Multimodal Access Grant funding to ROW and Construction phases. Please review the amendment and advise me if it requires further explanation. If you find the amendment satisfactory, please execute it in accordance with all rules, regulations and laws, obtain the signature of the attorney for your agency, and return it to me. Once the amendment is fully executed, we will send a copy to you for your records.

If you have any questions or need any additional information, please contact Kathryn McClung at 615-741-8886 or [Kathryn.McClung@tn.gov](mailto:Kathryn.McClung@tn.gov).

Sincerely,

A handwritten signature in cursive script that reads "Kimery Grant".

Kimery Grant  
Transportation Manager 2

Attachment

Amendment Deleting and Replacing Exhibit A and Specific Paragraph

**Amendment Number: 1**  
**Agreement Number: 180111**  
**Project Identification Number: 126616.00**  
**Federal Project Number: TAP-1(395)**  
**State Project Number: 75LPLM-F3-076**

THIS AGREEMENT AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"SR-1(Mercury Boulevard), From Middle Tennessee Boulevard to Apollo Drive in Murfreesboro (Mercury Boulevard Sidewalks-Phase 2)"

1. The language of Agreement # 180111 dated October 1, 2018 Exhibit A is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment 1.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF MURFREESBORO**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**Signature:** *Shane McFarland*  
Shane McFarland (Dec 8, 2021 17:12 CST)

**Email:** smcfarland@murfreesborotn.gov

By

**Signature:** *Joseph Galbato, III*  
Joseph Galbato, III (Dec 10, 2021 10:00 CST)

**Email:** TDOT.COMMISSIONER'S.Office@tn.gov

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

**Signature:** *Adam F. Tucker*  
Adam F. Tucker (Dec 8, 2021 09:38 CST)

**Email:** atucker@murfreesborotn.gov

By

**Signature:** *John H. Reinbold*  
John H. Reinbold (Dec 10, 2021 08:08 CST)

**Email:** TDOT.Legal.Attorneys@tn.gov

---

**EXHIBIT “A” for AMENDMENT 1**


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**AGREEMENT #: 180111**

**PROJECT IDENTIFICATION #: 126616.00**

**FEDERAL PROJECT #: TAP-1(395)**

**STATE PROJECT #: 75LPLM-F3-076**

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**PROJECT DESCRIPTION:** Mercury Boulevard Sidewalks - Phase 2: Construction of sidewalks along Mercury Boulevard (US 70S/SR-1) from Middle Tennessee Boulevard to Apollo Drive. Project also includes ADA compliance, pedestrian signals, crosswalks and school flashing speed limit signs.

---

**CHANGE IN COST:** Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto

---

**TYPE OF WORK:** Pedestrian and Bicycle Facilities

---

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
RIGHT-OF-WAY	MMAG	0	95	5	\$200,000.00
CONSTRUCTION	S-TAP	80	0	20	\$1,073,332.00
CEI	S-TAP	80	0	20	\$117,779.00
TDOT ES	S-TAP	80	0	20	\$58,889.00
CONSTRUCTION	MMAG	0	95	5	\$540,637.00

---

**INELIGIBLE COST:** One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

**LEGISLATIVE AUTHORITY:** Section 1122 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) established TAP in 23 U.S.C. 213.

**TDOT ENGINEERING SERVICES (TDOT ES):** IN order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.



STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION  
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION  
LOCAL PROGRAMS DEVELOPMENT OFFICE  
SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-5314

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

**BILL LEE**  
GOVERNOR

July 3, 2023

The Honorable Shane McFarland  
Mayor, City of Murfreesboro  
PO Box 1139  
Murfreesboro, TN 37133-1139

Re: SR-1 (Dr. Martin Luther King Jr. Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Dr. Martin Luther King Jr. Boulevard Sidewalks-Phase 2)  
Murfreesboro, Rutherford County  
PIN: 126616.00  
Federal Project Number: TAP-1(395)  
State Project Number: 75LPLM-F3-076  
Agreement Number: 180111

Dear Mayor McFarland:

I am attaching an amendment to the original contract to this letter. The amendment extends the contract's completion date. Please review the amendment and advise me if it requires further explanation. If you find the amendment satisfactory, please execute it in accordance with all rules, regulations, and laws. Adobe Sign will then forward the document for the signature of the attorney for your agency. Once the amendment is fully executed Adobe Sign will email you a link to the fully executed amendment.

If you have any questions or need any additional information, please contact Kathryn McClung at 615-741-8886 or [Kathryn.McClung@tn.gov](mailto:Kathryn.McClung@tn.gov).

Sincerely,

A handwritten signature in cursive script that reads "Kimery Grant".

Kimery Grant  
Transportation Manager 2

Attachment



**Amendment Number: 2**

**Agreement Number: 180111**

**Project Identification Number: 126616.00**

**Federal Project Number: TAP-1(395)**

**State Project Number: 75LPLM-F3-076**

THIS AGREEMENT AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency"), for the purpose of providing an understanding among the parties of their respective obligations related to the management of the project described as:

"SR-1 (Dr. Martin Luther King Jr. Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Dr. Martin Luther King Jr. Boulevard Sidewalks-Phase 2)"

1. The language of Agreement # 180111 dated October 1, 2018 Section B.2a) is hereby deleted in its entirety.
2. The following is added as B.2a) .

B.2a) The Agency agrees to complete the herein assigned phases of the Project on or before **September 30, 2023**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF MURFREESBORO**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**Signature:**   
Shane McFarland (Jul 10, 2023 08:59 CDT)

**Email:** smcfarland@murfreesborotn.gov

**Signature:** 

**Email:** TDOT.COMMISSIONER'S.Office@tn.gov

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

**Signature:** 

**Email:** atucker@murfreesborotn.gov

**Signature:**   
John H. Reinbold (Jul 11, 2023 09:18 CDT)

**Email:** TDOT.Legal.Attorneys@tn.gov

**Signature:**   
Dan Pallme (Jul 12, 2023 09:07 CDT)

**Email:** Daniel.Pallme@tn.gov



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**BUREAU OF PLANNING  
LOCAL PROGRAMS DEVELOPMENT OFFICE**

SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-5314

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

**BILL LEE**  
GOVERNOR

January 18, 2024

The Honorable Shane McFarland  
Mayor, City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

Re: SR-1 (Dr. Martin Luther King, Jr. Blvd), from Middle Tennessee Blvd. to Apollo Drive (Dr. Martin Luther King, Jr. Blvd. Sidewalks - Phase 2)  
Murfreesboro, Rutherford County  
PIN: 126616.00  
Federal Project Number: TAP1(395)  
State Project Number: 75LPLM-F3-076  
Agreement Number: 180111

Dear Mayor McFarland:

I am attaching an amendment to the original contract to this letter. The amendment extends the completion date of the contract. Please review the amendment and advise me if it requires further explanation. If you find the amendment satisfactory, please execute it in accordance with all rules, regulations, and laws. Adobe Sign will then forward the document for the signature of the attorney for your agency. Once the amendment is fully executed Adobe Sign will email you a link to the fully executed amendment.

If you have any questions or need any additional information, please contact Katie Brown at 615-253-2421 or [katie.brown@tn.gov](mailto:katie.brown@tn.gov).

Sincerely,

*Chasity M. Bell*  
Chasity M Bell  
Transportation Manager 1

Attachment



**Amendment Number: 3**

**Agreement Number: 180111**

**Project Identification Number: 126616.00**

**Federal Project Number: TAP-1(395)**

**State Project Number: 75LPLM-F3-076**

THIS AGREEMENT AMENDMENT is made and entered into this 1st day of February 2024 by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency"), for the purpose of providing an understanding among the parties of their respective obligations related to the management of the project described as:

SR-1 (Dr. Martin Luther King, Jr. Blvd.), from Middle Tennessee Blvd. to Apollo Drive (Dr. Martin Luther King, Jr. Blvd. Sidewalks - Phase 2)

1. The language of Agreement # 180111 A2 dated July 12, 2023 Section B.2 a) is hereby deleted in its entirety.
2. The following is added as 3 .

B.2 a) The Agency agrees to complete the herein assigned phases of the Project on or before **May 31, 2025**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF MURFREESBORO**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

Signature:   
Shane McFarland (Jan 31, 2024 10:07 CST)

Email: smcfarland@murfreesborotn.gov

By

Signature: 

Email: TDOT.COMMISSIONER'S.Office@tn.gov

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

Signature: 


Email: atucker@murfreesborotn.gov

B

Signature: 

Email: TDOT.Legal.Attorneys@tn.gov

E

Signature: 

Email: Daniel.Pallme@tn.gov



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**BUREAU OF PLANNING  
LOCAL PROGRAMS DEVELOPMENT OFFICE**

SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-5314

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

**BILL LEE**  
GOVERNOR

May 22, 2024

The Honorable Shane McFarland  
Mayor, City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

Re: SR-1 (Dr. Martin Luther King, Jr. Boulevard), From Middle Tennessee Boulevard to  
Apollo Drive (Dr. Martin Luther King, Jr. Boulevard Sidewalks - Phase 2)  
Murfreesboro, Rutherford County  
PIN: 126616.00  
Federal Project Number: TAP-1(395)  
State Project Number: 75LPLM-F3-076  
Agreement Number: 180111

Dear Mayor McFarland:

I am attaching an amendment to the original contract to this letter. The amendment replaces the Exhibit A and extends the expiration date of the contract. Please review the amendment and advise me if it requires further explanation. If you find the amendment satisfactory, please execute it in accordance with all rules, regulations, and laws. Adobe Sign will then forward the document for the signature of the attorney for your agency. Once the amendment is fully executed Adobe Sign will email you a link to the fully executed amendment.

If you have any questions or need any additional information, please contact John Bramlett at 615-253-2738 or [john.bramlett@tn.gov](mailto:john.bramlett@tn.gov).

Sincerely,

Chasity M. Bell  
Transportation Manager 1

Attachment

Amendment to Replace Exhibit A and Change Completion Date

**Amendment Number: 4**

**Agreement Number: 180111**

**Project Identification Number: 126616.00**

**Federal Project Number: TAP-1(395)**

**State Project Number: 75LPLM-F3-076**

THIS AGREEMENT AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency"), for the purpose of providing an understanding among the parties of their respective obligations related to the management of the project described as:

SR-1 (Dr. Martin Luther King, Jr. Boulevard), From Middle Tennessee Boulevard. to Apollo Drive. (Dr. Martin Luther King, Jr. Boulevard. Sidewalks - Phase 2)

1. The language of Agreement # 180111 A1 dated December 10, 2021 Exhibit A is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment 4 .
2. The language of Agreement # 180111 A3 dated February 1, 2024 Section B.2 a) is hereby deleted in its entirety.
3. The following is added as B.2 a) .

B.2 a) The Agency agrees to complete the herein assigned phases of the Project on or before **December 31, 2025**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.



Amendment to Replace Exhibit A and Change Completion Date

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF MURFREESBORO**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**Signature:**

**Email:** smcfarland@murfreesborotn.gov

B

**Signature:**

**Email:** TDOT.COMMISSIONER'S.Office@tn.gov

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

**Signature:**

**Email:** atucker@murfreesborotn.gov

B

**Signature:**

**Email:** TDOT.Legal.Attorneys@tn.gov

**Signature:**

**Email:** Daniel.Pallme@tn.gov

EXHIBIT "A" for AMENDMENT 4

Agreement #: 180111

Project Identification #: 126616.00

Federal Project #: TAP-1(395)

State Project #: 75LPLM-F3-076

**Project Description:** SR-1 (Dr. Martin Luther King Jr. Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Dr. Martin Luther King Jr. Boulevard Sidewalks-Phase 2)Construction of sidewalks along Dr. Martin Luther King Jr. Boulevard (US 70S/SR-1), from Middle Tennessee Blvd to Apollo Drive. Project also includes ADA compliance, pedestrian signals, crosswalks and school flashing speed limit signals.

**Change in Cost:** Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

**Type of Work:** Bicycles and Pedestrian Facility

Phase	Funding Source	Fed %	State %	Local %	Estimated Cost
RIGHT-OF-WAY	MMAG	0	95	5	\$350,000.00
CONSTRUCTION	MMAG	0	95	5	\$180,003.00
CONSTRUCTION	TAP	80	0	20	\$1,865,713.00
CEI	MMAG	0	95	5	\$191,486.00
TDOT ES	MMAG	0	95	5	\$19,148.00

**Ineligible Cost:** One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

**Legislative Authority:** MMAG: N/A; TAP: FAST Act § 1109; 23 U.S.C. 133(h).

**TDOT Engineering Services (TDOT ES):** In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

---

**Item Title:** Memorial Boulevard (SR 10) Traffic Signal Improvements  
Contract Amendment No. 1 with TDOT

**Department:** Transportation

**Presented by:** Jim Kerr, Transportation Director

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Memorial Blvd. Traffic Signal Improvements Contract Amendment No.1 between the City and TDOT.

**Staff Recommendation**

Approve contract Amendment No. 1.

**Background Information**

The City, through the federal Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), received \$774,171 of federal funds at a 100% match through TDOT for the development and implementation of the Traffic Signal System Upgrade Project along Memorial Blvd. from St. Clair St. to Thompson Ln. Since that time, Congress rescinded \$645,000 of the Covid Relief Funds in the Spring of 2023. This contract amendment adds an additional \$1,677,301 in federal funds to the design and construction phases of this project.

This project will update pedestrian features, system hardware, software, and incorporate Dedicated Short-Range Communication (DSRC) technology that can integrate with the TDOT I-24 SMART Corridor technology. The upgrade of this system will provide staff with additional tools for implementation of signal performance measures and overall operational efficiencies along the corridor.

The City anticipates additional funds will be requested for construction through the Metropolitan Planning Organization at an 80% federal match, as such, \$642,500 of local match is included in the General and FY21 CIP funds.

**Council Priorities Served**

*Responsible budgeting*

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

**Fiscal Impact**

The City's portion of the project is estimated at \$642,500 and will be funded from the General Fund and FY21 CIP Budget for this project.

**Attachments**

1. Amendment No. 1
2. Original Contract





**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION  
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION  
LOCAL PROGRAMS DEVELOPMENT OFFICE**

SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TN 37243-1402  
(615) 741-5314

**JOSEPH GALBATO, III**  
INTERIM COMMISSIONER

**BILL LEE**  
GOVERNOR

January 5, 2022

The Honorable Shane McFarland  
Mayor, City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

Re: SR-10/US-231N From St. Clair to SR-266/Thompson Lane  
Murfreesboro, Rutherford County  
PIN:132323.00  
Federal Project Number: HIP-C-M-10(90)  
State Project Number: 75LPLM-F3-113  
Contract Number: 210269

Dear Mayor McFarland:

I am attaching a contract providing for the development of the referenced project. Please review the contract and advise me if it requires further explanation. If you find the contract satisfactory, please execute it in accordance with all rules, regulations, and laws. Adobe Sign will then forward the document for the signature of the attorney for your agency. Once the contract is fully executed Adobe Sign will send you a link to the download the contract for your files.

If you have any questions or need any additional information, please contact Kathryn McClung at 615-741-8886 or [Kathryn.McClung@tn.gov](mailto:Kathryn.McClung@tn.gov).

Sincerely,

A handwritten signature in cursive script that reads "Kimery Grant".

Kimery Grant  
Transportation Manager 2

Attachment

**Agreement Number: 210269**

**Project Identification Number: 132323.00**

**Federal Project Number: HIP-C-M-10(90)**

**State Project Number: 75LPLM-F3-113**

**State of Tennessee Department of Transportation**

**LOCAL AGENCY PROJECT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"SR-10/US-231N from St. Clair to SR-266/Thompson Lane"

**A. PURPOSE OF AGREEMENT**

**A.1 Purpose:**

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

**A.2 Modifications and Additions:**

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

**B. ACCOMPLISHMENT OF PROJECT**

**B.1 General Requirements:**

- a)

	<b>Responsible Party</b>	<b>Funding Provided by Agency or Project.</b>
Environmental Clearance by:	<b>AGENCY</b>	<b>PROJECT</b>
Preliminary Engineering by:	<b>AGENCY</b>	<b>PROJECT</b>
Right-of-Way by:	<b>AGENCY</b>	<b>PROJECT</b>

Utility Coordination by:           **AGENCY**                           **PROJECT**

Construction by:                   **AGENCY**                           **PROJECT**

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

**B.2 Completion Date:**

- a) The Agency agrees to complete the herein assigned phases of the Project on or before **December 31, 2026**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

**B.3 Environmental Regulations:**

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

#### **B.4 Plans and Specifications**

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
- 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

#### **B.5 Right-of-Way**

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure

to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

#### **B.6 Approval of the Construction Phase**

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

#### **B.7 Detours**

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

#### **B.8 Utilities**

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
  - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
  - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

#### **B.9 Railroad**

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

### **C. PAYMENT TERMS AND CONDITIONS**

#### **C.1 Total Cost:**



**In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

**C.2 Eligible Costs:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

**C.3 Limits on Federal and State Participation:**

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.
- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

#### **C.4 Payment Methodology:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

#### **C.5 The Department's Obligations:**

**In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.**

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:
  - 1) **Misrepresentation:**  
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
  - 2) **Litigation:**  
There is then pending litigation with respect to the performance by the



Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

**C.6 Final Invoices:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

**C.7 Offset:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

**C.8 Travel Compensation**

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations

specified in the “State Comprehensive Travel Regulations,” as they are amended from time to time and subject to the Agreement Budget.

## **D. STANDARD TERMS AND CONDITIONS**

### **D.1 Governing Law:**

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

### **D.2 General Compliance with Federal, State, and Local Law:**

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

### **D.3 State Law:**

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

### **D.4 Submission of the Proceedings, Agreements, and Other Documents:**

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

#### **D.5 Appropriations of Funds:**

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

#### **D.6 Rights and Remedies Not Waived:**

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

#### **D.7 Department and Agency Not Obligated to Third Parties:**

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

#### **D.8 Independent Contractor:**

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

#### **D.9 Maintenance:**

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

#### **D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:**

**In the event that the herein-described project is funded with federal funds, the following shall apply:**

- a) **DBE Policy:**  
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.
- b) **DBE Obligation:**  
The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

**D.11 Tennessee Department of Transportation Debarment and Suspension:**

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

**D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):**

- a) **Instructions for Certification - Primary Covered Transactions:**

**By signing and submitting this Agreement, the Agency is providing the certification set out below.**

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.
- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

**b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:**

**The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:**

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or



performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**D.13 Equal Employment Opportunity:**

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**D.14 Title VI – Civil Rights Act of 1964:**

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties

that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

**D.15 Americans with Disabilities Act of 1990 (ADA):**

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

**D.16 Conflicts of Interest:**

- a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of it's subcontracts, the following provision:
  - 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

**D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):**

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

**D.18 Restrictions on Lobbying (applies to federal aid projects):**

**The Agency certifies, to the best of its knowledge and belief, that:**

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee



of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

**D.19 Records:**

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

**D.20 Inspection:**

- a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access

to all documents, papers, letters or other material made or received in conjunction with this Agreement.

**D.21 Annual Report and Audit:**

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

**D.22 Termination for Convenience:**

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**D.23 Termination for Cause:**

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

**D.24 How Agreement is Affected by Provisions Being Held Invalid:**

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**D.25 Agreement Format:**

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**D.26 Certification Regarding Third Party Contracts:**

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under

this Agreement without prior disclosure of such proposed contract to the Department.

- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

**D.27 Amendment:**

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

**D.28 State Liability:**

- a) The Department shall have no liability except as specifically provided in this Agreement.

**D.29 Force Majeure:**

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

**D.30 Required Approvals:**

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

**D.31 Estimated Cost:**

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

**D.32 Third Party Liability:**

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

**D.33 Deposits:**

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

**D.34 Department Activities:**

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

**D.35 Congestion Mitigation and Air Quality Requirement:**

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
  - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

**D.36 Investment of Public Funds:**

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

<b>Amount</b>	<b>=</b>	<b>Open to Public and Vehicular Traffic</b>
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

**D.37 Federal Funding Accountability and Transparency Act:**

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.





IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF MURFREESBORO**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

Signature:   
Shane McFarland (Jan 31, 2022 06:59 CST)

Email: [smcfarland@murfreesborotn.gov](mailto:smcfarland@murfreesborotn.gov)

E

Signature:   
Joseph Galbato, III (Jan 31, 2022 15:46 CST)

Email: [TDOT.COMMISSIONER'S.Office@tn.gov](mailto:TDOT.COMMISSIONER'S.Office@tn.gov)

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

Signature:   
Email: [atucker@murfreesborotn.gov](mailto:atucker@murfreesborotn.gov)

E

Signature:   
John H. Reinbold (Jan 31, 2022 13:42 CST)  
Email: [TDOT.Legal.Attorneys@tn.gov](mailto:TDOT.Legal.Attorneys@tn.gov)

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**EXHIBIT "A"**


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**AGREEMENT #:** 210269

**PROJECT IDENTIFICATION #:** 132323.00

**FEDERAL PROJECT #:** HIP-C-M-10(90)

**STATE PROJECT #:** 75LPLM-F3-113

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**PROJECT DESCRIPTION:** (SR-10/US-231N) from St. Clair to SR-266/Thompson Lane. Updating 13 traffic signals along Memorial Boulevard with new controller and DSRC technology. This project includes ADA improvements.

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**CHANGE IN COST:** Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto

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**TYPE OF WORK:** Signalization

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PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	HIP-CU	100	0	0	\$130,000.00
PE-DESIGN	HIP-CU	100	0	0	\$50,000.00
RIGHT-OF-WAY	HIP-CU	100	0	0	\$0.00
CONSTRUCTION	HIP-CU	100	0	0	\$498,750.00
TDOT ES	HIP-CU	100	0	0	\$8,750.00
CEI	HIP-CU	100	0	0	\$87,500.00
CONSTRUCTION	LOCAL	0	0	100	\$200,000.00

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**INELIGIBLE COST:** One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

**LEGISLATIVE AUTHORITY:** CRRSSA: 23 U.S.C.A, Section 133 (b), Coronavirus Response and Relief Supplemental Appropriations Act, 2021

**TDOT ENGINEERING SERVICES (TDOT ES):** IN order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.





**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**BUREAU OF PLANNING  
LOCAL PROGRAMS DEVELOPMENT OFFICE**  
SUITE 600, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-5314

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

**BILL LEE**  
GOVERNOR

April 18, 2024

The Honorable Shane McFarland  
Mayor, City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

Re: SR-10/US-231(Memorial Boulevard), From SR-268 (West Thompson Lane/Compton Road),  
to SR-1 (NW Broad Street)  
Murfreesboro, Rutherford County  
PIN: 132323.00  
Federal Project Number: HIP-C-M-10(90)  
State Project Number: 75LPLM-F3-113  
Agreement Number: 210269

Dear Mayor McFarland:

I am attaching an amendment to the original contract to this letter. The amendment replaces the Exhibit A. Please review the amendment and advise me if it requires further explanation. If you find the amendment satisfactory, please execute it in accordance with all rules, regulations, and laws. Adobe Sign will then forward the document for the signature of the attorney for your agency. Once the amendment is fully executed Adobe Sign will email you a link to the fully executed amendment.

If you have any questions or need any additional information, please contact John Bramlett at 615-253-2738 or [john.bramlett@tn.gov](mailto:john.bramlett@tn.gov).

Sincerely,

**Chasity M. Bell**  
Transportation Manager 1

Attachment

**Amendment Number: 1**

**Agreement Number: 210269**

**Project Identification Number: 132323.00**

**Federal Project Number: HIP-C-M-10(90)**

**State Project Number: 75LPLM-F3-113**

THIS AGREEMENT AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency"), for the purpose of providing an understanding among the parties of their respective obligations related to the management of the project described as:

SR-10/US-231 (Memorial Boulevard), From SR-268 (West Thompson Lane/Conpton Road) to SR-1 (NW Broad Street)

1. The language of Agreement # 210269 dated January 31, 2022 Exhibit A is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment 1.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF MURFREESBORO**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**Signature:**

**Email:** smcfarland@murfreesborotn.gov

B

**Signature:**

**Email:** TDOT.COMMISSIONER'S.Office@tn.gov

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

**Signature:**

**Email:** atucker@murfreesborotn.gov

B

**Signature:**

**Email:** TDOT.Legal.Attorneys@tn.gov

E

**Signature:**

**Email:** Daniel.Pallme@tn.gov

## EXHIBIT "A" for AMENDMENT 1

Agreement #: 210269

Project Identification #: 132323.00

Federal Project #: HIP-C-M-10(90)

State Project #: 75LPLM-F3-113

**Project Description:** SR-10 (US-231 N, Memorial Boulevard) from St. Clair to SR-266 (Thompson Lane). SR-10 (US-231 N, Memorial Boulevard) Updating 13 traffic signals along Memorial Boulevard with new controller and DSRC technology. This project includes ADA improvements.

**Change in Cost:** Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

**Type of Work:** Traffic Signal Improvements

Phase	Funding Source	Fed %	State %	Local %	Estimated Cost
PE-NEPA	HIP-CU	100	0	0	\$130,000.00
PE-DESIGN	STBG-U	80	0	20	\$91,000.00
CONSTRUCTION	STBG-U	80	0	20	\$492,322.00
CONSTRUCTION	LOCAL	0	0	100	\$200,829.00
CEI	STBG-U	80	0	20	\$55,317.00
TDOT ES	STBG-U	80	0	20	\$5,532.00
CONSTRUCTION	CARBON-U	100	0	0	\$1,161,964.00

**Ineligible Cost:** One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

**Legislative Authority:** STBG: 23 U.S.C.A., Section 133, Surface Transportation Block Grant Program funds allocated or subject to allocation to the Agency. HIP: 23 U.S.C. Section 133 (b)(1) and (b)(4) Highway Infrastructure Program funds allocated or subject to allocation to the Agency.

**TDOT Engineering Services (TDOT ES):** In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered.

**Amendment TIP**

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.



# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** ADS Professional Services Contract-2<sup>nd</sup> Amendment

**Department:** Water Resources

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

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Extension of ADS, LLC professional services contract for sanitary sewer flow monitoring for the third and final year of this existing contract.

**Staff Recommendation**

Approve the renewal of the ADS contract amendment for an additional one-year period. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

The City is contracted with ADS to operate and maintain MWRD’s 19 permanent sewer flow monitors and seven rain gauges, to analyze data recorded from these monitors and to report on this data annually. These annual reports assess wet and dry weather capacities and rain dependent inflow and infiltration (RDII) for 18 flow monitor areas that are integral to the Department’s annual sanitary sewer allocation assessment report. ADS is also contracted to perform temporary flow monitoring, analyze the temporary data recorded and report findings as well as perform field investigations.

The current Professional Services Contract is nearing the end of its second year which is June 30, 2024. There is an option to extend for two additional one-year periods, this being the second renewal, with pricing for Year 3 being established on the consumer pricing index (CPI-U) for the southern region. The proposed extension adjusts pricing 3.3%. Staff desires to continue to contract their professional service as we have in various forms over the last 29 years.

**Council Priorities Served**

*Expand infrastructure*

The permanent and temporary flow monitoring is the most important tool used to develop sewer rehabilitation projects, which provides a reduction in infiltration and inflow thereby allowing the City to increase sanitary sewer customer connections.

**Fiscal Impact**

The expense, \$340,000, is funded by MWRD’s FY24 operating budget.

**Attachments**

1. 2<sup>nd</sup> Amendment to Contract
2. ADS Year 3 Pricing

**SECOND RENEWAL OF THE PROFESSIONAL SERVICES AGREEMENT BETWEEN ADS, LLC AND THE CITY OF MURFREESBORO, TENNESSEE**

This Second Renewal of the Professional Services Agreement dated July 1, 2022 (the "Agreement"), by and between the City of Murfreesboro, Tennessee ("City"), a municipal corporation in the State of Tennessee, and ADS, LLC ("Engineer"), a Delaware limited liability company, doing business in the State of Tennessee and employing professional engineers duly licensed in the State of Tennessee, is entered into as follows:

WHEREAS, the Agreement by and between Engineer and City, acting through its Murfreesboro Water Resources Department, provided for Engineer to provide long term flow monitoring, capacity performance reports and presentations, temporary flow monitoring, and field services including manhole inspection, smoke testing, flow isolations, and wet weather inspections;

WHEREAS, the term of the Agreement ran from July 1, 2022 to June 30, 2023;

WHEREAS, Section 3.1 of the Agreement granted to City the option to renew the Agreement for two additional one-year periods;

WHEREAS, the City renewed the Agreement for the first additional one-year period on July 21, 2023, for the one-year period beginning July 1, 2023 and ending June 30, 2024;

WHEREAS, pursuant to Section 3.1.a of the Agreement, City has opted and elected to renew the Agreement for the second additional one-year period; and

WHEREAS, pursuant to Section 3.1.b of the Agreement, Engineer has submitted a form to continue contract performance for an additional one-year period.

NOW THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Agreement is hereby renewed and amended for an additional one-year term, beginning July 1, 2024 and ending June 30, 2025.
2. Year 3 Pricing will be as attached. The total value of this First Renewal will be equal to that approved for City's upcoming 2024/2025 budget.
3. This is the Second Renewal allowed by the Agreement, and all terms and conditions remain the same and in full force and affect.

CITY OF MURFREESBORO:

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

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

ADS, LLC:

DocuSigned by:

*Bobby Pickett*

\_\_\_\_\_  
Bobby Pickett, Jr., Director of Finance

Date: 5/30/2024

Approved as to form:

DocuSigned by:

*Adam Tucker*

\_\_\_\_\_  
Adam Tucker, City Attorney

**Year 3 Pricing Document (2024 – 2025)****5.1 Long Term Flow Monitoring**

Item	Description	# of Units	2024-2025 YEAR 3 Unit Price	2024-2025 YEAR 3 Total Price <sup>(1)</sup>
1	Turnkey Operations, Parts, Maintenance, Data Collection, Data Analysis, Monthly Data Delivery and Monthly Meetings for 21 meters.	252	\$989.61	\$249,381.72
2	Turnkey Operations, Parts, Maintenance, Data Collection, Data Analysis, Monthly Data Delivery and Monthly Meetings for 7 Rain Gauges.	84	\$340.81	\$28,628.04
3	Wet Weather and Capacity Performance Summary Report	1	Included	Included
4	PRISM Set-up for additional sites added to network	9	\$315.87	\$2,842.83
5	PRISM Monthly Service per site per month	336	\$50.56	\$16,988.16
6	ECHO Service, Wireless & PRISM Monthly Charge	12	\$122.62	\$1,471.44
			<b>Total:</b>	<b>\$299,312.19</b>
<b>Notes:</b>	<sup>(1)</sup> Future years 2 & 3 indexed to CPI increases			

\*Monthly service items will be billed at the beginning of the month for which services are to be provided.

\*\*PRISM Set-up fee is a one-time event at the initial set up. Monthly service fee starts immediately upon setup.

**5.2 Temporary Flow Monitoring**

TFM	# of Monitors	# of Days	YEAR 3 Unit Price	2024-2025 YEAR 3 Total Price
Equipment Rental, Service including parts, Meter Installation, Calibration, Collect, Analysis, Removal, for 1 <sup>st</sup> 30 days	9	30	\$170.59	\$46,059.30
Collect, Confirmation, Analysis for days>30*	9	30	\$88.42	\$23,873.70
Notes: Future years 2 & 3 indexed to CPI increases			<b>Total:</b>	<b>\$69,932.70</b>

\*Temporary Flow monitoring extensions assumes extensions in increments of 1 month (30 days)

**5.3 Field Inspections (SSES)**

SSES	Number	Units	YEAR 3 Rate	2024-2025 YEAR 3 Total Price
Flow Isolation Readings	40	each	\$295.64	\$11,825.60
Wet Weather Inspection	30	Hrs.	\$318.42	\$9,552.60
Manhole Inspection with Data Entry	300	each	\$125.25	\$37,575.00
Smoke Testing w/ Data Entry	100,000	Lf.	\$0.53	\$53,000.00
Dye	20	each	\$473.82	\$9,476.40
PM Consultation	10	Hrs.	\$182.00	\$1,820.00
Field Crew Rate	4	Hrs.	\$265.30	\$1,061.20
TOTAL (using estimated quantities)			<b>Total:</b>	<b>\$124,310.80</b>
Notes: Future years 2 & 3 indexed to CPI increases				



# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** WRRF Biosolids Dryer RPR Engineering Task Order Approval

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Engineering task order involving resident project representative (RPR) construction inspection services for the Water Resource Recovery Facility (WRRF) full-scale biosolids thermal drying project.

**Staff Recommendation**

Approve the engineering task order with SSR for RPR construction inspection services in conjunction with the biosolids thermal dryer construction contract. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

RPR services involved with a multi-disciplinary construction project of the complexity involved with the biosolids thermal drying project exceeds the expertise of our in-house resident inspectors. Additionally, for such a critical project, the City's best interests are served in mitigating the risk by transferring the inspection services to an outside professional services consulting firm.

This RPR Task Order is based on 960 calendar days and 885 days of continuous construction. This Task Order is intended to cover the Dryer project as well as other anticipated projects at the WRRF; Wet Weather Improvements & Headworks Recommissioning all at the WRRF. Final costs will be determined based on actual time on the jobsite at the submitted unit rates for RPR.

**Council Priorities Served**

*Responsible Budgeting*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product removes Murfreesboro's reliance on landfilling, a means of disposal that is expected to increase in costs significantly over time.

*Establish Strong City Brand*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product establishes Murfreesboro's brand as a leader in sustainability and environmental stewardship.

**Fiscal Impact**

The RPR engineering inspection services costs, \$853,350, is based on an hourly not to exceed amount, and will be funded by MWRD working capital reserves (i.e., cash on hand).

**Attachments**

SSR RPR Engineering Inspection Services Task Order

## Task Order

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In accordance with the Standard Form of Agreement Between Owner and Engineer for Professional Services, dated August 6, 2002 ("Agreement"), Owner and Engineer agree as follows:

### 1. Background Data

- a. Effective Date of Task Order: May 16, 2024
- b. Owner: Murfreesboro Water Resources Department
- c. Engineer: Smith Seckman Reid
- d. Specific Project (title): WRRF Upgrades RPR Services
- e. Specific Project (description): The project includes the resident project representative (RPR) services for construction of a new thermal sludge dryer system to be installed in the Truck Bay of the existing Biosolids Building at the existing Water Resource Recovery Facility (WRRF); RPR services for construction of new Tertiary Filtration equipment, new UV disinfection equipment, new influent structure for the UV disinfection equipment, and new conveyance improvements between the filtration and UV disinfection processes; RPR services for recommissioning of the Headworks Building.

### 2. Services of Engineer

The specific services to be provided or furnished by Engineer under this Task Order are:

the services (and related terms and conditions) set forth in the following sections of Basic Services of Engineer in the Agreement modified herein for this specific Task Order, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

- Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit A. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth herein.

### 3. Additional Services

Additional Services that may be authorized or necessary under this Task Order are:

set forth as Additional Services in Part 2—Additional Services of Engineer, of the Agreement modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

#### 4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Section 3 of the Agreement, subject to the following:

Delete Paragraph 3.5.

#### 5. Task Order Schedule

The parties shall meet the following schedule:

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Provide RPR services for 960 calendar days.	Within 0 days of the construction contract Notice to Proceed date.

#### 6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Section 1 of Agreement)		
a. Resident Project Representative Services*	\$853,350.00	Hourly Not to Exceed
<b>TOTAL COMPENSATION (lines 1.a)</b>	<b>\$853,350.00</b>	

\*Based on 885-day continuous construction period with RPR observation between 40 – 45 hour per week and assumes projects to be constructed concurrently.

B. The terms of payment are set forth in Section 5 of the Agreement.

#### 7. Attachments:

Exhibit A – Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative.

#### 8. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.



This is **EXHIBIT A**, consisting of 4 pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services** dated August 6, 2002.

## **Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

### A1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
- C. The duties and responsibilities of the RPR are as follows:
1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
  5. *Liaison*
    - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
  - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
  - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
10. *Inspections, Tests, and System Start-ups*
  - a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
  - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
  - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
  - d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
  - e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
11. *Records*
  - a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the

Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.



- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Specific Project in whole or in part.

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** WRRF Biosolids Dryer Construction Contract Approval

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

Approval of construction contract for the Water Resource Recovery Facility (WRRF) full-scale biosolids thermal drying project; creating a beneficial soil amendment and removing reliance on landfill disposal.

**Staff Recommendation**

Approve the standard construction contract with Reeves Young, LLC (RY), subject to Legal Department final review. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

Bids were received May 16th from two bidders out of a total of five initial plan holders. RY is the lowest responsive and responsible bidder in the amount of \$33,100,000. SSR has worked with RY previously in 2023 on a significant project with Metro Nashville in which they demonstrated competency and completed successfully. Additional background/history chronicling the phases of Biosolids Thermal Dryer project is attached.

**Council Priorities Served**

*Responsible Budgeting*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product removes Murfreesboro’s reliance on landfilling, a means of disposal that is expected to increase in costs significantly over time.

*Establish Strong City Brand*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product establishes Murfreesboro’s brand as a leader in sustainability and environmental stewardship.

### **Operational Issues**

The thermal drying project will increase operational costs at the WRRF by approximately \$1,000,000 per year in natural gas expenses. No new personnel are envisioned at this time.

### **Fiscal Impact**

The project costs, \$33,100,000, will be funded by MWRD working capital reserves (i.e., cash on hand), being reimbursed with a future general obligation bond debt issuance.

### **Attachments**

1. Biosolids Historical Summary Report
2. SSR Recommendation for Contract Award and Bid Tabulation

## **Biosolids Background Summary Report**

The Water and Sewer Board approved at their July 26th, 2016, meeting an SSR Task Order to prepare a biosolids master plan for the Department. In January 2017, an amendment to conduct a pilot study using the Schwing Bioset lime pasteurization process was approved, and in June of 2017, the Board approved a second amendment that allowed a more robust cost estimate involving second-party processors to fully dispose of MWRD's biosolids. The Schwing Bioset and second-party processing options were not pursued.

The Water Resources Board approved an SSR Task Order at their December 5, 2017, meeting to develop a Request for Competitive Sealed Proposals (RFCSP) to solicit various vendors to provide MWRD with a cost and performance-based proposal that would allow MWRD to install a small demonstration biosolids thermal drying unit.

The Water Resources Board approved the procurement of a small scale biosolids thermal drying unit from Gryphon Environmental, LLC at the June 2018 meeting. The Department contracted with Gryphon Environmental, LLC in 2019 for the installation of a small-scale dryer at the WRRF. The project was to demonstrate the dryer's capacity to produce Class A EQ biosolids from the departments dewatered sludge while meeting performance metrics. Ultimately, the installation did not meet several key requirements.

In June of 2021 SSR was authorized to conduct a study and report that provided a preliminary recommendation as to a vendor and process for full scale biosolids drying operations at the Water Resources Recovery Facility (WRRF), as well as preliminarily designing those drying operations within pre-existing biosolids dewatering facilities at the WRRF. SSR's report included analysis of 5 different equipment manufacturers and 3 different drying processes (belt, drum, and paddle).

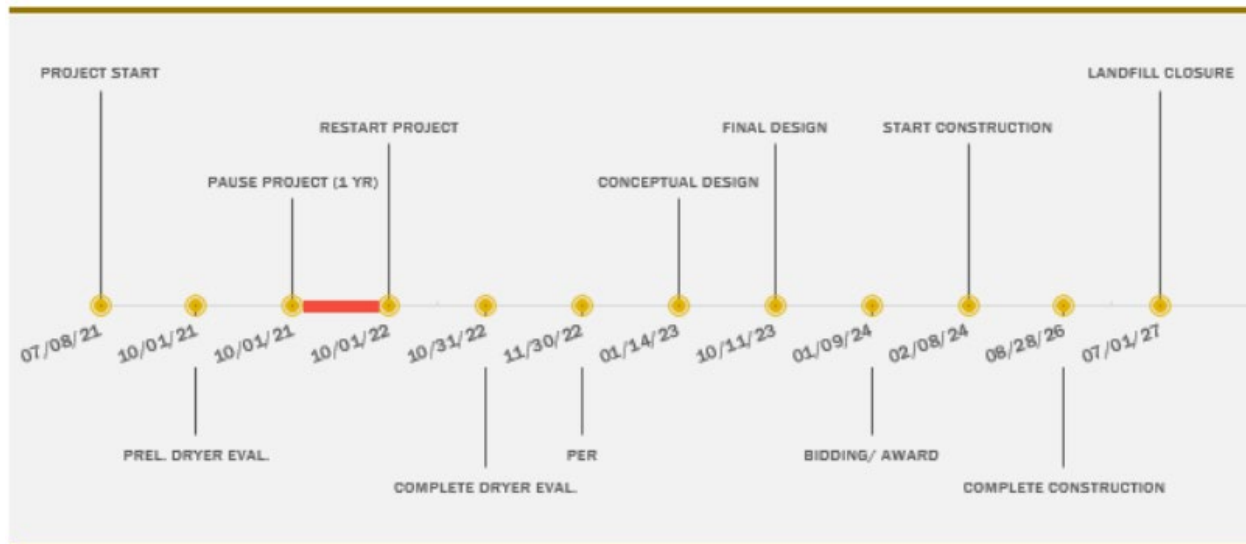
The following executive summary was provided for the Board's review:

- Komline Sanderson is the preferred biosolids dryer manufacturer based on the following:
  - Lowest capital cost
  - Highest throughput of processing/drying biosolids
  - Smallest footprint and fits inside existing biosolids dewatering truck bay
  - Offers redundancy by allowing two (2) dryers to fit inside the biosolids dewatering truck bay
  - Simple operation requiring less operator oversight.
- Staff visited Newport, TN about 4-yrs ago that had installed a Komline Sanderson dryer that had been operational for about 1-yr. The plant was small, and the dryer only ran part-time; however, staff was impressed by the simplicity and efficiency of the dryer.
- Athens, GA has a similar sized plant and treatment process as Murfreesboro and were anticipated to have Komline Sanderson biosolids dryers installed and running by the middle of 2022; however, supply chain issues have delayed that installation until early 2023. Staff expects to make a site visit when those dryers are operational to validate their initial impression of the K-S dryers.
- Staff has assumed that the Middle Point landfill will not be taking any more biosolids as of July 1, 2027. Under that assumption:
  - The final design contract for biosolids operation can be delayed for one-year, or until October of 2022
  - The ability to start drying biosolids would begin at the end of August 2026.

The summary table below shows the full-scale dryer evaluation for the City’s Water Resource Recovery Facility (WRRF) and Komline Sanderson being assessed as the best solution and the preferred drying manufacturer.

Description	Andritz	Huber	Komline	Kruger	Suez
Dryer Redundancy	●	●	●	●	●
Equipment Footprint	●	●	●	●	●
Product Quality	●	●	●	●	●
Equipment Operational Complexity	●	●	●	●	●
Equipment Capacity	●	●	●	●	●
20-Year Life Cycle Cost	●	●	●	●	●

Additionally, the original report presented in October of 2021, recommended a 12-month delay before entering into a full-scale design contract. The timeline below showed the expected milestones involved with completing the construction of a full-scale drying operation at the WRRF.



A recommendation to approve SSR’s Full-scale Design Task Order was approved at the October 2022 Board meeting.

The full-scale design for the biosolids drying project was completed in April of 2024 and bid on May 16, 2024. A recommendation to award the contract has been submitted for approval to the Board at their May 28<sup>th</sup>, 2024 meeting. Based on the timeline above, the project is approximately 3 ½ months behind. In adjusting the construction completion date, the biosolids drying operation will still be 7 months ahead of the anticipated Middle Point landfill closure.



May 22, 2024

Mr. Darren Gore  
Director  
Murfreesboro Water Resources Department  
P. O. Box 1477  
Murfreesboro, TN 37133-1477

RE: WRRF Full-Scale Thermal Dryer  
Recommendation of Award  
SSR No. 22-41-030.0

The bids for Murfreesboro Water Resource Recovery Facility (WRRF) Full-Scale Thermal Dryer were received by the City of Murfreesboro Water Resources Department (MWRD) at 2:00 p.m. CDT on May 16, 2024, and were read publicly. There was a total of two (2) bids submitted and opened. The total base bid prices for the bidders are listed below. All prices will be listed in the enclosed certified bid tabulation. The purpose of this letter is to make a recommendation regarding the award of the contract.

- |    |  |                  |
|----|--|------------------|
| 1. | J. Cumby Construction, Inc.<br>165 West Broad Street<br>Cookeville, TN 38501   | \$ 33,655,133.00 |
| 2. | Reeves Young, LLC<br>45 Peachtree Industrial Boulevard<br>Sugar Hill, GA 30518 | \$ 33,100,000.00 |

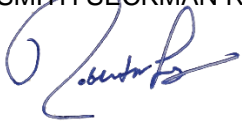
Reeves Young is the apparent low bidder for the project at a total base bid of \$33,100,000.00. No discrepancies were found in their bid. SSR has successfully worked with Reeves Young on the Gibson Creek Equalization Facility project completed in 2023. A Dun and Bradstreet Business Information Report for Reeves Young, LLC was obtained to verify credit worthiness and it indicated nothing of concern.

The high bid was noted to be within 1.7% of the lowest bid. All bids were higher than the engineer's opinion of probable construction cost (OPCC) of \$27,600,000.00. Given the inflationary climate, current construction market and equipment and materials shortages, costs are more challenging to estimate and continue to escalate. Unfortunately, SSR does not anticipate costs to go down in the future. MWRD staff decided not to accept alternate bid items 1 and 2. Therefore, SSR recommends that the contract be awarded to Reeves Young in the amount of \$ 33,100,000.00.

If you have questions regarding this information or require additional information, please contact me at (615) 934-6743 or [rlantz@ssr-inc.com](mailto:rlantz@ssr-inc.com).

Sincerely,

SMITH SECKMAN REID, INC.

A handwritten signature in blue ink, appearing to read "Rob Lantz", written over the printed name.

Rob Lantz, PE

Enclosure

cc: Valerie Smith, Marshall Fall – MWRD  
BDF – SSR  
File (1)

T:\Team41\2022\22410300\Correspondence\Letters\05222024 - RML - Bid Recommend to Award.docx



BID TABULATION SHEET WRRF FULL-SCALE THERMAL DRYER CITY OF MURFREESBORO, TENNESSEE SSR NO. 2241030.0  Page 1 of 1 BID DATE: MAY 16, 2024 2:00 PM CDT TIME	Reeves Young, LLC 45 Peachtree Industrial Boulevard Sugar Hill, GA 30518 License No: 70709 Expiration Date: 1/31/25  License Classification: BC; MU  Monetary Limits: Unlimited	J. Cumby Construction, Inc. 165 West Broad Street Cookeville, TN 38501 TN Lic #60508 Expiration Date: 1/31/2026  License Classification: BC; HRA-A;  Monetary Limits: Unlimited
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SCHEDULE A - LUMP SUM BID ITEMS			
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ITEM NO.	DESCRIPTION	ITEM TOTAL	ITEM TOTAL
1	WRRF Full-Scale Thermal Dryer, complete lump sum bid excluding Schedules B, C, and D	\$19,567,258.00	\$19,992,000.00

SCHEDULE B - UNIT PRICE ITEMS								
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ITEM NO.	SPEC SECTION	DESCRIPTION	EST. QTY.	UNITS	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL
2	31 63 33	Dryer Room, Truck Loadout Facility, Generator Pad, and Transformer Pad Micropiles – 6-inch diameter, 20 feet depth to competent rock	2,420	LF	\$80.00	\$193,600.00	\$105.00	\$254,100.00
3	31 63 33	Dryer Room, Truck Loadout Facility, Generator Pad, and Transformer Pad Micropiles – 6-inch diameter, 10 feet rock embedment	1,210	LF	\$80.00	\$96,800.00	\$105.00	\$127,050.00
4	31 63 33	Boiler Room Micropiles – 6-inch diameter, 20 feet depth to competent rock	160	LF	\$200.00	\$32,000.00	\$235.00	\$37,600.00
5	31 63 33	Boiler Room Micropiles – 6-inch diameter, 10 feet rock embedment	80	LF	\$200.00	\$16,000.00	\$238.00	\$19,040.00

SCHEDULE C - ALLOWANCES AND GUARANTEED PRICE ITEMS			
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ITEM NO.	DESCRIPTION	ITEM TOTAL	ITEM TOTAL
6	Cash Allowance for Signage Requirements	\$2,000.00	\$2,000.00
7	Cash Allowance for Construction Permits, Codes Inspection Fees	\$100,000.00	\$100,000.00
8	Cash Allowance to Establish Utilities Accounts	\$5,000.00	\$5,000.00
9	Cash Allowance for Miscellaneous Equipment	\$50,000.00	\$50,000.00
10	Construction Contingency Allowance	\$750,000.00	\$750,000.00
11	Guaranteed Price for Indirect Paddle Dryer Equipment	\$11,783,900.00	\$11,783,900.00
12	Guaranteed Price for Integration by MR Systems	\$356,942.00	\$356,942.00



BID TABULATION SHEET WRRF FULL-SCALE THERMAL DRYER CITY OF MURFREESBORO, TENNESSEE SSR NO. 2241030.0	Reeves Young, LLC 45 Peachtree Industrial Boulevard Sugar Hill, GA 30518 License No: 70709 Expiration Date: 1/31/25	J. Cumby Construction, Inc. 165 West Broad Street Cookeville, TN 38501 TN Lic #60508 Expiration Date: 1/31/2026
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**SCHEDULE D - ADJUSTMENT PRICE ITEMS AS ORDERED BY ENGINEER**

ITEM NO.	SPEC SECTION	DESCRIPTION	EST. QTY.	UNITS	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL
13	31 23 16	Earth excavation, off-site disposal and replace with No. 57 or 67 stone	100	CY	\$140.00	\$14,000.00	\$145.00	\$14,500.00
14	31 23 23 31 23 17	Rock excavation by mechanical means, off-site disposal, and replace with No. 57 or 67 stone	100	CY	\$180.00	\$18,000.00	\$250.00	\$25,000.00
15	31 23 23 31 23 17	Rock excavation by blasting, off-site disposal, and replace with No. 57 or 67 stone	100	CY	\$250.00	\$25,000.00	\$275.00	\$27,500.00
16	31 23 23	Granular backfill, in place	100	CY	\$50.00	\$5,000.00	\$85.00	\$8,500.00
17	31 23 23	Mix A concrete, no reinforcing steel, in place	100	CY	\$450.00	\$45,000.00	\$500.00	\$50,000.00
18	03 31 00	Mix D concrete, no reinforcing steel, in place	100	CY	\$375.00	\$37,500.00	\$480.00	\$48,000.00
19	03 21 00	Reinforcing steel	1000	LB	\$2.00	\$2,000.00	\$4.00	\$4,000.00
<b>TOTAL BASE BID</b>								
DESCRIPTION					TOTAL BASE BID PRICE		TOTAL BASE BID PRICE	
Total Base Bid (Sum Total of Items 1 thru 19)					<b>\$33,100,000.00</b>		<b>\$33,655,132.00</b>	

**SCHEDULE E- TABULATION OF BASE BID EQUIPMENT ITEMS**

ITEM NO.	DESCRIPTION	"A ITEM"		"B ITEM"		"A ITEM"		"B ITEM"	
		MANUFACTURER	BASE BID PRICE	MANUFACTURER	ADD / DEDUCT	MANUFACTURER	BASE BID PRICE	MANUFACTURER	ADD / DEDUCT
1	Section 33 12 00 – Motorized Actuator	<b>Rotork</b>	\$120,000.00			<b>Rotork</b>	\$120,000.00		
2	Section 26 24 19 – Motor-Control Centers	<b>Rockwell / Allen Bradley</b>	\$268,771.00	Eaton		<b>Rockwell / Allen Bradley</b>	\$268,771.00	Eaton	
		Schneider		\$24,029.00	Schneider				
		ABB			ABB				
		Siemens			Siemens				
3	Section 26 29 23 – Variable Frequency Motor Controllers	<b>Rockwell / Allen Bradley</b>	\$172,200.00	Eaton		<b>Rockwell / Allen Bradley</b>	\$172,200.00	Eaton	
		Schneider		-\$70,774.00	Schneider				
		ABB			ABB				
		Siemens			Siemens				
4	Section 26 32 13 – Engine Generators	<b>Caterpillar</b>	\$298,766.00			<b>Caterpillar</b>	\$298,766.00		
		Kohler		Adder	\$44,000.00	Kohler			
5	Section 41 12 14 – Shaftless Screw Conveyors and Appurtenances	Custom Conv	\$1,073,000.00			Custom Conv			
		<b>JDV</b>	<b>\$876,000.00</b>			<b>JDV</b>	<b>\$876,000.00</b>		
		JMS				JMS			
		KWS				KWS			
		Spirac	\$890,000.00			Spirac			

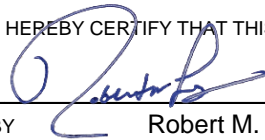
NOTE: Manufacturer pricing listed in **bold** text indicates manufacturer that was selected on Bid Form.

BID TABULATION SHEET WRRF FULL-SCALE THERMAL DRYER CITY OF MURFREESBORO, TENNESSEE SSR NO. 2241030.0	Reeves Young, LLC 45 Peachtree Industrial Boulevard Sugar Hill, GA 30518 License No: 70709 Expiration Date: 1/31/25	J. Cumby Construction, Inc. 165 West Broad Street Cookeville, TN 38501 TN Lic #60508 Expiration Date: 1/31/2026
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**SCHEDULE F - ADDITIVE ALTERNATE BID ITEMS (ADDITIVE)**

ITEM NO.	DESCRIPTION	ITEM TOTAL	ITEM TOTAL
1	Biosolids Building Existing 24-inch, 18-inch, and 8-inch Drain Line Cleaning and CCTV Inspection  Drawings: Number(s) CU1.0, CU1.1, CU1.2, CU1.3, CU1.4, D0.1-01 – Existing Drain Line (Segments from within Biosolids Building to Existing MH 075A001C upstream of the Influent Pump Station)  Specification(s): Section 33 31 22	\$40,000.00	\$33,000.00
2	Biosolids Building New 12-inch Drain Line  Drawing(s): Number(s) CU1.2, CU1.3, CU2.3 – Process Drain Line (Segments from MH 075D0070 to MH 075D0015) and subtracting the costs of 1) MH 0750070, 2) line segment from MH 0750070 to MH 0750050, and 3) modifications to MH 0750050  Specification(s): Division 31, Section 33 11 00, Section 33 39 00	\$400,000.00	\$1,573,000.00

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT RECORD WITH ALL ERRORS IN EXTENSIONS OF UNIT PRICES CORRECTED.

  
 BY \_\_\_\_\_ Robert M. Lantz, PE



Notes:

1. Reeves Young provided a price for Kohler generator as an adder cost to Caterpillar.
2. Reeves Young did not circle the "A Item" manufacturer for the shaftless screw conveyors but upon follow-up indicated that JDV was the basis for their "A Item" amount.
3. Reeves Young clarified that the price listed as a "B Item" was in fact an adder cost for Kohler in Schedule E.
4. J. Cumby total base bid price was listed as \$33,655,133.00 but calculated to be \$33,655,132.00. This discrepancy had no affect on the outcome.

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** WRRF Biosolids Dryer Geotechnical Testing Task Order Approval

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

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

**Summary**

Engineering task order involving geotechnical testing services for the Water Resource Recovery Facility (WRRF) full-scale biosolids thermal drying project.

**Staff Recommendation**

Approve the engineering task order with TTL for geotechnical services in conjunction with the biosolids thermal dryer construction contract. The Water Resource Board recommended approval of this matter on May 28, 2024.

**Background Information**

As required by the contract documents MWRD is required to hire a firm to perform construction inspections and testing to ensure that Reeves Young, the contractor, conforms to the project specifications. The firm will have a special inspector that will perform various inspections in addition to the testing identified below. These services are a requirement of the 2018 International Building Code (IBC).

The Inspector shall document all inspections and tests providing daily reports and a final engineer stamped report of all tests per IBC. TTL has worked for the Department on several geotechnical and materials testing projects in the past and has a Master Services Agreement with the City.

Generally, the following testing and inspections will be performed:

1. Concrete consistency, air content, compressive test cylinder casting and compressive strength testing.
2. Concrete formwork and steel reinforcement inspection.
3. Sieve analysis and proctor tests of proposed offsite backfill material
4. Backfill compaction testing and paving tests.
5. Geotechnical tests, such as inspection of pile foundation and load tests.
6. Masonry testing and steel inspections.

## **Council Priorities Served**

### *Responsible Budgeting*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product removes Murfreesboro's reliance on landfilling, a means of disposal that is expected to increase in costs significantly over time.

### *Establish Strong City Brand*

Providing a process to manufacture a beneficially reusable soil amendment from a previously considered waste product establishes Murfreesboro's brand as a leader in sustainability and environmental stewardship.

## **Fiscal Impact**

The geotechnical testing services costs, \$127,500, will be funded by MWRD working capital reserves (i.e., cash on hand).

## **Attachments**

TTL Geotechnical Testing Services Task Order



624 Grassmere Park, Ste. 14  
Nashville, TN 37211  
615.331.7770  
[www.TTLUSA.com](http://www.TTLUSA.com)

May 13, 2024

Ms. Valerie Smith  
Murfreesboro Water Resources Department (MWRD)  
300 NW Broad Street  
Murfreesboro, Tennessee 37130

**RE: PROPOSED TASK ORDER NO. 9 FOR PROFESSIONAL SERVICES  
PURSUANT TO ON-CALL MASTER SERVICES AGREEMENT  
Full-Scale Thermal Dryer  
Murfreesboro, Tennessee  
TTL Project No. 000240801100.00**

Dear Ms. Smith:

Thank you for the opportunity to provide this task order for professional services for the above-referenced project. We have prepared this task order to outline our understanding of the project, proposed scope of services, estimated fees, and schedule. This task order will be performed under a Master Services Agreement between the City of Murfreesboro and TTL.

#### **PROJECT INFORMATION**

Project information was provided by Mr. Brent Fowler (Smith Seckman Reid, Inc (SSR)) in several email transmissions and telephone conversations. We were provided a link to a Bid Set of drawings and a Bid Set of Contract Documents and Specifications prepared by SSR, dated March 26, 2024. We were not provided a detailed construction schedule. We are familiar with the project in that we previously performed a geotechnical exploration for the planned construction (TTL Project No. 000230800052.00, report dated February 27, 2023).

The project consists of installing an indirect paddle drying system at the Sinking Creek Wastewater Treatment Plant. The drying system includes wet cake and dried product conveyance equipment, a thermal fluid boiler system, modifications to the existing sludge cake conveyors, a new concrete pavement truck loadout facility, loadout conveyor equipment, modifications to the existing sludge holding facilities, and new asphalt pavement. If the above information is not correct, please contact us so that we can make the necessary modifications to this document.

#### **SCOPE OF SERVICES**

Based on the information provided to us and our experience on similar projects, we propose to provide the following services during construction:

##### **Earthwork Construction:**

- Observe and test fill placement and compaction activities and confirm whether or not the materials were compacted to the project requirements. In general, this will include a proofroll and/or nuclear density gauge, if applicable.

- Perform laboratory classification and standard Proctor compaction testing for soil and mineral aggregate materials used as fill to confirm whether or not they meet the project criteria and as a comparison for in-place density tests.

### **Deep Foundations**

- Observe installation of micropile foundations including making test specimens of fresh plastic grout for each micropile, as required by the project specifications. Our representative will be on-site on a full-time basis to observe and document micropile installation, including the load verification test.

### **Asphalt Pavement Testing:**

- Observe proofrolling and perform density testing of mineral aggregate base course materials and asphalt pavement layers.

### **Concrete Construction:**

- Observe reinforcing steel prior to concrete placement to evaluate conformance with the specifications in regard to size, grade, spacing, profiles, lap lengths, and coverage.
- Make test specimens and perform field tests on plastic concrete. Tests will include slump, air content, unit weight, and temperature. We will cast six test cylinders (6 in. x 12 in.) using the minimum number of samples chart provided in the project specifications.
- Field curing concrete samples for the first 24 to 48 hours. Upon completion of field curing, the specimens will be transported to our laboratory for final curing and compressive strength testing.

### **Masonry Construction:**

- Observe reinforcing steel prior to grout and mortar placement to evaluate conformance with the project drawings and specifications.
- Observe CMU block cells for cleanliness prior to grouting.
- Observe installation of masonry units for size, layout, bonding and placement of masonry units.
- Make test specimens and perform field tests on fresh mortar (six 2-in. by 2-in. cubes) and CMU block fill grout (four 3.25-in. by 3.25-in. by 6.5-in. grout prisms), including slump and temperature, as appropriate for the material.
- Perform compressive strength testing of contractor-made masonry prisms, if required.
- Field curing of the grout and mortar samples will be performed utilizing a contractor-provided on-site curing box for the first 24 to 48 hours. Upon completion of field curing, the specimens will be transported to our laboratory for final curing and compressive strength testing.

## Structural Steel Construction

- Review Welder Procedure Qualifications documentation prior to steel erection for conformance to project specifications.
- Observe field-welded and field-bolted connections of structural steel elements in general accordance with the Special Inspection requirements, defined by the Structural Engineer of Record. We have assumed the steel fabricator will be an approved steel fabricator per section 1704.2.5.2 of the International Building Code (IBC) and our scope of work will not include observations at the fabrication shop or observation/testing of shop welded connections.

We will issue field and testing reports for each site visit. Our project manager will review the field reports and test results before these documents are issued as final documents and will also be available for consultation at your request. The actual scope of services may vary from the proposed scope of services based on the project schedule, budget constraints, and other issues that we do not control. Please keep in mind that our testing is a sampling of the construction materials and does not guarantee the quality of the entire work product. Our representatives will notify you and the contractor of any portions of the work we observe which do not meet the project specifications. We do not have the authority to stop the contractor's work.

We will issue a final special inspection report stamped by a licensed professional engineer at job completion. Our special inspection services are limited to those aspects of the Special Inspection Schedule that are assigned to us. Additionally, we are not the Special Inspector for the entire project, and our services and reports will not address the special inspections of architectural, mechanical, electrical, plumbing, or other systems, if any are required.

We will need to be provided copies of the full construction documents (plans, specifications, and submittals), at the beginning of the project. As project conditions change or are modified by Requests for Information (RFIs), we will need to be copied on the RFIs and responses. Additionally, we are not responsible for the safety of persons other than TTL personnel. Job-site safety is the sole responsibility of the general contractor.

## SCHEDULING

A TTL representative will be on-site on a full-time (continuous) and/or part-time (periodic) basis, depending on the activity and level of inspection required. Our on-site representative(s) or Project Manager will be available to communicate with the General Contractor's Project Manager or designated representative to discuss construction schedules. Scheduling of our activities will be the sole responsibility of the contractor. We require at least 24 hours' notice to assist with scheduling our services for periodic observations.

## COMPENSATION

We understand the project schedule is over 800 days because of fabrication time for some of the equipment. We have developed our budget using our current Fee Schedule, but anticipate we will request modification to our Fee Schedule with time. **We will provide an updated fee estimate on a yearly basis for escalations in our Fee Schedule.** Based on our understanding of the scope of work

described within this proposal, we recommend a budget for services outlined above and on the appended sheets not to exceed **\$127,500**. Our fee is based on our experience with similar projects and the assumed work schedule which is shown on the detailed cost estimate included with this proposal. We will provide our services on a time and materials basis. We request that any additional documents related to materials testing and inspections be provided when available so that we may revise our scope and/or estimate, if necessary. Our fees will depend on the quality of the work and rate of progress achieved by the contractor, weather conditions, and other factors beyond our control. We will monitor and keep you apprised of the budget status and items requiring re-inspection. Our estimate does not include project delays and/or re-inspections.

**AUTHORIZATION**

To formerly authorize our services, please sign in the space below and return the signed task order to Mark Herrmann (mherrmann@ttlusa.com). Unless otherwise requested, TTL will return an electronic copy of the fully executed agreement to the Client’s Project Manager. This task order will be performed under the terms and conditions of the Master Services Agreement between the City of Murfreesboro and TTL.

**CLOSING**

We appreciate the opportunity to provide professional services on this important project. If you have questions, or need additional information, please contact our office at your convenience.

Sincerely,  
TTL, Inc.



Daven Rogers  
Project Manager



Mark Herrmann, PE  
Principal Engineer

Attachments: Construction Testing Estimate  
Schedule of Fees

*Authorized By:*

*Client (Signature and Date)*

DocuSigned by:  
*Adam Tucker*

43A2035E51F9401...  
*Approved as to form*  
City Attorney



**Client:** Murfreesboro Water Resources Department  
**Project Name:** Full-Scale Thermal Dryer  
**Address:** 2032 Blanton Drive  
**City, State:** Murfreesboro, TN  
**TTL Proposal No.:** 24-08-01100.00

**TTL**  
624 Grassmere Park  
Nashville, TN 37211  
615.331.7770  
**WWW.TTLUSA.COM**

SERVICE	PROJECTED SCHEDULE			UNIT COST	SUBTOTAL	SECTION SUBTOTAL
	No. Days	hrs/day	Total			
<b>EARTHWORK</b>						
Subgrade Review / Proofrolling	2	4	8	\$66.00	\$528.00	\$4,568
Monitoring Cut/Fill Activities & Density Testing	5	8	40	\$66.00	\$2,640.00	
Technician Overtime		2	0	\$85.80	\$0.00	
Special Inspector (Bearing Eval / Fill Monitoring / etc)			0	\$92.00	\$0.00	
Project Manager / Engineer Review	7	1	7	\$182.00	\$1,274.00	
PM Support Services	7	0.25	1.75	\$72.00	\$126.00	
<b>RIGID / FLEXIBLE PAVEMENTS</b>						
Subgrade Review / Proofrolling			0	\$66.00	\$0.00	\$3,244
Monitoring Cut/Fill Activities & Density Testing			0	\$66.00	\$0.00	
Monitoring Basestone Placement	1	8	8	\$66.00	\$528.00	
Monitoring & Testing Pavement Placement	2	8	16	\$66.00	\$1,056.00	
Site Concrete (Sidewalks, Curb & gutter, etc.)	2	4	8	\$66.00	\$528.00	
Technician Overtime		2	0	\$85.80	\$0.00	
Test Specimen Pick-Up	2	1	2	\$66.00	\$132.00	
Project Manager / Engineer Review	5	1	5	\$182.00	\$910.00	
PM Support Services	5	0.25	1.25	\$72.00	\$90.00	
<b>FOUNDATIONS</b>						
Shallow Foundations (Spread / Continuous Footings)	9	4	36	\$66.00	\$2,376.00	\$40,842
Deep Foundations (Drilled Piers / Micropiles / etc.)	28	10	280	\$92.00	\$25,760.00	
Technician Overtime			0	\$85.80	\$0.00	
Test Specimen Pick-Up	9	1	9	\$66.00	\$594.00	
Special Inspector (Bearing Eval / Reinforcement Insp. / etc)	9	4	36	\$92.00	\$3,312.00	
Project Manager / Engineer Review	44	1	44	\$182.00	\$8,008.00	
PM Support Services	44	0.25	11	\$72.00	\$792.00	
<b>CONCRETE</b>						
Columns / Retaining Walls / Shear Walls			0	\$66.00	\$0.00	\$7,118
Slab-On-Grade / Slab-On-Deck / Beams	5	4	20	\$66.00	\$1,320.00	
Post-Tension / Tilt-Up / Precast / etc.			0	\$66.00	\$0.00	
Misc. Placements (Sidewalks / Stairwells / Curbs)	2	4	8	\$66.00	\$528.00	
Technician Overtime			0	\$85.80	\$0.00	
Special Inspector (Post Tension / Reinforcement Insp. / etc)	6	4	24	\$92.00	\$2,208.00	
Test Specimen Pick-Up	7	1	7	\$66.00	\$462.00	
Project Manager / Engineer Review	13	1	13	\$182.00	\$2,366.00	
PM Support Services	13	0.25	3.25	\$72.00	\$234.00	
<b>STRUCTURAL STEEL</b>						
Anchor Bolts / Bolted Connections	2	8	16	\$115.00	\$1,840.00	\$8,232
Welded Connections	4	8	32	\$115.00	\$3,680.00	
Metal Decking	2	8	16	\$115.00	\$1,840.00	
Certified Welding Inspector Overtime			0	\$149.50	\$0.00	
Certified Structural Steel Inspector Overtime			0	\$149.50	\$0.00	
Project Manager / Engineer Review	8	0.5	4	\$182.00	\$728.00	
PM Support Services	8	0.25	2	\$72.00	\$144.00	

<b>POST-INSTALLED ANCHOR SYSTEM</b>	No. Days	hrs/day	Total	Rate	Subtotal		
Special Inspector (Drill Observations / Anchor Installation / etc)	5	8	40	\$92.00	\$3,680.00	\$4,680	
Project Manager / Engineer Review	5	1	5	\$182.00	\$910.00		
PM Support Services	5	0.25	1.25	\$72.00	\$90.00		
<b>MASONRY / MORTAR</b>	No. Days	hrs/day	Total	Rate	Subtotal		
Masonry Monitoring / Masonry Sampling	14	8	112	\$66.00	\$7,392.00	\$19,068	
Technician Overtime			0	\$85.80	\$0.00		
Special Inspector (Reinforcement Insp. / Cleanliness / etc)	14	4	56	\$92.00	\$5,152.00		
Test Specimen Pick-Up	14	1	14	\$66.00	\$924.00		
Project Manager / Engineer Review	28	1	28	\$182.00	\$5,096.00		
PM Support Services	28	0.25	7	\$72.00	\$504.00		
<b>MATERIALS / LAB TESTING / ADDITIONAL SERVICES</b>	Number	Units	Total	Rate	Subtotal		
Floor Flatness / Floor Levelness Testing			0	\$0.06	\$0.00	\$39,512	
Floor Flatness / Floor Levelness Testing (Special Inspector)			0	\$92.00	\$0.00		
Proctor Density Testing	1	1	1	\$140.00	\$140.00		
Proctor Density Testing w/ Atterberg Limits	1	1	1	\$235.00	\$235.00		
Vapor Emmission Testing (Kit Only)			0	\$0.00	\$0.00		
Concrete Specimens (Foundation)	9	6	54	\$15.00	\$810.00		
Concrete Specimens (Slab on Grade, Walls. Etc.)	11	6	66	\$15.00	\$990.00		
Masonry Grout / Mortar Specimens	14	10	140	\$15.00	\$2,100.00		
CMU Block Absorption / Compression Specimens (Set of 6)			0	\$0.00	\$0.00		
Micropile Grout Specimens	155	8	1240	\$15.00	\$18,600.00		
Progress Meeting / PM Site Visit / Kick-Off Meetings	4	4	16	\$182.00	\$2,912.00		
Special Inspection Letter & Engineer Review	1	8	8	\$217.00	\$1,736.00		
Engineer Site Visits	2	4	8	\$217.00	\$1,736.00		
Engineer Review of Concrete Cylinder Breaks	189	0.25	47.25	\$217.00	\$10,253.25		
<b>DIRECT COSTS</b>	Trips	Miles	Total	Rate	Subtotal		
Trip Charge			0	\$0.00	\$0.00		\$0
<b>PROJECT ESTIMATE / BUDGET</b>					<b>\$127,264</b>		

Note: This is a good faith estimate based on our understanding of the project. The actual schedule may vary and billing will be based on the unit rates shown on the attached fee schedule for actual hours worked.



624 Grassmere Park, Ste. 14  
Nashville, TN 37211  
615.331.7770  
[www.TTLUSA.com](http://www.TTLUSA.com)

### Schedule of Fees (Labor)

Project Technician IV .....	\$ 66.00 / hr
Senior Project Technician II.....	\$ 92.00 / hr
NDT Steel/ASNT Level II Technician.....	\$ 115.00 / hr
Project Manager V .....	\$ 182.00 / hr
Senior Project Professional II .....	\$ 217.00 / hr
Project Administrator II.....	\$ 72.00 / hr

*Technician rates to be multiplied by 1.3 for time in excess of 8 hours per day, and all hours on Saturdays, Sundays, and Holidays.*

Direct Expenses .....Cost + 15%

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

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**Item Title:** Board of Electrical Examiners

**Department:** Administration

**Presented by:** Mayor Shane McFarland

**Requested Council Action:**

Ordinance

Resolution

Motion

Direction

Information

---

**Summary**

Reappointment to the Board of Electrical Examiners.

**Background Information**

The Board of Electrical Examiners is responsible for reviewing electrical contractor's licenses and license applications to assure compliance with the Electrical Contractors Licensing Ordinance.

As established by City Code § 11-33-36, there are nine members who serve four-year terms.

**Attachments:**

Memo from Mayor McFarland



*... creating a better quality of life.*

June 6, 2024

Members of City Council

**RE: Recommended Appointments – Board of Electrical Examiners**

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As an item for the City Council Agenda, I am recommending the following appointments to the Board of Electrical Examiners.

**Appointment**

Jim Warden Jr. replacing the expiring term of Eva Warden (term expires June 30, 2028)

**Reappointments**

Tony Ogles (term expires June 30, 2028)

Jason Fann replacing the vacancy left by Altan Fann (term expires June 30, 2026)

Sincerely,

A handwritten signature in blue ink that reads "Shane McFarland". The signature is fluid and cursive.

Shane McFarland  
Mayor

# COUNCIL COMMUNICATION

Meeting Date: 06/06/2024

---

**Item Title:** Beer Permits  
**Department:** Finance  
**Presented by:** Amanda DeRosia, Interim City Recorder

**Requested Council Action:**

- Ordinance
  - Resolution
  - Motion
  - Direction
  - Information
- 

**Summary**

TCA 57-5-103 delegates the authority to regulate the sale, distribution, manufacture, or storage of beer to the City where the business is located.

**Staff Recommendation**

The applications from the following applicants meet requirements and are recommended to be approved. The permits will only be issued once the permits are approved by the City Council (Beer Board) and building and codes final inspections are passed for regular beer permits or a special event permit is approved for special event beer permits.

**Regular Beer Permits**

Name of Applicant	Name of Business	Address	Type of Permit	Type of Business	Reason
Luna Latin Food, Inc.	Luna Latin Food	2181 B Old Fort Pkwy	On-Premises	Restaurant	New Location
Neighborhood Market, LLC	Neighborhood Market	1208 E Northfield Blvd	Off-Premises	Grocery/Market	Ownership/Name Change

**Special Event Beer Permits**

<b>Name of Applicant</b>	<b>Date of Event</b>	<b>Type of Event</b>	<b>Location of Event</b>
Main Street Market	07/13/2024	Annual Fundraiser	900 N. Maney Ave
Charity Circle of Murfreesboro	08/16/2024	Summer Supper Fundraiser	3014 St. Johns Dr
Charity Circle of Murfreesboro	09/06/2024	Tailgate Fundraiser	1525 Riverview Dr
Charity Circle of Murfreesboro	12/13/2024	Fundraiser	1720 Shagbark Dr
Ascension Saint Thomas Rutherford Foundation	10/26/2024	Fundraiser for Power of Pink: Breast Cancer	Downtown Murfreesboro

**Background Information**

All applicants meet the requirements for issuing a beer permit per the City Code Chapter 4 Alcoholic Beverages with the exception of pending building and codes inspections for regular beer permits or pending special event permit for special event beer permits.

**Council Priorities Served**

*Maintain public safety*

Controlling the sale of beer within the City provides enforcement tools by the City for restrictions as to where beer is sold, ability to obtain the right to sell beer, time of beer sales and onsite consumption.

**Attachments**

Summaries of Request

## Beer Application

Summary of information from the beer application:

<b>Name of Business Entity/Sole Proprietor</b>	Luna Latin Food, Inc.
<b>Name of Business</b>	Luna Latin Food
<b>Business Location</b>	2181 B Old Fort Pkwy
<b>Type of Business</b>	Restaurant
<b>Type of Permit Applied For</b>	On-Premises

Type of Application:

<b>New Location</b>	<input checked="" type="checkbox"/>
<b>Ownership Change</b>	<input type="checkbox"/>
<b>Name Change</b>	<input type="checkbox"/>
<b>Permit Type Change</b>	<input type="checkbox"/>
<b>Corporation</b>	<input checked="" type="checkbox"/>
<b>Partnership</b>	<input type="checkbox"/>
<b>LLC</b>	<input type="checkbox"/>
<b>Sole Proprietor</b>	<input type="checkbox"/>

5% or more Ownership

<b>Name</b>	Juan Pablo Luna Flores
<b>Age</b>	42
<b>Residency City/State</b>	Murfreesboro, TN
<b>Race/Sex</b>	Hispanic/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

Application Completed Properly? Yes

Occupancy Application Approved? No

The actual beer application is available in the office of the City Recorder.

\*\*\*I request permission to issue the beer permit upon successful completion of all required building and codes inspections.



## Beer Application

Summary of information from the beer application:

<b>Name of Business Entity/Sole Proprietor</b>	Neighborhood Market, LLC
<b>Name of Business</b>	Neighborhood Market
<b>Business Location</b>	1208 E Northfield Blvd.
<b>Type of Business</b>	Grocery/Market
<b>Type of Permit Applied For</b>	Off-Premises

### Type of Application:

<b>New Location</b>	_____
<b>Ownership Change</b>	_____ X _____
<b>Name Change</b>	_____ X _____
<b>Permit Type Change</b>	_____
<b>Corporation</b>	_____
<b>Partnership</b>	_____
<b>LLC</b>	_____ X _____
<b>Sole Proprietor</b>	_____

### 5% or more Ownership

<b>Name</b>	Alaa Mankarious
<b>Age</b>	48
<b>Residency City/State</b>	Smyrna, TN
<b>Race/Sex</b>	White/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.
<b>Name</b>	Shehata Gergies
<b>Age</b>	52
<b>Residency City/State</b>	Brentwood, TN
<b>Race/Sex</b>	White/M
<b>Background Check Findings</b>	
City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

**Application Completed Properly?** Yes

**Occupancy Application Approved?** No

**The actual beer application is available in the office of the City Recorder.**

\*\*\*I request permission to issue the beer permit upon successful completion of all required building and codes inspections.

## Special Event Beer Application

Summary of information from the beer application:

<b>Name of Non-Profit Organization</b>	Main Street Murfreesboro Rutherford
<b>Organization Address</b>	225 W College St.
<b>Event Location</b>	Oakland's Mansion 900 N Maney Ave
<b>Event Date</b>	7/13/2024
<b>Event Time</b>	6:00 p.m. until 9:00 p.m.
<b>Period for Beer to be Served</b>	6:00 p.m. until 9:00 p.m.
<b>Nature and Purpose of Event</b>	Fundraiser-Taste of Rutherford
<b>Approximate Number of Persons Expected to Attend</b>	250
<b>Special Event Permit Approved?</b>	No
<b>Application Completed Properly?</b>	Yes
<b>Internal Revenue Letter Provided?</b>	Yes

The actual beer application is available in the office of the City Recorder.

## Special Event Beer Application

Summary of information from the beer application:

<b>Name of Non-Profit Organization</b>	Charity Circle of Murfreesboro
<b>Organization Address</b>	P.O. BOX 11128
<b>Event Location</b>	3014 St. Johns Dr.
<b>Event Date</b>	8/16/2024
<b>Event Time</b>	6:00 p.m. until 10:00 p.m.
<b>Period for Beer to be Served</b>	6:00 p.m. until 10:00 p.m.
<b>Nature and Purpose of Event</b>	Summer Supper Fundraising Event for Non-Profits
<b>Approximate Number of Persons Expected to Attend</b>	300
<b>Event Location</b>	1525 Riverview Dr.
<b>Event Date</b>	9/6/2024
<b>Event Time</b>	5:30 p.m. until 10:00 p.m.
<b>Period for Beer to be Served</b>	5:30 p.m. until 10:00 p.m.
<b>Nature and Purpose of Event</b>	Tailgate Fundraising Event for Non-Profits
<b>Approximate Number of Persons Expected to Attend</b>	300
<b>Event Location</b>	1720 Shagbark Dr.
<b>Event Date</b>	12/13/2024
<b>Event Time</b>	6:00 p.m. until 10:00 p.m.
<b>Period for Beer to be Served</b>	6:00 p.m. until 10:00 p.m.
<b>Nature and Purpose of Event</b>	Fundraising Event for Non-Profits
<b>Approximate Number of Persons Expected to Attend</b>	300
<b>Special Event Permit Approved?</b>	No
<b>Application Completed Properly?</b>	Yes
<b>Internal Revenue Letter Provided?</b>	Yes

The actual beer application is available in the office of the City Recorder.

**Special Event Beer Application**

Summary of information from the beer application:

<b>Name of Non-Profit Organization</b>	Ascension Saint Thomas Rutherford
<b>Organization Address</b>	1700 Medical Center Parkway
<b>Event Location</b>	Downtown Murfreesboro Square area of N&S Public Sq, N&S Church St, N&S Maple St, W&E Main St
<b>Event Date</b>	10/26/2024
<b>Event Time</b>	5:00 p.m. until 10:00 p.m
<b>Period for Beer to be Served</b>	5:00 p.m. until 10:00 p.m.
<b>Nature and Purpose of Event</b>	Fundraiser-Power of Pink:Breast Cancer
<b>Approximate Number of Persons Expected to Attend</b>	1200-1500
<b>Special Event Permit Approved?</b>	No
<b>Application Completed Properly?</b>	Yes
<b>Internal Revenue Letter Provided?</b>	Yes

The actual beer application is available in the office of the City Recorder.

**No Items.**

