

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Council Chambers – 6:00 PM
July 25, 2024

PRAYER

PLEDGE OF ALLEGIANCE

Public Comment on Actionable Agenda Items

Consent Agenda

1. Subrecipient Agreement with Volunteer Behavioral Health (Administration)
2. Asphalt and Concrete Purchase Report (Street)
3. Time Keeping Software Renewal (Information Technology)
4. Dr. Martin Luther King Jr. Blvd. Sidewalk Project Phase 2 Design Contract Addendum No. 1 (Transportation)
5. Amendment 3 to Contract with the Regional Transportation Authority (Transportation)

Old Business

Ordinance

6. Ordinance 24-O-23 Amendment to Murfreesboro City Code, Airport Chapter 3 (Airport)
Second Reading: Ordinance 24-O-23

New Business

Ordinance

7. Ordinance 24-O-10 City Code Chapter 12 Changes (Fire)
First Reading: Ordinance 24-O-10
8. FY25 Budget Amendment (Administration)
First Reading: Ordinance 24-O-27

On Motion

9. Acquisition of Easements for 106 SE Broad Street Town Creek (Administration)
10. Town Creek Task Order 14 (Administration)
11. Taxiway A and Apron Pavement Rehabilitation Change Orders (Airport)
12. New Airport Lease Agreements (Airport)
13. Acceptance of Grant Award (Fire)

Board & Commission Appointments

Licensing

Payment of Statements

Other Business

Adjourn

COUNCIL COMMUNICATION

Meeting Date: 07/25/2024

Item Title: Subrecipient Agreement with Volunteer Behavioral Health

Department: Administration

Presented by: Karen Lampert, Grant Manager

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Subrecipient Agreement in the amount of \$58,250 between Murfreesboro Police Department and Volunteer Behavioral Health (VBH) to provide Co-Responder Services.

Staff Recommendation

Approve Subrecipient Amendment with Volunteer Behavioral Health.

Background Information

On May 11, 2024, Council approved a plan to designate opioid settlement funds in the amount of \$290,155, plus future receipt of additional funds, to support MPD Co-Responder services. VBH provides Co-Responder services to assist MPD in responding to individuals displaying mental health issues, providing de-escalation, assessment, resources, and linkage to services. This agreement provides a continuation of these services for four months (July 1-Oct. 31) due to pending notification of a submitted federal grant for these services. Further funding needs will be reassessed at that time.

Council Priorities Served

Responsible budgeting

Utilization of federal funds to offset qualified costs assists in reducing budgeted expenditures.

Maintain Public Safety

Providing mental health services during certain public safety calls has provide beneficial to assistance individuals, protecting public safety personnel, and may reduce criminal activity over the long term.

Fiscal Impact

None. Agreement reflects a use of Opioid Remediation Funds to fund these services.

Attachment

Subrecipient Agreement

SUBRECIPIENT GRANT AGREEMENT

Between

THE CITY OF Murfreesboro – Police Department

And

Volunteer Behavioral Health Care System

For

Mental Health Co-Responder Assistance

Funded through the

Tennessee State-Subdivision Opioid Agreement

For an initial payment of \$58,250

Performance Period: July 1, 2024 – October 31, 2024

Amanda DeRosia, Interim Finance Director and
Treasurer
Finance & Tax Department
111 W. Vine St.
First Floor
Murfreesboro, TN 37130
Phone 615-893-5210
aderosia@murfreesborotn.gov

Date agreement fully executed: _____

PART A AGREEMENT

THIS AGREEMENT (hereinafter the “Agreement”) entered into this _____ day of _____, 2024 and dated to be effective _____, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the “City”) and Volunteer Behavioral Health Care System, a nonprofit corporation of the State of Tennessee (the “Subrecipient”), located at 1504 Williams Drive, Murfreesboro, TN 37129

WITNESSETH THAT:

WHEREAS, the City of Murfreesboro has received a settlement distribution through the National Prescription Opiate Litigation; and

WHEREAS, the City of Murfreesboro seeks to enter a Strategic Partnership with Volunteer Behavioral Health to prevent the misuse of opioids through the implementation of intervention and prevention strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids; and

WHEREAS, the City and Subrecipient desire to ensure funds are used for opioid remediation uses through identified core abatement strategies; and

WHEREAS, the cooperation of the City and the Subrecipient is essential for the successful local implementation of Opioid Remediation projects; and

WHEREAS, on May 11, 2024, the Murfreesboro City Council designated the settlement funds in the amount of \$290,115 for Subrecipient use for implementation of Opioid Remediation projects and programs; and

WHEREAS, Subrecipient, was selected to implement evidence-based or evidenced-informed programs or strategies to prevent misuse of opioids; and

NOW, THEREFORE, the parties hereto do mutually agree that this Agreement is entered into predicated upon the following terms and/or conditions, all and every one of which the parties hereto agree to observe and perform:

I. SCOPE OF SERVICES

1. **Scope of Services:** Subrecipient provides behavioral health services across 32 counties in Middle, Upper Cumberland, and South-East Tennessee, and is the designated Mobile Crisis provider for adults in 29 Tennessee Counties. In addition to the Co-Responder program and as part of the Mobile Crisis continuum, Subrecipient operates a Crisis Call Center (“Call Center”) which serves to centrally coordinate triage and dispatch efforts to provide timely and effective Mobile Crisis services. The Call Center is also part of the National Suicide Prevention Lifeline. Subrecipient also operates three Crisis Walk-in Centers (Chattanooga, Cookeville, and Cleveland) which include Pre-Arrest Diversion Programs as well as Crisis Stabilization Units for adults in Chattanooga and Cookeville.

Volunteer Behavioral Health, through the collaborative implementation of a Co-Responder program with MPD, will address Opioid misuse issues using core abatement strategies under Section D.1.6 as defined in the Schedule B: Approved Uses of Final Agreement (3.25.22) Section D: Address the Needs of Criminal Justice-Involved Persons, 1: Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions including established strategies such as: 1.6 Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.

Co-Responders will assist individuals and families that are experiencing a behavioral health crisis in resolving the crisis in the most clinically appropriate, least restrictive, and safest method. Co-Responders provide services to individuals in their community environment whenever possible. Co-Responders work to provide linkage and referrals to appropriate short and long-term resources.

Local law enforcement agencies are frequently asked to respond to calls for assistance involving individuals who are in a psychiatric crisis (defined in this Agreement as a mental health condition requiring immediate intervention to prevent further psychological or situational deterioration or injury to self or others).

It is the expectation of both Subrecipient and MPD that by working cooperatively and sharing respective expertise, they will be able to assist each other and provide the most appropriate response in individual situations.

The Project funded by this Agreement is (1) to continue the implementation of established collaborative resources between MPD and Subrecipient for crisis response and crisis intervention through an existing Memorandum of Understanding (the "MOU") and to underwrite the cost of providing salary and benefits for two full-time Mental Health Co-Responder positions, supplies, and equipment for the positions and Crisis Diversion Funds. The services provided by Subrecipient pursuant to this Agreement are hereinafter collectively referred to as the "Program" and are defined in further detail in Part B.

The Subrecipient, assuming responsibility for the implementation of the actual operation of the Program herein specified, shall perform services in a satisfactory and proper manner as determined by the City and as outlined per Part B.

2. **Revision of Scope:** The performance criteria, objectives and budget items may be modified, revised, or amended upon the joint written consent of the parties. The Subrecipient may request a budget revision, not to exceed the total award in this agreement, at any time throughout the duration of this Agreement. However, prior to any purchases under the new budget, the City must approve the revision in writing and the revision must not substantially change the scope or outcomes of the Program. Approval may be in the form of a letter, a fax, or an email.

II. COMMENCEMENT AND COMPLETION

1. **Commencement and Time of Performance:** The services of the Subrecipient are to commence as soon as practicable on or after the date of this Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement through a period ending October 31, 2024. All expenditures associated with implementation of this project must be expended or encumbered by October 31, 2024; and submitted for reimbursement by November 30, 2024.
2. **Agreement Completion Date:** Unless an extension has been approved by the City in advance, OR unless this Agreement is terminated earlier in accordance with other provisions herein, this agreement will end on October 31, 2024, except that Subrecipient shall complete such close-out requirements no later than the date dictated by **Section 3.7** below.

III. COMPENSATION AND USE OF FUNDS

1. **Regulation for Use of Funds:** The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Settlement Final Agreement dated March 25, 2022, or other regulations governing the use of these funds; and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. ***It is the Subrecipient's responsibility to read, understand, and comply with these regulations.***
2. **Total Payments:** Total amount of funds provided by the City to the Subrecipient under this Agreement shall not exceed \$58,250. At the sole discretion of the City, any unexpended funds as of October 31, 2024, may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City. All expenditures associated with implementation of this Project must be expended or encumbered by October 31, 2024; and submitted for reimbursement by November 30, 2024, unless a written extension request is received and approved by the City prior to September 30, 2024.
3. **Reimbursement Requests:** This is a cost-reimbursement Agreement. Disbursement of funds under this

Agreement may be requested only for necessary, reasonable, and allowable costs of this Project, and for which the Subrecipient has made payment during the period of performance as set forth above.

The City agrees to reimburse the Subrecipient for such costs, and payment shall be made upon the receipt of an invoice with supporting documentation requesting reimbursement, so long as the Subrecipient is current on all performance and financial reporting and has provided the necessary response and/or support for any other request, if any, that has been made by the City of Murfreesboro in regard to this Agreement. The City will reimburse all approved reimbursements requests within 30 days of the request. The request must include all of the necessary documentation and any questions must be sufficiently answered as determined by the City of Murfreesboro.

All requests for reimbursement must be accompanied by an invoice which identifies the address to which the payment should be remitted and supporting documentation substantiating the payment of the eligible expenses being requested for reimbursement. Such supporting documentation shall include, but is not limited to, an agency payment voucher; a copy of the signed check with which the payment was made; any invoices, receipts and/or bills from vendors; and any relevant time sheets and related payroll reports. The City reserves the right to request further supporting documentation as necessary to ensure compliance for auditing purposes.

4. **Double Reimbursement:** The Subrecipient must not claim reimbursement from the City under this Agreement for any portion of its obligations that has been paid by another source of revenue. A Duplication of Benefits (hereinafter "DOB") occurs when any subrecipient receives funding assistance from multiple sources of funding for the same expenses. If the City determines that a DOB has occurred, the funds that are in excess of the need and duplicated by other assistance received by the beneficiary for the same purpose must be recaptured. The Subrecipient must submit the Duplication of Benefits Certification, **Part D**, with the Requests for Reimbursement.
5. **Restriction on Disbursements:** Settlement Disbursement funds shall not be disbursed to Subrecipient except pursuant to the conditions of this Agreement. Disbursements may be suspended or terminated under this Agreement upon refusal to accept any additional conditions that may be imposed by the City at any time or if the Settlement funds distributed to the City of Murfreesboro are suspended or terminated.
6. **Withholding Payments:** All payments to the Subrecipient are subject to the Subrecipient's compliance with this Agreement. Any breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve the Agreement non-compliance.
7. **Close-out Reimbursement:** Close-out requests for reimbursement must be submitted by November 30, 2024. If not submitted, the unexpended funds under this Agreement shall revert to the City of Murfreesboro.
8. **Compliance with applicable laws:** The Subrecipient must comply with all other applicable statutes, regulations, and Executive orders, and the Subrecipient shall provide for compliance with the Settlement Funds Final Agreement, any implementing regulations, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

IV. ASSIGNMENTS

1. **Assignability:** Neither the City nor the Subrecipient shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.
2. **Subcontracting/Third Party Contracts:** The Subrecipient agrees to furnish the City with a copy of any and all third-party contracts that it executes in the performance of the work to be undertaken within the scope of this Agreement.

The Subrecipient agrees to incorporate or cause to be incorporated in all third-party contracts or subcontracts funded under the Settlement Funds Final Agreement program provisions requiring all applicable Federal, State, and local laws, rules, and regulations to be adhered to in accordance with all parts of this Agreement.

Specifically, the Subrecipient agrees to require and monitor compliance by all contractors, subcontractors, and other third parties. Any third-party contract that is not in accordance with the outlined budget in this Agreement will be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Subrecipient.

V. AUDITS AND INSPECTIONS

1. **Audits and Inspections:** The Subrecipient must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Finance & Tax Department of the City of Murfreesboro. Subrecipient personnel will make available to City staff and any other auditor authorized by the City, all program and accounting records and financial statements needed to meet the requirements of [2 CFR § 200.300 through 200.309](#) and [Subpart F](#). If any portion of the funds approved by this Agreement is subcontracted to other organizations for the delivery of objectives and criteria, the Subrecipient will ensure that the fiscal and performance records of the subcontractor will be available for inspection by Finance Department personnel or duly authorized auditors; by including appropriate clauses in all of its subcontracts.

VI. SUBRECIPIENT RESPONSIBILITIES

1. **Compliance with Laws:** All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Tennessee and local governments.
2. **Non-Municipal Personnel and Services:** All services required herein will be performed by the Subrecipient under the direction of its Board of Directors or other governing body. Any services outside the Scope of Services which the Subrecipient deems necessary to assign to a subcontractor, must first have written approval from the City.

VII. DOCUMENTATION AND RECORD KEEPING

1. **Establishment and Maintenance of Records:** The Subrecipient shall establish and maintain records of all actions, and accurate books of accounts for all funds received and disbursed with full documentation to substantiate each transaction. If the Subrecipient should go out of existence, custody of the records with respect to all matters covered by this Agreement shall be assigned and transferred to the City.
2. **Record Requirements:** The Subrecipient shall maintain all records required by the Federal regulations specified in [2 CFR Part 200, Subpart D](#), and that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:
 - a. Records providing a full description of each activity undertaken;
 - b. Records demonstrating that each activity undertaken meets the list of Opioid Remediation Uses under Schedule A and Schedule B of Exhibit E in the Final Agreement dated March 25, 2022;
 - c. Financial records that document all transactions and that can be properly documented and audited;
 - d. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documents;
 - e. Copies of all third party or subcontracts; and
 - f. Detailed records on the Subrecipient's organization, financial and administrative systems, and the specific Settlement funded project(s) or activities.
3. **Retention of and Access to Records:** The Subrecipient must retain all financial records, supporting documents, statistical records, and all other records pertinent to any and all expenditures incurred under this

Agreement, and any other information as requested by the City for a period of three years from the date of submission of the final expenditure report to the City of Murfreesboro. Records for real property and equipment acquired with funds under this Agreement shall be retained for three years after final disposition. If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

The Subrecipient agrees that the City, or any of their authorized representatives has access to and the right to examine all documents, papers, or other records which are pertinent to this Agreement, in order to make examinations, excerpts and transcripts. The right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. The City reserves the right, on demand and without notice, to review all of the Subrecipient's files associated with this Agreement. The same right to review will be imposed upon any third party or subcontractor of the Subrecipient; therefore, it is the Subrecipient's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City to ensure compliance with this Agreement and with all local, state, and Federal regulations.

4. **Documentation of Costs:** All costs must be supported by proper documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

VIII. PROCUREMENT

The Subrecipient must have and use documented procurement procedures, consistent with Federal, State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. If the Subrecipient does not have documented procurement procedures, they must follow the City's procurement policy.

IX. PERFORMANCE AND FINANCIAL REPORTING

The Subrecipient is required to submit any requested performance and financial reports on or before November 30, 2024.

With reasonable notice given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement to satisfy compliance with any requirement of this Agreement.

X. PROGRAM MONITORING

1. **General:** All data necessary to review and monitor project progress as determined by the City will be made available to City personnel or an auditor as designated by the City to oversee compliance monitoring (hereinafter the "Auditor"). This includes, but is not limited to, performance records and interviews with the Subrecipient staff, as required by the City.

City personnel or the designated Auditor will also make field inspections at the office/job site(s), as necessary, including but not limited to the following:

- a. The Subrecipient fails to take recommended corrective action;
- b. Projects are at high risk of error for activities that serve large number of people;
- c. Projects are at high risk based on the amount of funds involved.

2. **Financial Monitoring:** City staff shall monitor, review, and evaluate the financial procedures of the Subrecipient through documents and financial reports submitted to the City and on-site. The Subrecipient shall provide and make available to the City such reports and records that will be necessary for a proper financial evaluation. With reasonable notice being given to the Subrecipient, the City may schedule on-site visits.

XI. TERMINATION, SANCTIONS AND CLOSEOUTS

1. **Termination:** In the event that the Subrecipient fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part. The City may also terminate this Agreement for convenience.

In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

In the event of termination of this Agreement by the City, when termination is due to Subrecipient noncompliance as set forth above, the Subrecipient shall forfeit to the City all unexpended monies provided under the Agreement. At the City's discretion, the Subrecipient may also be required to refund all funds awarded during the period of this Agreement that have already been spent by the Subrecipient and reimbursed by the City.

Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:

- a. Reasonable description of the default/reason for termination;
- b. Demand for a cure; and
- c. Statement of reasonable time within which a cure must be effected. Such reasonable time will be presumed to be not less than five, nor more than fifteen, business days. Such times shall be measured from the actual receipt of said notice.

If the Subrecipient cures the default within the reasonable period of time set forth in the notice, or as otherwise agreed between the parties, the City shall not terminate the Agreement and the written notice of proposed termination shall be deemed revoked, null and void.

2. **Imposition of Sanctions:** The City reserves the right to impose sanctions on the Subrecipient for the violation of any terms of this Agreement, failure to comply with any terms of this Agreement, or failure to undertake the project in a timely manner. Sanctions may include, but are not necessarily limited to, suspension of the grant operations until corrective measures are implemented, withholding any and all project funds, termination of the Agreement, requiring the Subrecipient to return funds already received, or barring the Subrecipient from future funding. No sanction may be imposed pursuant to this paragraph unless the City complies with requirements of **Section 11.1** and the Subrecipient fails to cure the alleged default within the reasonable period of time provided for in the notice or as otherwise agreed between the parties.
3. **Closeout:** The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during the close-out period shall include, but are not limited to, submitting final reimbursement request and final activity/progress report to the City, account for any real or personal property acquired, and determining the custodianship of records. Closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Subrecipient.

XII. TAXES

The City shall not be liable for the payment of any taxes levied by the City, State, or Federal Governments against the Subrecipient, and all such taxes shall be paid by Subrecipient; however, should the City nevertheless pay any such taxes, the Subrecipient shall immediately reimburse the City.

XIII. MISCELLANEOUS CLAUSES AND NOTICES

1. **Terms Herein Controlling Provisions**: The terms of this Agreement shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law**: This Agreement shall be interpreted under and governed by the laws of the State of Tennessee. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Rutherford County, Tennessee.
3. **Disclaimer of Liability**: City shall not hold harmless or indemnify Subrecipient beyond that liability incurred under the Tennessee Governmental Tort Liability Act (T.C.A. §29-20-101 *et seq.*).
4. **Acceptance of Agreement**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
5. **Arbitration, Damages, Jury Trial and Warranties**: The Subrecipient and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void. The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement.

The City does not consent to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Subrecipient waives its right to a jury trial to resolve any disputes that may arise hereunder.

No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

6. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Tennessee Governmental Tort Liability Act (T.C.A. §29-20-101 *et seq.*), Subrecipient shall bear the risk of any loss or damage to any personal property to which Subrecipient holds title.
7. **Dissemination of Information**: The Subrecipient, at such times and in such forms as the City may require, shall furnish to the City, such statements, records, reports, data and information the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Subrecipient under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in the Tennessee Public Records Act (T.C.A. §10-7-503 *et seq.*).
8. **Identification of Documents and Projects**: All projects, reports, maps, news releases and/or other documents undertaken as part of this Agreement, other than documents exclusively for internal use with City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "City of Murfreesboro", then name of the Subrecipient, and, in the case of written material, the month and year of preparation.
9. **Compliance with Law**. Subrecipient shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
10. **Third Party Exclusion**. This Agreement is intended solely for the benefit of City and Subrecipient and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party

may sue for damages based on the terms or performance of this Agreement.

11. Independent Contractor: The parties agree that the relationship between the Subrecipient and the City shall be that of an independent contractor. No employee or agent of the Subrecipient shall be considered an employee of the City and this Agreement in no manner shall be construed to be that of a partnership between the parties.

XIV. APPENDICES

All Appendices, as listed below and referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

- Part A – Agreement
- Part B – Subrecipient Information, Project Scope, and Timeline
- Part C – Project Budget
- Part D – Duplication of Benefits Certification

XVIII. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Subrecipient, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Subrecipient and to bind the Subrecipient to this Agreement, and further that said Subrecipient has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

SUBRECIPIENT

CITY OF MURFREESBORO

CEO or Representative
Volunteer Behavioral Health Care System

Date: _____

Shane McFarland, Mayor

Date: _____

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

Adam F. Tucker, City Attorney

PART B

SUBRECIPIENT INFORMATION, PROJECT SCOPE, AND TIMELINE

I. SUBRECIPIENT INFORMATION

Subrecipient: Volunteer Behavioral Health Care System
SAM UEI: K7EEB8JCX1N1
Funding Source: National Opioid Litigation Settlement Fund
Award Amount: \$58,250

Address: 1504 Williams Dr.
City: Murfreesboro
State: Tennessee
Zip Code + 4: 37129-3247

Contact Person: Dawn J. Carlton, VP, Chief Financial Officer
Contact Email: dcarlton@vbhcs.org
Contact Phone: 423-825-4345

II. PROJECT SCOPE

Project Overview: The Project funded by this Agreement is to underwrite the cost of establishing additional collaborative resources between the Murfreesboro Police Department and Volunteer Behavioral Health Care crisis response and crisis intervention by expanding an existing Memorandum of Understanding for one Mental Health Co-Responder currently in place to providing two additional Mental Health Co-Responders and providing extended hours of coverage.

Providing Behavioral Health Services to Address Mental Health and Substance Abuse Challenges exacerbated by the opioid misuse:

- (1) **Background** – Subrecipient provides behavioral health services across 32 counties in Middle, Upper Cumberland, and Southeast Tennessee, and is the designated Mobile Crisis provider for adults in 29 Tennessee Counties. In addition to the Co-Responder program and as part of the Mobile Crisis continuum Subrecipient operates a Crisis Call Center (“Call Center”) which serves to centrally coordinate triage and dispatch efforts in order to provide timely and effective Mobile Crisis services. The Call Center is also part of the National Suicide Prevention Lifeline. Subrecipient also operates three Crisis Walk-in Centers (Chattanooga, Cookeville, and Cleveland) which include Pre-Arrest Diversion Programs as well as Crisis Stabilization Units for adults in Chattanooga and Cookeville.

The goal of Co-Responders is to assist individuals and families that are experiencing a behavioral health crisis in resolving the crisis in the most clinically appropriate, least restrictive, and safest method. Co-Responders provide services to individuals in their community environment whenever possible. Co-Responders work to provide linkage and referrals to appropriate short and long-term resources.

Local law enforcement agencies are frequently asked to respond to calls for assistance involving individuals who are in a psychiatric crisis (defined in this Agreement as a mental health conditions requiring immediate intervention to prevent further psychological or situational deterioration or injury to self or others).

It is the expectation of both Co-Responder and MPD that by working cooperatively and sharing respective expertise, they will be able to assist each other and provide the most appropriate response in individual situation.

(2) Co-Responder Role

- a. Co-Responders will assist law enforcement in responding to individuals in the community having a mental health crisis to provide de-escalation, assessment, resources and linkage to services. The Co-Responder and law enforcement will work collaboratively to provide better outcomes and services to those in need. The combined expertise of the co-responder and law enforcement will allow for increased safety and on-scene evaluation to help individuals obtain the most appropriate level of care while avoiding unnecessary emergency department admissions and offering an alternative to incarceration for crimes related to their mental illness.
- b. Co-Responders will adhere to prevailing and current confidentiality laws when interacting with law enforcement with respect to a psychiatric emergency ensuring the safety of the person in crisis and/or the public. Co-Responders will provide information without written consent from the client, subject to the requirements and restrictions of the Health Insurance Portability and accountability Act ("HIPAA") and all other applicable laws and MPD policies in the following situations:
 - i. In an emergency where there is a threat of immediate harm to self or others, Co-Responders will exchange information with police, other service providers, family members, or other collateral individuals of the consumer who have need to know.
 - ii. Staff will follow all laws related to reporting of child, dependent, elderly adult abuse and/or domestic violence abuse.
- c. Co-Responders will respond, with a designated officer, to calls dispatched from the 911 call center or other Law Enforcement sources to a person in crisis, or a call for collaterals including hospital personnel, family members, etc. The mode of transportation utilized by the Co-Responder in responding to a scene will be dependent on circumstances present. Modes of transportation may include utilizing the Co-Responder's own vehicle or when possible, transportation by a MPD officer in a department vehicle.

d. Co-Responders will not respond for face-to-face consultation to any situation that may pose a danger or potential danger to consumer, staff, or others without first requesting MPD involvement. The assessment of danger or potential danger will be at the discretion of Co-Responders. Co-Responders will discuss the situation with officers on scene and determine the nature of the crisis. Co-Responder will not remain in any location deemed unsafe if law enforcement involvement has been requested and on scene officers must leave.

e. During a face-to-face response Co-Responders will evaluate the situation and arrange for the most appropriate disposition.

f. Unless an individual is deemed to meet criteria under T.C.A. § 33-6-404, the services that can be rendered are voluntary, this includes Pre-Arrest Diversion, Crisis Stabilization Unit Respite, Observation, Outpatient and Alcohol and Drug services.

g. If the person in crisis needs to be transported and is not in need of secure transportation per Mobile Crisis evaluation, Co-Responders will attempt to arrange transportation to the appropriate psychiatric facility by any other means available. If an emergency petition is required in accordance with T.C.A. § 33-3-404, Co-Responder may request MPD provide transportation for medical clearance.

h. Co-Responders will be available to MPD for in-service training in mental health related topics as requested.

i. Subrecipient will provide behavioral health crisis assessments when consulted and as appropriate via telehealth with MPD as space and equipment are available.

j. Subrecipient acknowledges that law enforcement utilizes body cameras or other recording devices which will not be turned off and will record all interactions, which may include interactions involving Co-Responder consultations and assessments.

(3) **Law Enforcement Role**

a. The MPD may contact the Co-Responder for consultation on a case involving a psychiatric crisis. In cases of behavior that may not result directly from mental illness, MPD will use their judgment to determine Co-Responder involvement.

b. Should MPD feel a person in a psychiatric crisis is in immediate need for evaluation and Mobile Crisis staff cannot respond in person immediately for any reason, officers have the ability to complete a T.C.A. §33-6-401 (Title 33, Chapter 6, Part 4, Tenn. Code Annotated) requesting an examination for emergency

admission, which allows for law enforcement transport and initiates a request for consumer to be seen for emergent needs (i.e. deemed danger to self or others, cannot be maintained in current environment).

c. MPD and Co-Responders will work collaboratively to evaluate the person in crisis and coordinate the most appropriate disposition.

d. MPD will provide information on applicable laws and department orders/procedures regarding emergency evaluation to Co-Responders.

e. MPD will take all necessary steps to protect the integrity and security of the recorded footage gathered by the use of body cameras or other recording devices.

PART C Program BUDGET

Opioid Prevention			
Needs:	Description	Costs	Budget Detail
Salary	2 Mental Health Co-Responders	\$33,973	2 FT 100% of time MH Co-Responders for 4 months of pay-July1-October 31
Benefits		\$14,560	Taxes, Medical, Dental, etc.
Admin		\$19,412	
Total		\$58,250	

PART D
DUPLICATION OF BENEFITS CERTIFICATION

To be submitted by the Subrecipient with its reimbursement requests.

The undersigned, on behalf of and as a duly authorized agent and representative of the Subrecipient, Volunteer Behavioral Health Care System, certifies and represents that all information contained in and enclosed with the reimbursement request is true to the best of their knowledge and acknowledges that the City of Murfreesboro (City) has relied on such information to award assistance. The Subrecipient also certifies that they have not received assistance or reimbursement from any other sources of funding for the specific expenses included in this reimbursement request.

The Subrecipient acknowledges that it may be prosecuted by Federal, State, or local authorities and/or that repayment of all funds must be repaid to the City in the event that it makes or files false, misleading, or incomplete statements, documents or reimbursement requests.

Month of Reimbursement Request

Signature of Volunteer Behavioral Health
Care System Signing Agent

Printed Name

Title

Date

COUNCIL COMMUNICATION

Meeting Date: 7/25/2024

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

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Asphalt and concrete purchases report.

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 the best cost savings to the Department and our customers.

Fiscal Impacts

Asphalt purchases, \$120,000, and concrete purchases, \$60,000, are funded by the Department’s FY25 Budget.

Attachments

Asphalt and Concrete Purchases Report

FY25 STREET DEPARTMENT ASPHALT PURCHASES

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
	Hawkins		\$ -		\$ -	\$ -
			\$ -		\$ -	\$ -
			\$ -		\$ -	\$ -
			\$ -		\$ -	\$ -
			\$ -		\$ -	\$ -
			\$ -		\$ -	\$ -
			\$ -		\$ -	\$ -
			\$ -		\$ -	\$ -

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/1/2024	Vulcan	307BM PG 64-22	\$ 76.00	9.69	\$ 736.44	\$ 736.44
			\$ -	0.00	\$ -	\$ 736.44
			\$ -	0.00	\$ -	\$ 736.44
			\$ -	0.00	\$ -	\$ 736.44
			\$ -	0.00	\$ -	\$ 736.44
			\$ -	0.00	\$ -	\$ 736.44
			\$ -	0.00	\$ -	\$ 736.44
			\$ -	0.00	\$ -	\$ 736.44
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -

Invoice Date	Vendor	Type	Rate	Tons	Total	FY Total
7/2/2024	Wiregrass Construction	Commercial 411-E	\$ 94.98	13.00	\$ 1,234.74	\$ 1,234.74
7/3/2024	Wiregrass Construction	Commercial 411-E	\$ 95.02	12.05	\$ 1,144.99	\$ 2,379.73
			\$ -	0.00	\$ -	\$ 2,379.73
			\$ -	0.00	\$ -	\$ 2,379.73
			\$ -	0.00	\$ -	\$ 2,379.73
			\$ -	0.00	\$ -	\$ 2,379.73
			\$ -	0.00	\$ -	\$ 2,379.73
			\$ -	0.00	\$ -	\$ 2,379.73
			\$ -	0.00	\$ -	\$ 2,379.73
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -
			\$ -	0.00	\$ -	\$ -

FY 25 STREET DEPARTMENT CONCRETE PURCHASES

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/8/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2.00		\$ 276.00	\$ 276.00
7/11/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	1.50		\$ 207.00	\$ 483.00
7/10/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2.00		\$ 276.00	\$ 759.00
7/9/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	4.00		\$ 552.00	\$ 1,311.00
		Min Load Charge	\$ 75.00	1.00		\$ 75.00	\$ 1,386.00
		Fuel Surcharge	\$ 50.00	1.00		\$ 50.00	\$ 1,436.00
		Retarder 2%	\$ 8.00	4.00		\$ 32.00	\$ 1,468.00
7/3/2024	Nashville Ready Mix	Flowable Fill TDOT	\$ 126.00	2.00		\$ 252.00	\$ 1,720.00
7/15/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.50		\$ 207.00	\$ 1,927.00
7/16/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 2,065.00
							\$ 2,065.00
							\$ 2,065.00
							\$ 2,065.00
							\$ 2,065.00
							\$ 2,065.00

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/19/2024	Orgain Ready Mix	3000 PSI 1/2" AGG	\$ 139.00	1		\$ 139.00	\$ 139.00

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

COUNCIL COMMUNICATION

Meeting Date: 07/25/2024

Item Title: Timekeeping Software Renewal FY25

Department: Information Technology Department

Presented by: Ronald Head, Assistant Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Renewal of City-wide timekeeping software with UKG.

Staff Recommendation

Approve the annual renewal of City-wide timekeeping software.

This agreement shall automatically renew each year, contingent upon the availability of budgeted funds allocated for this purpose. Unless otherwise notified, the renewal will occur without the need for additional approval, provided that the necessary budgeted amounts are confirmed and allocated. IT will ensure that budget provisions are reviewed and confirmed annually to maintain compliance and ensure continued funding.

Background Information

The City has been utilizing UKG's timekeeping software since 2017 for efficient management of employee hours and payroll. This is an annual renewal and is a budgeted expense. The software has proven to be reliable and cost-effective, making it a sensible choice for ongoing use in City operations.

Council Priorities Served

Responsible budgeting

Renewing the City's timekeeping software ensures accurate payroll and efficient resource allocation.

Fiscal Impact

The estimated expense, \$125,245, is funded by the Department's FY25 operating budget. This amount will vary depending on number of licensed employees.

Attachments

UKG Renewal Quote



RENEWAL ORDER FORM

Quote#: Q-258463

Date: 17 May, 2024

Customer Legal Name:
CITY OF MURFREESBORO

Ship To: CITY OF MURFREESBORO
111 W VINE ST
MURFREESBORO, TN 37130 USA

Customer Legal Address:
111 W VINE ST, MURFREESBORO, TN 37130 USA

Bill To: CITY OF MURFREESBORO
PO BOX 1139
MURFREESBORO, TN 37133-1139 USA

Bill To Contact:

Payment Terms: Net 30 Days
Customer PO Number:
Renewal Term: 12 months
Billing Frequency: Annual
Billing Type: Advance

Currency: USD
Solution ID: 6118446

Contract Summary

Contract Period Start Date: 9/21/2024 12:00:00 AM

Contract Period End Date: 9/20/2025 12:00:00 AM

Total Price: USD 125,053.60

The Total Price is the total billable amount (pre-tax) for the contract period listed above.

Annualized Contract Value: USD 125,244.60

The Annualized Contract Value is the value of the contract if all services are priced for 365 days. The Annualized Contract Value does not include estimated tax. Please note that this quote may include services priced for prorated periods.

SaaS Application

Product Name	Duration	Quantity	Monthly Total	Total Price
UKG PRO TIMEKEEPING HOURLY	12	1,465	USD 7,288.90	USD 87,466.83
UKG PRO TIMEKEEPING SALARIED	12	185	USD 460.22	USD 5,522.65
UKG PRO LEAVE	12	1,550	USD 1,542.36	USD 18,508.34
UKG PRO LEAVE	12	250	USD 248.77	USD 2,985.22
UKG PRO TIMEKEEPING HOURLY	12	150	USD 745.68	USD 8,948.16
Total Price				USD 123,431.20

Tiered Pricing Application



Billing Frequency: **Annual in Advance**

Product Name	Total License Count	License Count Tier	Monthly Price
UKG PRO WORKFORCE MANAGEMENT OUTLOOK INTEGRATION	1,550	1 to 2499	USD 135.20
Monthly Total			USD 135.20

CITY OF MURFREESBORO		UKG Kronos Systems LLC	
Signature:	_____	Signature:	<small>DocuSigned by:</small> <i>Gina Shaw</i> <small>2428CB91F04E444...</small>
Name:	_____	Name:	Gina Shaw
Title:	_____	Title:	Assoc. Manager, Renewals
Date:	_____	Date:	6/12/2024 11:51 AM EDT
<p>The monthly price on this Order has been rounded to two decimal places for display purposes. As many as eight decimal places may be present in the actual price. Due to the rounding calculations, the actual price may not display as expected when displayed on your Order. Nonetheless, the actual price on your invoice is the true and binding total for this Order for purposes of amounts owed for the term.</p>			

APPROVED AS TO FORM
DocuSigned by:
Adam F. Tucker

33203591F401
 Adam F. Tucker, City Attorney

UKG is aligning our product brand and announcing that the UKG Dimensions® and UKG Pro® solutions will be one product suite under the name UKG Pro. Click here to learn more and view examples of current to future names

<https://www.ukg.com/one-suite#WhatproductnamesarechangingunderUKGDimensions>

**CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
KRONOS INCORPORATED
FOR
WORKFORCE MANAGEMENT SOFTWARE AND
RELATED SERVICES AND EQUIPMENT**

This contract is entered into on March 18, 2017 (the "Effective Date"), by and between **THE CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **KRONOS INCORPORATED**, a corporation of the State of Massachusetts ("Kronos"). This contract consists of the following documents:

- ***U.S. Communities Contract 14-JLR-003: Workforce Management System, between Kronos Incorporated and Harford County (Maryland) Public Schools, on behalf of U.S. Communities Governmental Purchasing Alliance, dated March 18, 2014, as amended on November 21, 2016, ("U.S. Communities Contract"), Exhibit A (Sections A, B, C, C-1, D, and E only), and Exhibit B (Pricing), copies of which are attached hereto as Exhibit 1;***
- ***This Document; and***
- ***The Order Form # 560475-1 signed concurrently with this contract (Perpetual License to SaaS Conversion and related services), Professional Services Work Order signed concurrently with this contract, and Support Services Quote (dated November 30, 2016), Exhibits 2, 3, and 4, respectively.***

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

- ***Any properly executed amendment or change order (most recent with first priority)***
- ***This Document***
- ***The order form and services scope statement associated with the purchase and delivery of a specific product, service, or offering, including without limitation Exhibits 2, 3, and 4 hereto.***
- ***U.S. Communities Contract***

1. Duties and Responsibilities of Kronos.

- a. Kronos agrees to provide the products, services and offerings specified in Exhibits 2, 3, and 4 and any subsequent order form or services scope statement executed by the parties in accordance with terms and conditions set forth in this Document and Exhibit 1.
- b. In providing any such products, services, and offerings, Kronos must to comply with all applicable federal, state, and local laws, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Kronos is solely response to any and all taxes imposed upon Kronos and acknowledges it cannot claim exemption from taxes by virtue of any municipal exemption from taxation.

2. Duties and Responsibilities of the City. City agrees to perform the duties and responsibilities specified in this Document and the Exhibits.

3. **Price; Payment.** The price for products, services, and offerings provided pursuant to this Agreement shall be invoiced at the prices and charges set forth in Exhibit B to the U.S. Communities Contract. Payment will be made by the City in accordance with Exhibits A to the U.S. Communities Contract.
4. **Term and Termination.**
 - a. **Initial Term.** The initial term of this Agreement shall be one (1) year beginning on the Effective Date set forth above.
 - b. **Additional Terms.** At the expiration of the Initial Term, this Agreement shall automatically renew for successive one-year terms unless either party provides notice of its intent not to renew at least sixty (60) days prior the expiration of the then-current term.
 - c. **Termination of Agreement.**
 - i. ***Termination for Material Breach.*** Either party may terminate this Agreement for material breach on thirty (30) days' written notice unless the other party cures such breach within thirty (30) days after the serving of such notice; provided, termination will become effective immediately upon such notice, without opportunity to cure, if the injury caused by the breach is of a type that both parties agree to be incapable of cure. Upon termination under this paragraph, the damaged party may seek its remedies available at law and equity to the extent consistent with the terms of the Agreement.
 - ii. ***Termination for Non-Appropriation of Funds.*** Should funding for the services be discontinued, City shall have the right to terminate the Agreement immediately upon written notice to Kronos. In such event, the City agree to pay for the products delivered and the services performed under the terms of the Agreement prior to the receipt by Kronos of the termination notice. Except with respect to order forms for ongoing support services, the City acknowledges that execution of an order form shall represent that funds have been appropriated for the fees associated with such order form.
 - iii. ***Parties' Obligations upon Termination During the Initial Term.*** Notwithstanding the foregoing, the parties' obligations upon termination during the initial term shall be governed by the termination provisions set forth in Exhibit 1 applicable to the products, services, and offerings provided by Kronos pursuant to this Agreement.
 - d. **Termination of Specific Service or Offering.** Notwithstanding the foregoing, should a party seek to terminate a specific service or offering made pursuant to a specific order form without terminating this Agreement in its entirety, the termination of such service or offering shall be governed the termination provisions applicable to that specific service or offering in Exhibit 1.
5. **Specific Modifications and Amendments to U.S. Communities Contract**
 - a. **Section B, Acceptance.** Section B.7 of Exhibit 1 is amended by deleting the second paragraph thereof in its entirety and in lieu thereof substituting the following:

The Test Period shall be for 60 days. If Customer has not given Kronos a written deficiency statement specifying how the Equipment or Software fails to meet the Specifications ("Deficiency Statement") within the Test Period, the Equipment and

Software shall be deemed accepted. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, and Customer shall have an additional 60 days to evaluate the Equipment and Software. If the Equipment or Software does not meet the Specifications at the end of the second 60-day period, either Customer or Kronos may terminate this Agreement. Upon any such termination, Customer shall return all Equipment and Software (and related documentation) to Kronos, and Kronos shall refund any monies paid by Customer to Kronos for the returned Equipment and Software. Except for Kronos' obligations to provide the software and equipment support services set forth in Exhibits 1 and 2 and to indemnify the City, as forth in Section B(16) of Exhibit 1, as amended herein, neither party shall have further liability to the other for the products that were the subject of the Acceptance Test.

- b. Section B, Limitation of Liability.** Section B.17 of Exhibit 1 is amended by deleting the second paragraph thereof in its entirety and in lieu thereof substituting the following:

EXCEPT FOR (I) KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN ARTICLE 16 (AS AMENDED) AND (II) CITY'S CLAIMS FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF KRONOS' EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN NO EVENT SHALL KRONOS' OR ITS PARENTS', SUBSIDIARIES', AFFILIATES', OR THIRD PARTY LICENSOR'S LIABILITY TO THE CITY, HOWSOEVER CAUSED, EXCEED TWO (2) TIMES THE VALUE OF THE ORDER WHICH GIVES RISE TO THE CLAIM, AND IN NO EVENT WILL KRONOS OR ITS PARENTS, SUBSIDIARIES, AFFILIATES, OR THIRD PARTY LICENSORS BE LIABLE FOR LOST PROFITS OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES (EXCLUDING DAMAGES FOR DATA BREACH AND LOSS OF PERSONALLY IDENTIFIABLE INFORMATION) ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

- c. Section C, Limitation of Liability.** Section C.9 of Exhibit 1 is amended by deleting the second paragraph thereof in its entirety and in lieu thereof substituting the following:

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE LICENSE AGREEMENT (SECTION B(17), AS AMENDED), EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE SYSTEMS OR MACHINE ERROR.

- d. Section C-1, Limitation of Liability.** Section C-1.9 of Exhibit 1 is amended by deleting the second paragraph thereof in its entirety and in lieu thereof substituting the following:

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE LICENSE AGREEMENT (SECTION B(17), AS AMENDED ABOVE BY SECTION 4(C) OF THIS DOCUMENT), EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY

INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE SYSTEMS OR MACHINE ERROR.

- e. **Section D, Indemnification.** Section D.13 of Exhibit 1 is amended by deleting subsection D13.3 in its entirety and in lieu thereof substituting the following:

13.3 To the extent permitted under Tennessee law and subject to the doctrine of comparative fault, Customer shall be responsible and liable for damages suffered by Kronos, its Suppliers, and their respective directors, officers, employees, agents and independent contractors stemming from: (a) claims brought by Customer's employees arising out of Customer's configuration of the Services; (b) copyright and patent infringement claims arising from Customer's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification or combination is a cause of such infringement and was not authorized by Kronos; or (c) a claim that the Customer infringes in any manner any intellectual property right of any third party or that any of the Customer Content contains any material or information that: (i) is obscene, defamatory, libelous, or slanderous; (ii) violates any person's right of publicity, privacy or personality; or (iii) has otherwise caused or resulted in any tort, injury, damage, or harm to any other person; provided, however, under no circumstances shall Customer be liable for any attorneys' fees or legal expenses incurred by Kronos, its Suppliers, and their respective directors, officers, employees, agents and independent contractors in connection with prosecuting or defending against any such claim.

- f. **Section D, Limitation of Liability.** Section D.14 is amended by deleting subsections 14.1, 14.2, 14.3, and 14.4 thereof in its entirety and in lieu thereof substituting the following:

- 14.1 Except as specifically provided in this agreement (including sections B, C, C-1, D, and E, as amended), Kronos and its suppliers will not be liable for any damages or injuries caused by the use of the services or by an errors, delays, interruptions in transmission, or failures of the Services.
- 14.2 Except for Kronos's indemnification obligations set forth in sections B.16, D.13, and E.13 of Exhibit 1, the total aggregate liability to Customer and/or any third party, howsoever caused, shall not exceed two (2) times the value of the order which gives rise to the claim, and in no event will Kronos or its parents, subsidiaries, affiliates, or third-party licensors be liable for lost profits or any other incidental or consequential damages (excluding damages for data breach and loss of personal identifiable information) arising out of this agreement whether such claim is based on warranty, contract, tort or the existence furnishing, functioning or customer's specific use of, or inability to so use any equipment, software or services provided for in this Agreement.
- 14.3 In addition to the limitations set forth in the license agreement (section B.17, as amended) and except with respect to liability arising from Kronos' gross negligence or willful misconduct, Kronos disclaims any and all liability and service credits, including such liability related to a breach of security or disclosure, resulting from any externally introduced harmful program (including viruses, trojan horses, and worms), customer's content or applications, third party unauthorized access of equipment or software systems or machine error.

- g. **Section E, Indemnification.** Section E.13.3 of Exhibit 1 is amended by deleting subsection E13.3 in its entirety and in lieu thereof substituting the following:

13.3 To the extent permitted under Tennessee law and subject to the doctrine of comparative fault, Customer shall be responsible and liable for damages suffered by Kronos, its Suppliers, and their respective directors, officers, employees, agents and independent contractors stemming from: (a) claims brought by Customer's employees arising out of Customer's configuration of the Services; (b) copyright and patent infringement claims arising from Customer's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification or combination is a cause of such infringement and was not authorized by Kronos; or (c) a claim that the Customer infringes in any manner any intellectual property right of any third party or that any of the Customer Content contains any material or information that: (i) is obscene, defamatory, libelous, or slanderous; (ii) violates any person's right of publicity, privacy or personality; or (iii) has otherwise caused or resulted in any tort, injury, damage, or harm to any other person; provided, however, under no circumstances shall Customer be liable for any attorneys' fees or legal expenses incurred by Kronos, its Suppliers, and their respective directors, officers, employees, agents and independent contractors in connection with prosecuting or defending against any such claim.

- h. **Section E, Limitation of Liability.** Section E.14 is amended by deleting subsections 14.1, 14.2, 14.3, and 14.4 thereof in its entirety and in lieu thereof substituting the following:

- 14.1 Except as specifically provided in this agreement (including sections B, C, C-1, D, and E, as amended), Kronos and its suppliers will not be liable for any damages or injuries caused by the use of the services or by an errors, delays, interruptions in transmission, or failures of the Services.
- 14.2 Except for Kronos's indemnification obligations set forth in sections B.16, D.13, and E.13 of Exhibit 1, the total aggregate liability to Customer and/or any third party, howsoever caused, shall not exceed two (2) times the value of the order which gives rise to the claim, and in no event will Kronos or its parents, subsidiaries, affiliates, or third-party licensors be liable for lost profits or any other incidental or consequential damages (excluding damages for data breach and loss of personal identifiable information) arising out of this agreement whether such claim is based on warranty, contract, tort or the existence furnishing, functioning or customer's specific use of, or inability to so use any equipment, software or services provided for in this Agreement.
- 14.3 In addition to the limitations set forth in the license agreement (section B.17), as amended), except with respect to liability arising from Kronos' gross negligence or willful misconduct, Kronos disclaims any and all liability and service credits, including such liability related to a breach of security or disclosure, resulting from any externally introduced harmful program (including viruses, trojan horses, and worms), customer's content or applications, third party unauthorized access of equipment or software systems or machine error.

6. **Cooperation with Tyler Technologies, Inc.** Kronos acknowledges that the City has entered into this Agreement to Kronos based on its partnering with Tyler Technologies, Inc. ("Tyler") to provide the City with an enterprise resource planning (ERP) solution. Kronos agrees to cooperate with Tyler as may reasonably be required and as reasonably necessary to accommodate both parties schedules in the performance of the services agreed with the City.

Kronos further agrees to cooperate with Tyler to integrate Kronos's and Tyler's components of the jointly proposed ERP solutions during the implementation. Any dispute or difference of opinions between Tyler and Kronos relating to the ERP solutions will be submitted to the dispute resolution process set forth in Section 22 for resolution.

7. **Maintenance of Records.** Kronos shall maintain documentation for all charges associated with services provided pursuant to this Agreement. The books, records, and documents of Kronos, insofar as they relate to work performed or money received under the Agreement, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit during Kronos regular business hours and upon reasonable prior notice by City or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
8. **Modification of Agreement.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required. Minor modifications to the Agreement may be executed by signature of the City Manager in lieu of the City's signatory hereto.
9. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.
10. **Waiver.** No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
11. **Employment.** Kronos shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
12. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Kronos 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, Kronos may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

13. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
14. **Insurance.** Prior to performing services under this Agreement, Kronos shall provide the City with certificates of insurance evidencing the following insurance coverage: a) Commercial general liability insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate; b) Automobile liability insurance of at least \$1,000,000 each occurrence; c) Professional (errors and omissions) liability insurance of at least \$1,000,000 per claim and \$1,000,000 aggregate; d) Umbrella liability insurance of \$5,000,000 each occurrence and \$5,000,000.00 aggregate; and e) Workers' compensation complying with statutory requirements and employer's liability insurance with a limit of \$500,000 per occurrence. Kronos shall see that the City is named as an additional insured on Kronos' commercial general liability and automobile insurance policies.
15. **Entire Agreement.** This Contract, including Exhibits 1 and 2 hereto, set forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
16. **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 Motorola may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
17. **Dispute Resolution.** City will notify Kronos in writing within fifteen (15) days of becoming aware of a dispute. If Kronos and City cannot resolve such dispute within thirty (30) calendar days of Kronos's receipt of written notice from City, the following procedure will apply:
 - a. Each party shall appoint one (1) person to act as an impartial representative. The appointed individual will be of sufficient knowledge and experience to understand and deal with the dispute but will not be a person assigned to the project. The set of five (5) individuals consisting of Kronos's Project Manager for this project, City's IT Director, a representative of the City's implementation consultant/independent project manager, if any, for this project and the two (2) appointees is called a Dispute Resolution Group. In the event the dispute also involves Tyler Technologies, Inc., the Dispute Resolution Group shall include Tyler Technologies, Inc.'s Project Manager and one (1) additional person appointed by Tyler Technologies, Inc. to act as an impartial representative.
 - b. The Dispute Resolution Group shall convene no later than twenty-one (21) calendar days after the expiration of the thirty (30) calendar day period referenced above and

shall meet for a maximum of four (4) four (4) hour sessions during the subsequent four (4) business days, unless otherwise mutually agreed. Any resolution will be in writing and signed by both parties. Such resolution will constitute a binding amendment to the Agreement.

In the event the Dispute Resolution Group fails to resolve the dispute as set forth above, the dispute will be referred to non-binding mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither party will initiate litigation until seven (7) days after the first mediation conference, unless the other party has materially breached its obligations set forth in the preceding sentence. Thereafter, either party may assert its other rights and remedies under this Agreement in a court whose jurisdiction includes Rutherford County, Tennessee.

All meetings and discussions of the Dispute Resolution Group will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Civil Procedure 408 or any similar applicable state rule. Nothing in this section will prevent a party from applying to a federal or state court of competent jurisdiction to obtain injunctive and/or declaratory relief pending resolution of the dispute through the dispute resolution procedures set forth herein.

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

- a. Notices to City shall be sent to:

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

- b. Notices to Kronos shall be sent to:

Contractor: Kronos Incorporated
Attention: Vice-President General Counsel
Address: 297 Billerica Road
Chelmsford, MA 01824

27. **Effective Date.** This Agreement is not binding upon the parties until signed by the authorized representatives of both Kronos and the City and is thereafter effective as of the Effective Date set forth above.

Signature page to follow

CITY OF MURFREESBORO

KRONOS INCORPORATED

Signature: Shane McFarland 3/23/17

Signature: _____

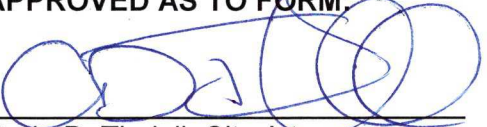
Name: Shane McFarland

Name: _____

Title: Mayor

Title: _____

APPROVED AS TO FORM:



Craig D. Tindall, City Attorney

CITY OF MURFREESBORO

KRONOS INCORPORATED

Signature: _____

Signature: _____ 

Name: Shane McFarland

Name: John O'Brien

Title: Mayor

Title: Sr. VP, Global Sales

APPROVED AS TO FORM:

Craig D. Tindall, City Attorney

Exhibit 1

EXHIBIT A

KRONOS TERMS AND CONDITIONS FOR PARTICIPATING PUBLIC AGENCIES ADMINISTERED BY US COMMUNITIES

KRONOS TERMS

A PARTICIPATING PUBLIC AGENCY ("CUSTOMER"), BY SIGNING AN ORDER FORM OR PURCHASE ORDER WITH KRONOS INCORPORATED, AGREES TO THE APPLICATION OF THESE TERMS AND CONDITIONS FOR ALL PRODUCTS, SERVICES AND OFFERINGS SET FORTH ON SUCH ORDER FORM (OR PURCHASE ORDER) WHICH REFERENCES THESE TERMS AND CONDITIONS.

- SECTION A: [GENERAL TERMS AND CONDITIONS](#). This Section apply for all transactions.
- SECTION B: [TERMS AND CONDITIONS FOR SOFTWARE LICENSES, SOFTWARE AND EQUIPMENT SUPPORT SERVICES, AND EDUCATIONAL AND PROFESSIONAL SERVICES](#). This Section apply for all transactions except Workforce Ready and the Workforce Central SaaS offering (not including the professional and educational services governed by this Section).
- SECTION C: [CLOUD HOSTING SUPPLEMENTAL TERMS AND CONDITIONS](#) . This Section applies only for transactions that involve Kronos hosting for Software licensed under Section B and identified as CLOUD 2.
- SECTION C-1: [APPLICATION HOSTING TERMS AND CONDITIONS](#) . This Section applies only for transactions that involve Kronos hosting for Software licensed under Section B and identified as CLOUD.
- SECTION D: [KRONOS WORKFORCE CENTRAL SAAS TERMS AND CONDITIONS](#). This Section applies only for Workforce Central transactions in a SaaS environment (except for the related professional and educational services see Section B)
- SECTION E: [KRONOS WORKFORCE READY SAAS TERMS AND CONDITIONS](#). This Section applies only for Workforce Ready transactions.
- SECTION F: ~~KRONOS ADDENDUM VOXEO PROPHECY SERVICES. This Section applies to the Voxeo Prophecy services.~~

SECTION A: GENERAL TERMS AND CONDITIONS

1. APPLICATION OF THESE TERMS

These terms and conditions apply to each order accepted by Kronos Incorporated ("Kronos") from an eligible Participating Public Agency ("Customer") for all Kronos Equipment, Software, Professional and Educational Services, Support and such other Kronos offerings, as specified on an order form (an "Order").

In addition to the terms set forth in this Section A: General Terms and Condition, the following sections apply for the specific offering referenced:

- (i) Section B shall apply to the Software licenses and purchased Equipment, support services, and professional and educational services,
- (ii) Section C shall apply to the Hosting Services purchased in connection with certain Software licensed under Section B,
- (iii) Section D shall apply to the Workforce Central Saas Orders;
- (iv) Section E shall apply to the Workforce Ready Saas Order; and
- (v) Section F shall apply to Voxeo Prophecy ordered to Kronos.

All orders are subject to the approval of Kronos' corporate office in Chelmsford, Massachusetts. This Agreement and the Order Form shall supersede the pre-printed terms of any Customer purchase order or other Customer ordering document, and no such Customer pre-printed terms shall apply to the items ordered.

2. APPLICABLE LAWS

This Agreement shall be governed by the state law in which Customer is based, provided however, if such jurisdiction has adopted the Uniform Computer Information Transactions Act (UCITA), or such other similar law, the parties expressly agree to "opt-out" of and not be governed by UCITA or such other similar law. The parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of this Agreement.

3. EXPORT

Customer acknowledges that the Equipment and Software may be restricted by the United States Government or by the country in which the Equipment or Software is installed from export to certain countries and certain organizations and individuals, and agrees to comply with such laws. Customer agrees to comply with all applicable laws of all of the countries in which the Equipment and Software may be used by Customer. Customer's obligations hereunder shall survive the termination or expiration of the Order Form. Customer must obtain Kronos prior written consent before exporting the Software.

4. CONFIDENTIAL INFORMATION

"Confidential Information" is defined as information that is: i) disclosed between the parties after the date of this Agreement that is considered confidential or proprietary to the disclosing party; and ii) identified as "confidential" at the time of disclosure, or would be reasonably obvious to the receiving party to constitute confidential information because of legends or other markings, by the circumstances of disclosure or the nature of the information itself. Additionally, Customer acknowledges and agree that the Software (and Software documentation), and the Specifications shall be deemed to be Kronos' Confidential Information and trade secret. Each party shall protect the Confidential Information of the other party with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such party utilizes for its own information of similar character that it does not wish disclosed to the public. Neither party shall disclose to third parties (except the parent company or the wholly owned subsidiaries of the receiving party who have a need to know) the other party's Confidential Information, or use it for any purpose not explicitly set forth herein, without the prior written consent of the other party. Notwithstanding the foregoing, a party may disclose Confidential Information to the extent required: (a) to any subsidiary or affiliate of such Party, or (b) to any consultants, contractors, and counsel who have a need to know in connection with the Agreement and who are under obligations of non-disclosure agreement at least as stringent as this section 4, or (c) by law (including the applicable public record laws), or by a court or governmental agency, or if necessary in any proceeding to establish rights or obligations under the Agreement; provided, the receiving party shall, unless legally prohibited, provide the disclosing party with reasonable prior written notice sufficient to permit the disclosing party an opportunity to contest such disclosure. If a party commits, or threatens to commit, a breach of this Section 4, the other party shall have the right to seek injunctive relief from a court of competent jurisdiction. The obligation of confidentiality shall survive for three (3) years after the disclosure of such Confidential Information.

This Agreement imposes no obligation upon either party with respect to the other party's Confidential Information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party, (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; (d) is independently developed by the receiving party without use of the disclosing party's confidential information, which can be shown by tangible evidence.

5. TAXES

If Customer presents to Kronos a validly issued tax-exempt certificate, or other sufficient evidence of tax exemption, Customer shall not be liable for those taxes for which Customer is exempt. Otherwise, Customer agrees to pay all other applicable duties and customs fees relating to this Agreement, as well as all taxes levied or based on the products, services or other charges hereunder, including federal, state and local sales and excise taxes, and any taxes or amount in lieu thereof paid or payable by Kronos, exclusive of taxes based on Kronos net income or business privilege.

6. TRAVEL EXPENSES

Customer agrees to reimburse Kronos for all pre-approved, reasonable and necessary travel incurred by Kronos in the performance of its obligations under this Agreement, provided that such travel complies with the then current Kronos Travel and Expense Policies (such policies are available upon request) or such other policies mutually agreed between the parties in the statement of work. Customer further agrees to pay any travel expenses such as airfare, lodging, meals and local transportation, incurred by Kronos in the performance of its obligations under this Agreement provided such expenses comply with the applicable policies. Customer will be billed by Kronos for such travel expenses and payment thereof shall be due net 30.

7. GENERAL

- (a) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.
- (b) Customer shall not assign this Agreement or the license to the Software without the prior written consent of Kronos and any purported assignment, without such consent, shall be void.
- (c) Neither Party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement (other than a failure to comply with payment obligations) where and to the extent that such failure or delay results from an unforeseeable event beyond a party's reasonable control, including but not limited to, acts of war; acts of nature; earthquake; flood; embargo; riot; sabotage; labor shortage or dispute; changes in government codes, ordinances, laws, rules, regulations or restrictions; failure of the Internet; terrorist acts; failure of data, products or services controlled by any third party, including the providers of communications or network services; utility power failure; material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefor, or lack of or delay in transportation (each a "Force Majeure Event").
- (d) All notices given under this Agreement shall be in writing and sent postage pre-paid, if to Kronos, to the Kronos address on the Order Form, or if to Customer, to the billing address on the Order Form.
- (e) The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.
- (f) The parties agree that the Order signed by both parties and expressly reference this Agreement, which is delivered via fax or electronically delivered via email it shall constitute a valid and enforceable agreement.
- (g) This Agreement and any information expressly incorporated herein (including information contained in any referenced URL), together with the applicable Order Form, constitute the entire agreement between the parties for the products and services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos may disclose to customers certain confidential information regarding general product development direction, potential future products and/or product enhancements under consideration, Customer is not entitled to any products or product enhancements other than those contained on the Order Form. Customer has not relied on the availability of any future version of the Software or Equipment identified on an Order Form, nor any other future product in executing this Agreement.
- (h) Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (c)(1)(2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, as applicable. Manufacturer/distributor is Kronos Incorporated, 297 Billerica Road, Chelmsford, MA.
- (i) The JBoss® Enterprise Middleware components embedded in the Software are subject to the End User License Agreement found at http://www.redhat.com/licenses/jboss_eula.html.
- (j) Customer may pay an invoice by credit card if the amount is not greater than \$50,000.00.
- (k) Kronos agrees to comply with any applicable federal, state and local laws and regulations.
- (l) Additionally, Kronos agrees to be liable for tangible property damage or personal injury to the extent caused by the negligence or willful misconduct of its employees.

SECTION B
TERMS AND CONDITIONS FOR SOFTWARE LICENSES, SOFTWARE AND EQUIPMENT SUPPORT SERVICES,
AND EDUCATIONAL AND PROFESSIONAL SERVICES

This Section B applies to Software licensed, Equipment purchased, support services for Software and Equipment, and educational and professional services, when such items are identified on the Order which expressly references this Agreement.

1. PAYMENT AND DELIVERY

Unless otherwise set forth in this Agreement, payment terms are indicated on the Order Form or other contemporaneous ordering document containing product-specific payment terms signed by the parties. Delivery terms are as stated on the Order Form ("Delivery"). Kronos will invoice Customer for products upon Delivery. Unless otherwise set forth on the Order Form, Professional and Educational Services are provided on a time and materials basis, invoiced monthly as rendered.

2. GENERAL LICENSE TERMS

Kronos owns or has the right to license the Software. The Software and Software documentation are confidential and may not be disclosed to a third party without Kronos' written consent. The Software contains proprietary trade secret technology. Unauthorized use and copying of such Software is prohibited by law, including United States and foreign copyright law. The price Customer pays for a copy of the Software constitutes a license fee that entitles Customer to use the Software as set forth below. Kronos grants to Customer a non-exclusive, nontransferable, perpetual (except as provided herein) license to use the Software. This license may be terminated by Kronos by written notice to Customer upon any material breach of this Agreement by Customer which remains uncured for a period of thirty (30) days after such written notice from Kronos. Upon such termination of this license by Kronos, Customer will have no further right to use the Software and will return the Software media to Kronos and destroy all copies of the Software (and related documentation) in Customer's possession or control. This license is subject to all of the terms of this Section B.

3. FEE BASED LIMITATIONS

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by Customer. Limitations, which are set forth on the Order Form, may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number and partition, and/or the number of telephone lines or terminals to which the Software is permitted to be connected. Customer agrees to: i) use the Software only for the number of employees, simultaneous or active users, computer model, partition and serial number, and/or terminals permitted by the applicable license fee; ii) use only the product modules and/or features permitted by the applicable license fees; and iii) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, partitions, terminals, products modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable fee for such increase/upgrade. Customer may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos.

4. OBJECT CODE ONLY

Customer may use the computer programs included in the Software (the "Programs") in object code form only, and shall not reverse compile, disassemble or otherwise convert the Programs into uncompiled or unassembled code. The Programs include components owned by third parties. Such third party components are deemed to be Software subject to this Section B. Customer shall not use any of the Programs (or the data models therein) except solely as part of and in connection with the Software and as described in the published documentation for such Software.

5. PERMITTED COPIES

Customer may copy the Programs as reasonably necessary to load and execute the Programs and for backup and disaster recovery and testing purposes only, except for additional copies of the Teletime Software and the Kronos iSeries (which must be licensed separately). All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this license, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer.

6. UPDATES

In the event that Kronos supplies Service Packs, Point Releases and Major Releases (including legislative updates if available) of the Software (collectively referred to as "Updates"), such Updates shall be part of the Software and the provisions of this license shall apply to such Updates and to the Software as modified thereby.

7. ACCEPTANCE

For Customer's initial purchase of each Equipment and Software product Kronos shall provide an acceptance test period (the "Test Period") that commences upon Installation. Installation shall be defined as: a.) the Equipment, if any, is mounted; b.) the Software is installed on Customer's server(s); and c.) implementation team training, if any, is complete. During the Test Period, Customer shall determine whether the Equipment and Software meet the Kronos published electronic documentation, ("Specifications").

The Test Period shall be for 30 days. If Customer has not given Kronos a written deficiency statement specifying how the Equipment or Software fails to meet the Specifications ("Deficiency Statement") within the Test Period, the Equipment and Software shall be deemed accepted. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, and Customer shall have an additional 30 days to evaluate the Equipment and Software. If the Equipment or Software does not meet the Specifications at the end of the second 30 day period, either Customer or Kronos may terminate this Agreement. Upon any such termination, Customer shall return all Equipment and Software (and related documentation) to Kronos, and Kronos shall refund any monies paid by Customer to Kronos for the returned Equipment and Software. Neither party shall then have any further liability to the other for the products that were the subject of the Acceptance Test.

8. LIMITED WARRANTY

Kronos warrants that all Kronos Equipment and Software media shall be free from defects in materials and workmanship, for a period of ninety (90) days from Delivery. In the event of a breach of this warranty, Customer's remedy shall be Kronos' repair or replacement of the deficient Equipment and/or Software media, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Specifications. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) or Software media in the event of:

- (a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- (b) failure of Customer to provide and maintain a suitable installation environment, as specified in the Specifications; or
- (c) malfunctions resulting from the use of badges or supplies not approved by Kronos.

When using and applying the information generated by Kronos products, Customer is responsible for ensuring that Customer complies with requirements of federal and state law where applicable. If Customer is licensing Workforce Payroll Software or Workforce Absence Management Software: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using such Software, (ii) using such Software does not release Customer of any professional obligation concerning the preparation and review of such reports and documents, (iii) Customer does not rely upon Kronos, Best Software, Inc. or such Software for any advice or guidance regarding compliance with federal (and state laws where applicable) or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using such Software and satisfy itself that those calculations are correct.

9. PROFESSIONAL AND EDUCATIONAL SERVICES

(a) ENGAGEMENTS

Unless otherwise indicated on the Order, Professional and Educational Services ("Professional Services") shall be provided on a time and material basis and described in a statement of work. If a dollar limit is stated in the Order Form or any associated statement of work ("SOW"), the limit shall be deemed an estimate for Customer's budgeting and Kronos' resource scheduling purposes. After the dollar limit is expended, Kronos will continue to provide Professional Services on a time and materials basis, if a Change Order or Schedule of Services for continuation of the Professional Services is signed by the parties.

(b) WARRANTY

Kronos warrants that all professional and educational services performed under this Agreement shall be performed in a professional and competent manner. In the event that Kronos breaches this warranty, and Customer so notifies Kronos within 30 days of receipt of invoice for the applicable services, the Customer's remedy and Kronos' liability shall be to re-perform the services which were deficient in a manner so as to conform to the foregoing warranty, at no additional cost to Customer.

(c) KRONOS PROFESSIONAL/EDUCATIONAL SERVICES POLICIES

Kronos' then-current Professional/Educational Services Policies shall apply to all Professional and/or Educational Services purchased under the applicable SOW and may be accessed at: <http://www.kronos.com/Support/ProfessionalServicesEngagementPolicies.htm> ("Professional Services Policies"). In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

10. SOFTWARE SUPPORT SERVICES

The following terms and conditions shall govern the Software support services provided by Kronos to Customer.

10.1 SUPPORT OPTIONS

Customer may select from the following Software support purchase options: Gold (or Gold Plus) and Platinum (or Platinum Plus) support ("Service Type"), each providing different service coverage periods and/or service offerings, as specified herein ("Service Offerings") and in the Kronos Support Service Policies (defined below). Customer must purchase the same Service Type for all of the Software specified on the Order Form, (however, if Customer is purchasing support services for Visionware Software, Customer may only purchase Gold Service Type for the Visionware Software). All Updates shall be provided via remote access.

10.2 TERM OF SOFTWARE SUPPORT

Unless otherwise indicated on the Order Form, support service shall commence on the Software Delivery date and shall continue for an initial term of one (1) year. Support service may be renewed for additional one (1) year terms on the anniversary date of its commencement date by mutual written agreement of the parties or by Kronos sending Customer an invoice for the applicable renewal term and Customer paying such invoice prior the commencement of such renewal term. After the one year initial term of this Agreement, the Service Offerings provided and the Service Coverage period are subject to change by Kronos with sixty (60) days advance written notice to Customer. For the initial two (2) renewal years the annual support fee, for the same products and service type, will not increase by more than 4% over the prior year's annual support fee.

10.3 GOLD SERVICE OFFERINGS

Customer shall be entitled to receive:

(i) Updates for the Software (not including any Software for which Kronos charges a separate license fee), provided that Customer's operating system and equipment meet minimum system configuration requirements, as reasonably determined by Kronos. If Customer requests Kronos to install such Updates or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' pricing set forth in this Agreement.

(ii) Telephone and/or electronic access to the Kronos Global Support Center for the logging of requests for service during the Service Coverage Period. The Service Coverage Period for the Gold Service Offering is 8:00 a.m. to 8:00 p.m., local time, Monday through Friday, excluding Kronos holidays.

(iii) Web-based support including access to Software documentation, FAQ's, access to Kronos knowledge base, Customer forums, and e-case management. Such offerings are subject to modification by Kronos. Current offerings can be found at <http://www.kronos.com/services/support-services.aspx>.

(iv) Web-based remote diagnostic technical assistance which may be utilized by Kronos to resolve Software functional problems and user problems during the Service Coverage Period.

(v) Access to specialized content as and when made available by Kronos such as technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerforce and service case studies.

10.4 PLATINUM AND PLUS SERVICE OFFERINGS:

Platinum: In addition to the Service Offerings specified for the Gold Service Offering above, the Service Coverage Period for the Platinum Service Offering is 24 hours a day, seven days a week, 365 days a year.

Plus option: In addition to the Service Offerings specified for the Gold Service Offering above, Customers purchasing the Plus option shall receive the services of a dedicated, but not exclusive, Kronos Technical Account Manager ("TAM") for one production instance of the Software. Customers purchasing the Gold-Plus option shall designate up to one primary and one secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM, while Customers purchasing the Platinum-Plus option shall designate up to two primary and three secondary backup Technical Contacts. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos product training for the Software covered under this Section B at Customer's expense.

Customers purchasing the Platinum-Plus option shall also receive a one day per year visit to be performed at the Customer location where the Software is installed. During this onsite visit, Kronos shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment. Customer must be utilizing the then-current version of the Software.

10.5 PAYMENT

Customer shall pay annual support charges for the initial term in accordance with the payment terms on the Order Form and for any renewal term upon receipt of invoice. Customer shall pay additional support charges, if any, and time and material charges upon receipt of invoice

10.6 ADDITION OF SOFTWARE

Additional Software purchased by Customer as per the ordering procedure set out in the agreement during the initial or any renewal term shall be added to the Support Services at the same support option as the then current Software support coverage in place under these terms. Customer agrees to pay the charges for such addition as per the Order.

10.7 RESPONSIBILITIES OF CUSTOMER

Customer agrees (i) to provide Kronos personnel with full, free and safe access to Software for purposes of support, including use of Kronos' standard remote access technology, if required; (ii) to maintain and operate the Software in an environment and according to procedures which conform to the Specifications; and (iii) not to allow support of the Software by anyone other than Kronos without prior written authorization from Kronos. Failure to utilize Kronos' remote access technology may delay Kronos' response and/or resolution to Customer's reported Software problem. If Customer requires the use of a specific remote access technology not specified by Kronos, then Customer must purchase the Plus option to receive support and provide Kronos personnel with full, free and safe access to the remote access hardware and/or software.

10.8 DEFAULT

Customer shall have the right to terminate Kronos support services in the event that Kronos is in breach of the support services warranty set forth below and such breach is not cured within fifteen (15) days after written notice specifying the nature of the breach. In the event of such termination, Kronos shall refund to Customer on a pro-rata basis those pre-paid annual support fees associated with the unused portion of the support term. Kronos reserves the right to terminate or suspend support service in the event the Customer is in default under this Agreement with Kronos and such default is not corrected within fifteen (15) days after written notice. In addition, the support services will terminate and all charges due hereunder will become immediately due and payable in the event that Customer ceases to do business as a going concern or has its assets assigned by law.

10.9 WARRANTY

Kronos warrants that all support services shall be performed in a professional and competent manner.

11. EQUIPMENT SUPPORT SERVICES

The following terms and conditions shall govern the equipment support services provided by Kronos to Customer.

Kronos and Customer hereby agree that Kronos shall provide depot equipment repair support services ("Depot Support Services") for Customer's Kronos Equipment ("Product(s)") specified on an Order Form to and from locations within the United States and Puerto Rico pursuant to the following terms and conditions:

11.1 TERM

Equipment Support Services for the Product(s) have a term of one (1) year commencing upon the expiration of the applicable warranty period, as specified in this Section B. Equipment Support Services can be extended for additional one year terms on the anniversary of its commencement date ("Renewal Date") by mutual written agreement of the parties or by Kronos sending Customer an invoice for the applicable renewal term and Customer paying such invoice prior the commencement of such renewal term. For the initial two (2) renewal years the annual support fee, for the same products and service type, will not increase by more than 4% over the prior year's annual support fee to the extent consistent with the pricing set forth under the Agreement.

11.2 PAYMENT

Customer agrees to pay the Support Charges for the initial term as set forth on the Order Form for each Product listed. Customer agrees that all Products of the same type that are owned by the Customer, including without limitation Customer's "Spare Products" (as defined below), will be subject to this Agreement. Customer agrees that if Customer purchases, during the term of this Agreement, any Products of the same type as those specified on an Order Form, such additional Products shall be subject to this Agreement. Customer agrees to pay a prorated fee for such additional Products and agrees to pay the full annual fee for such additional Products, upon the renewal date. Kronos will invoice Customer for the annual Support Charges each year in advance of the Renewal Date. Customer will pay Kronos within thirty (30) days of receipt of invoice.

11.3 DEPOT SUPPORT SERVICE DESCRIPTION

Upon the failure of installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and can be found at <https://customer.kronos.com/contact/contact-phone.aspx> and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies. Service packs for the Equipment (as described in subsection (b) below) are included in both Depot Exchange and Depot Repair Support Services.

(i) *Depot Exchange*: Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

(ii) *Depot Repair*: Upon failure of installed Equipment, Customer shall install a Spare Product to replace the failed Equipment. Customer shall then return the failed Equipment, with the required RMA, to the applicable Kronos Depot Repair Center. Customer shall make reasonable efforts to return the failed Equipment using the same or substantially similar packing materials in which the original Equipment was sent. Customer shall also specify the address to which the repaired Equipment should be return shipped. Upon receipt of the failed Equipment, Kronos shall repair the failed Equipment and ship it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Equipment by regular surface transportation to Customer.

Kronos warrants that all repairs performed under the Agreement shall be performed in a professional and competent manner. In the event of a breach of this warranty, the exclusive remedy of Customer and sole liability of Kronos shall be replacement of the repaired Equipment.

11.4 EQUIPMENT SERVICE PACK SUPPORT SERVICE DESCRIPTION

If Customer purchase the Equipment service packs support, Kronos manufactured terminals specified on an Order, Customer shall be entitled to receive:

- (i) Service packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements) available for download at Kronos' customer portal; and
- (ii) Access to the Kronos Support Services Center for the logging of requests for assistance downloading service packs for the Equipment.

Service packs for the Equipment are not installed by the Kronos Depot Repair Center but are available for download at Kronos' customer portal, provided Customer is maintaining the Equipment under an annual Equipment Support Services plan with Kronos.

Kronos warrants that all service packs and firmware updates provided under this Agreement shall materially perform in accordance with the Kronos published specifications for a period of ninety (90) days after download by Customer. In the event of a breach of this warranty, Customer's exclusive remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the specifications.

11.5 RESPONSIBILITIES OF CUSTOMER

Customer agrees that it shall return failed Products promptly as the failures occur and that it shall not hold failed Products and send failed Product to Kronos in "batches" which shall result in a longer turnaround time and surcharge to Customer. In addition, Customer agrees to:

- (a) Maintain the Products in an environment conforming to Kronos' published specifications for such Products;
- (b) De-install all failed Products and install all replacement Products in accordance with Kronos' published installation guidelines;
- (c) Ensure that the Product(s) are returned to Kronos properly packaged; and
- (d) Obtain an RMA before returning any Product to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Product authorized by Kronos when issuing the RMA.

11.6 SUPPORT EXCLUSIONS

Depot Support Service does not include the replacement of "consumables". In addition, Depot Support Service does not include the repair of damages, and Customer will not attempt to return damaged Product, resulting from:

- (a) Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
- (b) Customer's failure to continually provide a suitable installation environment (as indicated in Kronos' published installation guidelines) including, but not limited to, adequate electrical power;
- (c) Customer's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with Kronos' published specifications;
- (d) Customer's use of the Products for purposes other than those for which they are designed or the use of accessories or supplies not approved by Kronos;
- (e) Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
- (f) Customer's repair, attempted repair or modification of the Products.

Professional services provided by Kronos in connection with the installation of any Software or firmware upgrades, if available, and if requested by Customer, are not covered by Depot Support Services. Firmware (including equipment service packs) which may be available to resolve a Product issue is not installed by the Kronos Depot Repair Center but is available for download at Kronos' customer web site provided Customer is maintaining the Product under an annual Depot Support Services plan with Kronos.

11.7 WARRANTY

(a) Depot Repair and Exchange warranty: Kronos warrants that all repairs performed under this Section B shall be performed in a professional and competent manner.

(b) Services Pack support Warranty: Kronos warrants that all service packs and firmware updates provided under this Section B shall materially perform in accordance with the Kronos published specifications for a period of ninety (90) days after download by Customer. In the event of a breach of this warranty, Customer's remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the specifications.

11.8 LIMITATION OF REMEDIES

To the extent permitted by law, the remedy of Customer and liability of Kronos shall be replacement of the repaired Product.

12. KRONOS SUPPORT SERVICE POLICIES

Kronos' then-current Support Services Policies shall apply to all Support Services purchased and may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies"). In the event of a conflict between the Support Policies and this Agreement, the terms of this Agreement shall prevail.

13. FIRMWARE

Customer may not download firmware updates for the Kronos Equipment unless Customer is maintaining such Equipment under a support plan with Kronos. If Customer is not maintaining the Equipment under a support plan with Kronos, Kronos shall have the right to verify Customer's Kronos Equipment to determine if Customer has downloaded any firmware to which Customer is not entitled.

14. TRAINING POINTS

Training Points which are purchased by Customer may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos. Available instructor-led sessions are listed at <http://customer.kronos.com> and each session has the Training Points value indicated. Training Points are invoiced when used by the Customer. Points may be redeemed at any time within 12 months of the date of the applicable Order Form, at which time they shall expire. Training Points may not be exchanged for other Kronos products and/or services.

15. KNOWLEDGEPASS EDUCATION SUBSCRIPTION:

The parties hereby agree that the following terms shall apply to Customer's purchase of the Kronos KnowledgePass Education Subscription only, if specified on the Order Form:

Scope: The KnowledgePass Education Subscription is available to customers who are licensing Kronos' Workforce Central and iSeries Timekeeper Software products and who are maintaining such products under a support plan with Kronos. The KnowledgePass Education Subscription provides access via the internet to certain educational offerings provided by Kronos (the "KnowledgePass Content"), including:

- Product and upgrade information for project teams and end users
- Hands-on interactive instruction on common tasks
- Self-paced tutorials covering a range of topics
- Job aids
- Knowledge assessment and reporting tools to measure progress
- Webinars

Term of Subscription: The annual KnowledgePass Education Subscription shall run co-terminously with Customer's Software Support, and shall renew for additional one (1) year terms provided Customer renews its KnowledgePass Education Subscription as provided below.

Payment: Customer shall pay the annual subscription charge for the initial term of the KnowledgePass Education Subscription in accordance with the payment terms on the Order Form. Kronos will send Customer a renewal invoice for renewal of the KnowledgePass Education Subscription at least forty five (45) days prior to expiration of the then current term. KnowledgePass Education Subscription shall renew for an additional one (1) year term if Customer pays such invoice before the end of the initial term or any renewal term.

The KnowledgePass Subscription is available when the Customer subscribe on annual basis.

Limitations: Customer recognizes and agrees that the KnowledgePass Content is copyrighted by Kronos. Customer is permitted to make copies of the KnowledgePass Content provided in pdf form solely for Customer's internal use and may not disclose such KnowledgePass Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the KnowledgePass Content without the written consent of Kronos, provided that Customer may download and modify contents of Training Kits solely for Customer's internal use.

Train-the-Trainer Program (TTT): Certification under the Train-the-Trainer Program is valid only for the point release of the Software for which the TTT Program is taken, and covers only the Customer employee who completes the TTT Program.

16. INDEMNIFICATION

Kronos agrees to indemnify Customer and to hold it harmless from and against any and all claims, costs, fees and expenses (including reasonable legal fees) relating to actual or alleged infringement of United States or Canadian patents or copyrights asserted against Customer

by virtue of Customer's use of the Software as delivered and maintained by Kronos, provided that: i) Kronos is given prompt written notice of any such claim and has sole control over the investigation, preparation, defense and settlement of such claim; and, ii) Customer reasonably cooperates with Kronos in connection with the foregoing and provides Kronos with all information in Customer's possession related to such claim and any further assistance as reasonably requested by Kronos. Kronos will have no obligation to indemnify Customer to the extent any such claim is based on the use of the Software with software or equipment not supplied by Kronos. Should any or all of the Software as delivered and maintained by Kronos become, or in Kronos' reasonable opinion be likely to become, the subject of any such claim, Kronos may at its option: i) procure for Customer the right to continue to use the affected Software as contemplated hereunder; ii) replace or modify the affected Software to make its use non-infringing; or iii) should such options not be available at reasonable expense, terminate this Agreement with respect to the affected Software upon thirty (30) days prior written notice to Customer. In such event of termination, Customer shall be entitled to a pro-rata refund of all fees paid to Kronos for the affected Software, which refund shall be calculated using a five year straight-line depreciation commencing with the date of the relevant Order. Additionally, Kronos agrees to be liable for tangible property damage or personal injury to the extent caused by the negligence or willful misconduct of its employees.

17. LIMITATION OF LIABILITY

CUSTOMER'S EXCLUSIVE REMEDIES AND KRONOS' SOLE LIABILITY FOR ANY KRONOS BREACH OF THIS AGREEMENT ARE EXPRESSLY STATED HEREIN. EXCEPT AS PROVIDED IN THIS AGREEMENT, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

EXCEPT FOR i) KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN ARTICLE 16 ABOVE; (ii) CUSTOMER'S CLAIMS FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY'S EMPLOYEES, IN NO EVENT SHALL KRONOS' OR ITS PARENTS', SUBSIDIARIES', AFFILIATES', OR THIRD PARTY LICENSOR'S LIABILITY TO A CUSTOMER, HOWSOEVER CAUSED, EXCEED THE VALUE OF THE ORDER WHICH GIVES RISE TO THE CLAIM, AND IN NO EVENT WILL KRONOS OR ITS PARENTS, SUBSIDIARIES AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

18. TERMINATION OF ORDER FORM OR SOW

(a) Termination for breach. For any breach of this Agreement by Kronos in relation with that Customer which cannot be cured by repair, replacement or re-performance, Customer shall have the right to terminate this the Order Form or applicable SOW upon thirty (30) days prior written notice to Kronos, provided Kronos has not cured such breach during such thirty (30) day period. Upon such termination, Customer shall be entitled to pursue its remedies at law or in equity subject to the terms of this Agreement.

(b) Termination for non-appropriation of funds. Should the funding for the services ordered by Customer be discontinued, Customer shall have the right to terminate the Order Form relating to such services ordered upon a 30 days written advance notice to Kronos. In such event, the Customer agrees to pay for the products delivered and the services performed under the terms of the Agreement prior to the receipt by Kronos of the termination notice.

**SECTION C
CLOUD APPLICATION HOSTING
SUPPLEMENTAL TERMS AND CONDITIONS**

These terms and conditions apply to the cloud services which are identified in the Pricing as the Cloud 2 in the Pricelist Name.

These Application Hosting Supplemental Terms and Conditions are applicable for hosting services ordered by Customer for Kronos Software licensed under Section B of this Agreement.

1. DEFINITIONS

"Application(s)" means those Kronos software applications set forth in the Cloud Hosting SSS which are made accessible for Customer to use under the terms of this Addendum.

"Application Hosting Program" or "Program" means (i) accessibility to the Applications, by means of access to the password protected customer area of the Kronos hosting environment, and (ii) all Hosting Related Services.

"Content" means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Program, including but not limited to information, data (such as payroll data, vacation time, and hours worked), designs, know-how, logos, text, multimedia images (e.g. graphics, audio and video files), compilations, software programs, third party software, applications, or other materials, or any other Customer content shared or processed on equipment under the control of Kronos.

"Hosting Related Services" means certain services set forth in a Services Scope Statement (SSS) containing hosted related services (the **"Cloud Hosting SSS"**), such as hosting infrastructure, equipment, bandwidth, server monitoring, backup services, reporting services, storage area network (SAN) services, load balancing services, security services, system administration, connectivity services, performance tuning, service pack installation and all professional and/or Cloud Services and maintenance services related to hosting.

"Initial Term" means the initial term of the Program as set forth in the applicable Cloud Hosting SSS.

"Internal Use" means the use of the Program: (i) by Customer's personnel solely for Customer's internal business purposes and (ii) by any authorized employee, agent or contractor of Customer to process information relating to Customer's employees assigned to, or potential employees of, Customer's authorized business unit(s), solely for the internal business purposes of such business unit(s).

"Monthly Service Fee(s)" means the monthly fees described in the Cloud Hosting SSS and set forth on the applicable Order Form..

"Order Form" means the order request form supplied by Kronos and signed by the Parties that lists the fees for the elements of Customer's particular Program.

"Personally Identifiable Data" means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

"Production Environment" means a permanent environment established for the daily use and maintenance of the Applications in a live environment throughout the term of a Program.

"Service Description" means the detailed service description (including any supplementary service terms) specified in the Cloud Hosting SSS which sets forth the specific Program to be provided to the Customer.

"SLA(s)" means a service level agreement offered by Kronos for the Production Environment and attached to this Section C as **Exhibit A** which contains key service level standards and commitments that apply to the Program as detailed in the Service Description.

"SLA Credit" means the credit calculated in accordance with the SLA and offered by Kronos in the event of outages, interruptions or deficiencies in the delivery of the Program that result in a failure to meet the terms of the applicable SLA.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Program.

"Temporary Environment" means a transient database environment created to serve limited purposes for a limited time period, and identified in the applicable Cloud Hosting SSS as a Temporary Environment.

2. CLOUD HOSTING SERVICES SCOPE STATEMENT

The description of the particular Program ordered by the Customer, the Program term, the Monthly Service Fee rates, and other fees, if any, applicable to the Program are described in the applicable Cloud Hosting SSS and Order Form. Kronos will not change the Monthly Service Fee rates it charges for Customer's existing Program, or the SLA, during the Initial Term. Kronos may change such Monthly Service Fee rates or the associated SLA for a renewal term of the particular Program by notifying Customer at least sixty (60) days prior to the expiration of the then current term. SLAs are only available in a Production Environment. Unless the Cloud Hosting SSS indicates that the Program is to be implemented in a Temporary Environment, the Program will be deemed to be implemented in a Production Environment.

3. AUTHORIZED USE

Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Program, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Section C.

4. MAINTENANCE ACCESS

If Kronos, its Suppliers, or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair the Program, Customer shall cooperate in a timely manner and reasonably provide such access and assistance as necessary. As part of Kronos' support services, Kronos will make updates to the Applications available to Customer at no charge as they are released generally to Kronos' customers. Customer agrees to receive those updates automatically as part of the Program. Customer may be required to purchase additional Hosting Related Services to address infrastructure requirements as released by Kronos for a new version of a particular Application.

5. CUSTOMER REPRESENTATIONS AND WARRANTIES; CUSTOMER OBLIGATIONS

5.1 Customer represents and warrants to Kronos that it has the right to publish and disclose Customer's Content in the Program.

5.2 Customer represents and warrants to Kronos that Customer's Content will not: (a) infringe or violate any third-party right, including (but not limited to) intellectual property, privacy, or publicity rights; (b) be abusive, profane, or offensive to a reasonable person; or (c) be hateful or threatening.

5.3 Customer will, at its own cost and expense, provide all end user equipment, operating systems, and software (including a web browser) not provided by Kronos and needed to access and use the Program. Customer will also provide, at its own cost and expense, all connections from its computer systems to the Program, which shall include all related costs associated with Customer accessing the Program, unless such connectivity services are purchased from Kronos as indicated on the Cloud Hosting SSS and Order Form.

5.4 Customer shall not, and shall not permit any person or entity under Customer's direct or indirect control to: (a) recirculate, republish, distribute or otherwise provide access to the Program to any third party; (b) use the Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Program; (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Program or any software components of the Program; (e) use, or allow the use of, the Program in contravention of any applicable law, or rules or regulations of regulatory or administrative organizations; (f) introduce into the Program any virus or other code or routine intended to disrupt or damage the Program, alter, damage, delete, retrieve or record information about the Program or its users; or, (g) otherwise act in a fraudulent, malicious or negligent manner when using the Program.

6. CONNECTIVITY AND ACCESS

6.1 Customer acknowledges that Customer shall (a) be responsible for securing, paying for, and maintaining connectivity to the Services (including any and all related hardware, software, third party services and related equipment and components); and (b) provide Kronos and Kronos' representatives with such physical or remote access to Customer's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under the Agreement. Customer will make all necessary arrangements as may be required to provide access to Customer's computer and network environment if necessary for Kronos to perform its obligations under the Agreement. Customer agrees that Kronos may audit Customer's use of the Services.

7. FEES AND PAYMENT TERMS

7.1 In consideration of the delivery of the Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form. The Monthly Services Fee shall begin to accrue on the date the Order Form and SSS are signed by the parties, and shall be invoiced annually in advance.

7.2 All fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be net 30 days following receipt of invoice.

7.3 SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Program shall be paid by Kronos in the month following the month in which the SLA Credits were earned.

8. SERVICE LEVEL AGREEMENT

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA; PROVIDED THAT ANY REMEDIES OR CREDITS CONTAINED IN THE SLA ARE NOT AVAILABLE FOR OUTAGES, INTERRUPTIONS OR DEFICIENCIES OCCURRING DURING ANY PERIOD IN WHICH CUSTOMER IS IN BREACH OF THIS ADDENDUM OR THE LICENSE AGREEMENT. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.

9. LIMITATION OF LIABILITY

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE LICENSE AGREEMENT, EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE OR SYSTEMS, OR MACHINE ERROR.

10. DATA SECURITY

10.1 As part of the Program, Kronos shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data as described at: <http://www.kronos.com/products/smb-solutions/workforce-central-saas/security-description.aspx>. Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under the Agreement.

10.2 As between Customer and Kronos, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of Customer's knowledge such Personally Identifiable Data supplied to Kronos is accurate. Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Kronos and Kronos' Suppliers wherever located only for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out Kronos' duties and responsibilities under this Agreement or as required by law.

10.3 Prior to initiation of the Program and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's industry and which could be imposed on Kronos as a result of provision of the Program. Customer will ensure that: (a) the transfer to Kronos and storage of any Personally Identifiable Data by Kronos or Kronos' data center is permitted under applicable data protection laws and regulations; and (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

11. TERM AND TERMINATION

11.1 At the expiration of the Initial Term, the applicable Program shall automatically renew for successive one year periods unless either party provides notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term. Kronos may suspend or terminate the Program upon notice in the event of any breach by Customer of this Section C if such breach is not cured within ten (10) days of the date of Kronos' written notice. No Program interruption shall be deemed to have occurred during, and no Program credits shall be owed for, any authorized suspension of the Program.

11.2 Customer may terminate the Program by written notice at any time during the term of the Addendum if Kronos materially breaches any provision of this Addendum, and such default is not cured within thirty (30) days after receipt of written notice from Customer. In the event of such termination by Customer, Customer shall pay Kronos within thirty (30) days all fees then due and owing for the Program prior to the date of termination.

11.3 Customer may terminate the Program for convenience on no less than ninety (90) days prior written notice to Kronos.

11.4 In the event of termination of the Program by Customer for convenience or by Kronos for cause during the Initial Term, Customer will pay to Kronos any out of pocket expenses incurred by Kronos in terminating the Program plus an early termination fee based on the following calculation: one (1) month of the then-current Monthly Services Fees for every twelve (12) month period (or portion thereof) remaining in the Initial Term. By way of example only, if Customer terminates the Program for convenience with fifteen (15) months remaining in the Initial Term, Customer will be responsible to pay Kronos two (2) months of the applicable Monthly Services Fees.

EXHIBIT A

SERVICE LEVEL AGREEMENT (SLA)

Service Level Agreement: The Services, in a production environment and as described in the Statement of Work (aka Services Scope Statement), are provided with the service levels described in this Exhibit A. SLAs are only applicable to production environments. SLAs will be available upon Customer's signature of Kronos' Go Live Acceptance Form for Customer's production environment.

99.75% Application Availability

Actual Application Availability % = (Monthly Minutes (MM) minus Total Minutes Not Available (TM)) multiplied by 100 and divided by Monthly Minutes (MM), but not including Excluded Events

Service Credit Calculation: An Outage will be deemed to commence when the Applications are unavailable to Customer in Customer's production environment hosted by Kronos and end when Kronos has restored availability of the Services. Failure to meet the 99.75% Application Availability SLA, other than for reasons due to an Excluded Event, will entitle Customer to a credit as follows:

Actual Application Availability % (as measured in a calendar month)	Service Credit to be applied to Customer's monthly invoice for the affected month
<99.75% to 98.75%	10%
<98.75% to 98.25%	15%
<98.25% to 97.75%	25%
<97.75 to 96.75%	35%
<96.75	50%

"Outage" means the accumulated time, measured in minutes, during which Customer is unable to access the Applications for reasons other than an Excluded Event.

"Excluded Event" means any event that results in an Outage and is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos, including without limitation Customer Content, failures or malfunctions resulting from circuits provided by Customer, any inconsistencies or changes in Customer's source environment, including either intentional or accidental connections or disconnections to the environment; (c) Force Majeure events; (d) scheduled or emergency maintenance, alteration or implementation provided during the Maintenance Period defined below; (e) any suspension of the Services in accordance with the terms of the Agreement to which this Exhibit A is attached; (f) the unavailability of required Customer personnel, including as a result of failure to provide Kronos with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.

"Maintenance Period" means scheduled maintenance periods established by Kronos to maintain and update the Services, when necessary. During these Maintenance Periods, the Services are available to Kronos to perform periodic maintenance services, which include vital software updates. Kronos will use its commercially reasonable efforts during the Maintenance Period to make the Services available to Customer; however, some changes will require downtime. Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least one day in advance of any known downtime so planning can be facilitated by Customer.

Currently scheduled Maintenance Periods for the Services are:

Monday through Friday 04:00 am – 06:00 am (U.S. eastern time)
Saturday and Sunday 12:00 am – 06:00 am (U.S. eastern time)

Maintenance Periods include those maintenance periods mutually agreed upon by Customer and Kronos.

"Monthly Minutes (MM)" means the total time, measured in minutes, of a calendar month commencing at 12:00 am of the first day of such calendar month and ending at 11:59 pm of the last day of such calendar month.

"Total Minutes Not Available (TM)" means the total number of minutes during the calendar month that the Services are unavailable as the result of an Outage.

Limitations: Service Credits will not be provided if: (a) Customer is in breach or default under the Agreement at the time the Outage occurred; or (b) the Outage results from an Excluded Event. If Kronos does not provide the appropriate Service Credit as due hereunder, Customer must request the Service Credit within sixty (60) calendar days of the conclusion of the month in which the Service Credit accrues. Customer waives any right to Service Credits not requested within this time period. All performance calculations and applicable Service Credits are based on Kronos records and data unless Customer can provide Kronos with clear and convincing evidence to the contrary.

The Service Level Agreements in this Exhibit, and the related Service Credits, apply on a per production environment basis. For the avoidance of doubt, Outages in one production environment may not be added to Outages in any other production environment for purposes of calculating Service Credits.

Customer acknowledges that Kronos manages its network traffic in part on the basis of Customer's utilization of the Services and that changes in such utilization may impact Kronos' ability to manage network traffic. Therefore, notwithstanding anything else to the contrary, if Customer significantly changes its utilization of the Services than what is contracted with Kronos and such change creates a material and adverse

impact on the traffic balance of the Kronos network, as reasonably determined by Kronos, the parties agree to co-operate, in good faith, to resolve the issue.

**SECTION C.1:
APPLICATION HOSTING TERMS AND CONDITIONS .**

**This Section applies only for transactions that involve Kronos hosting for Software licensed under Section B in relation with hosting pricing referred to as CLOUD
This attachment does not apply to CLOUD 2 items.**

APPLICATION HOSTING SUPPLEMENTAL TERMS AND CONDITIONS

These Application Hosting Supplemental Terms and Conditions are applicable for hosting services ordered by Customer for Kronos Software licensed under Section B of this Agreement using the pricing set up on November 21, 2013.

1. DEFINITIONS

"Application Hosting Program" or "Program" means (i) accessibility to the commercially available object code version of the Kronos hosted applications, as set forth in the Cloud Services SOW, by means of access to the password protected customer area of the Kronos hosting environment, and (ii) all Hosting Related Services.

"Content" means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Program, including but not limited to information, data (such as payroll data, vacation time, and hours worked), designs, know-how, logos, text, multimedia images (e.g. graphics, audio and video files), compilations, software programs, third party software, applications, or other materials, or any other Customer content shared or processed on equipment under the control of Kronos or a Supplier.

"Hosting Related Services" means certain services set forth in a statement of work containing hosted related services (the **"Cloud Services SOW"**), such as hosting infrastructure, equipment, bandwidth, server monitoring, backup services, reporting services, storage area network (SAN) services, load balancing services, security services, system administration, connectivity services, performance tuning, service pack installation and all professional and/or Cloud Services and maintenance services related to hosting.

"Initial Term" means the initial term for which Kronos shall provide the Program to Customer and as set forth in the applicable Cloud Services SOW executed by Customer.

"Internal Use" means the use of the Program: (i) by Customer's personnel solely for Customer's internal business purposes and (ii) by any authorized employee, agent or contractor of Customer to process information relating to Customer's employees assigned to, or potential employees of, Customer's authorized business unit(s), solely for the internal business purposes of such business unit(s).

"Monthly Service Fee(s)" means the monthly fees described in the Cloud Services SOW and set forth on the applicable Order Form, which shall include all Hosting Related Services fees.

"Order Form" means the order request form supplied by Kronos and signed by the Parties that lists the Startup Fees and Monthly Service Fees for the elements of Customer's particular Program.

"Personally Identifiable Data" means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

"Production Environment" means a permanent environment established for the daily use and maintenance of the Application in a live environment throughout the term of a Program.

"Services Commencement Date" shall, except as otherwise provided in writing in a Cloud Services SOW or Order Form signed by the parties, mean the earlier of (a) the date the Software is transferred to the hosted environment, as mutually agreed by the parties in writing or (b) 90 days after the Effective Date. Notwithstanding the foregoing, the Services Commencement Date for software hosted in a Temporary Environment shall commence seven (7) days after the Effective Date.

"Service Description" means the detailed service description (including any supplementary service terms) specified in the Cloud Services SOW which sets forth the specific Program to be provided to the Customer.

"SLA(s)" means a service level agreement offered by Kronos for the Production Environment and attached to this Section C.1 as Exhibit A.1 which contains key service maintenance standards and commitments that apply to the Program as detailed in the Service Description.

"SLA Credit" means the credit calculated in accordance with the SLA and offered by Kronos in the event of outages, interruptions or deficiencies in the delivery of the Program that result in a failure to meet the terms of the applicable SLA.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Program.

"Temporary Environment" means a transient database environment created to serve limited purposes for a limited time period, and identified in the applicable Cloud Services SOW as a Temporary Environment.

"Startup Fees" means the one time, customer-specific startup fee as indicated on the Order Form that will be charged to Customer to enable access to the Program.

2. CLOUD SERVICES STATEMENT OF WORK

The description of the particular Program ordered by the Customer, the Program term, the Monthly Service Fee rates, the Startup Fees and other fees, if any, applicable to the Program are described in the applicable Cloud Services SOW and Order Form. Kronos will not change the Monthly Service Fee rates it charges for Customer's existing Program, or the SLA, during the Initial Term. Kronos may change such Monthly Service Fee rates or the associated SLA for a renewal term of the particular Program by notifying Customer at least sixty (60) days prior to the expiration of the then current term. SLAs are only available in a Production Environment. Unless the Cloud Services SOW indicates that the Program is to be implemented in a Temporary Environment, the Program will be deemed to be implemented in a Production Environment.

3. Authorized Use

Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Program, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this section C.1.

4. MAINTENANCE ACCESS

If Kronos, its Suppliers, or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair the Program, Customer shall cooperate in a timely manner and reasonably provide such access and assistance as necessary.

Customer representations and warranties; Customer obligations

5.1 Customer represents and warrants to Kronos that it has the right to publish and disclose Customer's Content in the Program.

5.2 Customer represents and warrants to Kronos that Customer's Content will not: (a) infringe or violate any third-party right, including (but not limited to) intellectual property, privacy, or publicity rights; (b) be abusive, profane, or offensive to a reasonable person; or (c) be hateful or threatening.

5.3 Customer will, at its own cost and expense, provide all end user equipment, operating systems, and software (including a web browser) not provided by Kronos and needed to access and use the Program in accordance with the technical requirements set forth in the Cloud Services SOW. Customer will also provide, at its own cost and expense, all connections from its computer systems to the Program, which shall include all related costs associated with Customer accessing the Program, unless such connectivity services are purchased from Kronos as indicated on the Cloud Services SOW and Order Form.

5.4 Customer shall not, and shall not permit any person or entity under Customer's direct or indirect control to: (a) recirculate, republish, distribute or otherwise provide access to the Program to any third party; (b) use the Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Program; (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Program or any software components of the Program; (e) use, or allow the use of, the Program in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (f) introduce into the Program any virus or other code or routine intended to disrupt or damage the Program, alter, damage, delete, retrieve or record information about the Program or its users; or, (g) otherwise act in a fraudulent, malicious or negligent manner when using the Program.

6. INTERNET ACCESS

6.1 If Customer uses open internet connectivity or Customer-supplied VPN internet connections to access the Program, Customer acknowledges that the performance and throughput of the internet connection cannot be guaranteed by Kronos, and variable connection performance may result in application response variations.

6.2 Customer hereby acknowledges that the internet is not owned, operated, managed by, or in any way affiliated with Kronos, its Suppliers or any of its affiliates, and that it is a separate network of computers independent of Kronos. Access to the internet is dependent on numerous factors, technologies and systems, many of which are beyond Kronos' authority and control. Customer acknowledges that Kronos cannot guarantee that the internet access services chosen by Customer will meet the level of up-time or the level of response time that Customer may need. Customer agrees that its use of the internet access services and the internet is solely at its own risk, except as specifically provided in this Section C.1, and is subject to all applicable local, state, national and international laws and regulations.

7. Fees and payment terms

7.1 In consideration of the delivery of the Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form. The Monthly Services Fee shall begin to accrue on the Services Commencement Date, and shall be invoiced monthly in advance. In addition, Customer shall be billed the Startup Fees and any additional Cloud Hosting startup fees set forth in the applicable Order Form. Customer acknowledges that the billing commencement date does not coincide with implementation completion, final configuration, or go-live.

7.2 All fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be net 30 days following receipt of invoice. All overdue payments shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. Customer is responsible for all federal, state or local taxes, duties and customs fees relating to the Program, excluding taxes based on Kronos' income or business privilege.

7.3 SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Program shall be included in the Monthly Service Fee invoice issued by Kronos for the month following the month in which the SLA Credits were earned.

8. SERVICE LEVEL AGREEMENT

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA; PROVIDED THAT ANY REMEDIES OR CREDITS CONTAINED IN THE SLA ARE NOT AVAILABLE FOR OUTAGES, INTERRUPTIONS OR DEFICIENCIES OCCURRING DURING ANY PERIOD IN WHICH CUSTOMER IS IN BREACH OF THIS SECTION C.1 OR SECTION B. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.

9. limitation of liability

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE LICENSE AGREEMENT, EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE OR SYSTEMS, OR MACHINE ERROR.

10. DATA SECURITY

10.1 As part of the Program, Kronos shall provide those Kronos security-related services described in the Cloud Services SOW. Customer acknowledges that the security-related services endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular security-related service as just one tool to be used as part of an overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties.

10.2 All Personally Identifiable Data contained in any Software, Equipment or systems supplied by Kronos, or to which Kronos has access to under this Section C.1, as between Kronos and Customer, is Customer's Confidential Information and will remain the property of Customer. Customer hereby consents to the use, processing and/or disclosure of Personally Identifiable Data only for the purposes described herein and to the extent such use or processing is necessary for Kronos to carry out its duties and responsibilities under this Section C.1 or as required by law.

10.3 Prior to initiation of the Program and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer and which could be imposed on Kronos as a result of provision of the Program. Customer will ensure that: (a) the transfer and storage of any Personally Identifiable Data to Kronos and managed by Kronos' or Supplier's data center is legitimate under applicable data protection laws and regulations; and (b) Customer will obtain consent from individuals for such transfer and storage to the extent required under applicable laws and regulations.

10.4 At no cost to Customer, Kronos shall upon (i) request by Customer at any time and (ii) the cessation of the Program, promptly return to Customer, in the format and on the media in use as of the date of the request, all Personally Identifiable Data.

11. term and termination

11.1 At the expiration of the Initial Term, the applicable Programs shall automatically renew for successive one year periods unless either party provides notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term. Kronos may suspend or terminate the Program upon notice in the event of any breach by Customer of this Section C.1. No Program interruption shall be deemed to have occurred during, and no Program credits shall be owed for, any authorized suspension of the Program.

12.2 Customer may terminate the Program by written notice at any time during the term of this Section if Kronos materially breaches any provision of this Section, and such default is not cured within thirty (30) days after receipt of written notice from Customer. In the event of such termination by Customer, Customer shall pay Kronos within thirty (30) days all fees then due and owing for the Program prior to the date of termination.

12.3 Customer may terminate the Program for convenience on no less than ninety (90) days prior written notice to Kronos.

12.4 In the event of termination of the Program by Customer for convenience or by Kronos for cause during the Initial Term, Customer will pay to Kronos any out of pocket expenses incurred by Kronos in terminating the Program plus an early termination fee based on the following calculation: one (1) month of the then-current Monthly Services Fees for every twelve (12) month period (or portion thereof) remaining in the Initial Term. By way of example only, if Customer terminates the Program for convenience with fifteen (15) months remaining in the Initial Term, Customer will be responsible to pay Kronos two (2) months of the then-current Monthly Services Fees.

**EXHIBIT A.1
TO SECTION C.1
SERVICE LEVEL AGREEMENT (SLA)**

Service Level Types: SLAs are only applicable to Production Environments. The Program, in a Production Environment, as described in the Service Description is provided with the following service level:

99.50% Application Availability

Service Levels/Credit Calculation: An Outage will be deemed to commence when Customer opens a case with Kronos Global Support, or Kronos Cloud Services receives an application availability alert. The Outage will be deemed to end when Kronos has restored availability of the Program. Failure to meet the above service levels will entitle Customer to credits as follows.

99.50% Application Availability SLA – Production Environment	
Uptime percentage (as measured in a calendar month)	Affected Service Credit
The amount of the Credit will be determined as follows:	
<99.50% to 98.75%	15%
<98.75% to 98.25%	20%
<98.25% to 97.75%	35%
<97.75 to 96.75%	50%
<96.75	75%

Application Availability SLA% = ((MM-TM)*100) / (MM)

Definitions

“Affected Service” means the monthly fees paid for the hosting of the Program.

“Excluded Event” means any event that adversely impacts the Program that is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos or Supplier; (c) Force Majeure events; (d) scheduled or emergency maintenance, alteration or implementation; (e) any suspension of the Program in accordance with the terms of this Section or License Agreement; (f) the unavailability of required Customer personnel, including as a result of failure to provide Supplier with accurate, current contact information; (g) using the Application in a manner inconsistent with the product documentation; or (h) any other exclusionary circumstance specified in the applicable Cloud Services SOW.

“Monthly Minutes (MM)” means total minutes in which service was scheduled to be available.

“Outage” means the accumulated time during which Customer is unable to establish an active communications connection, measured from beginning to end, between Customer and the Program for reasons other than (a) failures caused by Customer Data; or (b) any Excluded Events.

“Scheduled Maintenance (SM)” means scheduled maintenance periods established by Kronos to provide ample time to maintain and update the applications, when necessary. During these maintenance periods, the applications are available to Kronos to perform periodic services, which include vital software updates. Systems will generally continue to be available to Customer; however, some changes will require planned downtime. Kronos will provide notice for planned downtime via an email notice to our primary Customer contact at least one day in advance of such shutdown/restart so planning can be facilitated by Customer.

When application maintenance is required, current Scheduled Maintenance periods for the applications are:

Monday through Friday	4am – 6am
Saturday and Sunday	12am - 6am

- All times listed are U.S. Eastern Time.
- Kronos’ utilization of the above maintenance windows shall not trigger SLA Credits to Customer.

“Total Minutes Not Available” (TM) means the total number of minutes during the calendar month that the Program is unavailable outside of scheduled maintenance windows.

Limitations: Kronos will apply any credits to the Customer account. Credits will not be provided if: (a) Customer is in breach or default under this Section or the Program at the time the Outage occurred and such breach is the cause of the Outage; or (b) it results from an Excluded Event.

In no event will the credits accrued in any calendar month exceed, in the aggregate across all service levels and events, one hundred (100%) of the invoice amount for the Affected Service.

The Service Level Agreements in this Exhibit, and the related credits listed, apply on a per Program basis. For the avoidance of doubt, Outages, delays, failures, etc. in one Program may not be added to Outages, delays, failures, etc. in any other Program for purposes of calculating SLA credits.

SECTION D
KRONOS WORKFORCE CENTRAL - SOFTWARE AS A SERVICE (SAAS) TERMS AND CONDITIONS

Customer and Kronos agree that the terms and conditions set forth in this Section D shall apply to the Kronos supply of the commercially available version of the Workforce Central SaaS Applications in Kronos' hosting environment, the services related thereto, and the sale or rental of Equipment (if any) specified on a Kronos Order Form. The Applications described on the Order Form shall be delivered by means of Customer's permitted access to the Kronos infrastructure hosting such Applications.

1. DEFINITIONS

"**Agreement**" means the terms and conditions of Section D and the Order Form(s).

"**Application(s)**" or "**SaaS Application(s)**" means those Kronos software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Agreement.

"**Billing Start Date**" means the date the billing of the Monthly Service Fees commences as indicated on the applicable Order Form. Notwithstanding, Implementation Services provided on a time and material basis are billed monthly as delivered. The Billing Start Date of the Monthly Service Fees for any Services ordered by Customer after the date of this Agreement which are incremental to Customer's then-existing Services shall be the date the applicable Order Form is executed by Kronos and Customer.

"**Cloud Services**" means those services related to Customer's cloud environment such as infrastructure, equipment, bandwidth, server monitoring, backup services, storage area network (SAN) services, security services, system administration, connectivity services, performance tuning, update installation and maintenance services related thereto. Cloud Services are described as set forth at: <http://www.kronos.com/products/workforce-central-cloud/cloud-guidelines.aspx>

"**Customer Content**" means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Services.

"**Documentation**" means technical publications published by Kronos relating to the use of the Services or Applications.

"**Equipment**" means the Kronos equipment specified on an Order Form.

"**Implementation Services**" means those professional and educational services provided by Kronos to set up the cloud environment and configure the Applications. Unless otherwise set forth on an Order Form as "a la carte" services (supplemental fixed fee, fixed scope services) or "bill as you go" services (time and material services described in a Statement of Work), Kronos will provide, as part of the Monthly Service Fee for the Applications, the fixed fee, fixed scope Implementation Services described in the Services Implementation Detail set forth at: www.kronos.com/products/workforce-central-saas/implementation-guidelines.aspx. Implementation Services may also be provided as set forth in Section B.

"**Initial Term**" means the initial term of the Services as indicated on the Order Form.

"**KnowledgePass Content**"/"**KnowledgePass Education Subscription**" have the meanings ascribed in Section 7.5.

"**Monthly Service Fee(s)**" means the monthly fees described in an Order Form. Monthly Service Fees include fees for usage of the Applications and the Services, Cloud Services as applicable, and Equipment rental, if any. Billing of the Monthly Service Fee(s) commences on the Billing Start Date.

"**Order Form**" means an order form mutually agreed upon by Kronos and Customer setting forth the items ordered by Customer and to be provided by Kronos and the fees to be paid by Customer.

"**Personally Identifiable Data**" means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

"**Renewal Term**" means the renewal term of the Services as indicated on the Order Form.

"**Services**" means (i) the Cloud Services, (ii) accessibility to the commercially available version of the Applications by means of access to the password protected customer area of a Kronos website, and all such services, items and offerings accessed by Customer therein, and (ii) the Equipment rented hereunder, if any.

"**Statement of Work**", "**SOW**", "**Services Scope Statement**" and "**SSS**" are interchangeable terms referring to a written description of the Implementation Services mutually agreed upon by Kronos and Customer and set forth as "bill as you go" services on the Order Form.

"**Supplier**" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Services.

"**Term**" means the Initial Term and any Renewal Terms thereafter.

"**Training Points**" has the meaning ascribed to it in Section 7.6 below.

2. TERM

2.1 The Services shall commence on the Billing Start Date, and shall continue for the Initial Term or until terminated in accordance with the provisions hereof. At the expiration of the Initial Term and each Renewal Term as applicable, the Services shall automatically renew for additional Renewal Terms until terminated in accordance with the provisions hereof.

2.2 Customer may terminate the Services and this Order Form for convenience upon ninety (90) days prior written notice subject to Customer's payment of the Services performed and Products delivered prior to the effective date of termination. Kronos may terminate the Services and this Agreement to be effective at the expiration of the then current Term upon no less than sixty (60) days prior written notice.

2.3 Either party may terminate the Services and the Agreement upon a material breach of the Agreement by the other party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Kronos may suspend the Services immediately upon notice in the event of any Customer breach of Sections 4 (Rights to Use), 5 (Acceptable Use), or Section A.4 (Confidential Information).

2.4 In the event that either party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated a bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization, the other party may request adequate assurances of future performance. Failure to provide adequate assurances, in the requesting party's reasonable discretion, within ten (10) days of delivery of the request shall entitle the requesting party to terminate the Agreement immediately upon written notice to the other party.

2.5 If the Agreement is terminated for any reason:

(a) Customer shall pay Kronos within thirty (30) days of such termination, all fees accrued under this Agreement prior to the effective date of such termination, provided however, if Customer terminates for material breach of the Agreement by Kronos, Kronos shall refund Customer any pre-paid fees for Implementation Services not delivered by Kronos;

(b) Customer's right to access and use the Applications shall be revoked and be of no further force or effect and return rented Equipment as provided in Section 9.1 below;

(c) No more than fifteen (15) days after termination (or upon Customer's written request at any time during the Term), Kronos will provide to Customer, at no charge to Customer, the Customer Content. After such time period, Kronos shall have no further obligation to store or make available the Customer Content and will securely delete any or all Customer Content without liability;

(d) Customer agrees to timely return all Kronos-provided materials related to the Services to Kronos at Customer's expense or, alternatively, destroy such materials and provide Kronos with an officer's certification of the destruction thereof; and

(e) All provisions in the Agreement, which by their nature are intended to survive termination, shall so survive.

3. FEES AND PAYMENT

3.1 Customer shall pay Kronos the Monthly Service Fees, the fees for the Implementation Services and any additional one time or recurring fees for Equipment, Training Points, KnowledgePass Education Subscription and such other Kronos offerings, all as set forth on the Order Form. The Monthly Service Fees will be invoiced on the frequency set forth on the Order Form ("Billing Frequency"). If Customer and Kronos have signed a Statement of Work for the Implementation Services, Implementation Services will be invoiced monthly as delivered unless otherwise indicated on the Order Form. If Kronos is providing Implementation Services in accordance with the Services Implementation Guideline or as "a la carte" services on the Order Form, Kronos will invoice Customer for Implementation Services in advance of providing such Implementation Services unless otherwise indicated on the Order Form. All other Kronos offerings will be invoiced upon execution of the applicable Order Form by Kronos and Customer. Unless otherwise indicated on an Order Form, payment for all items shall be due 30 days following date of invoice. All payments shall be sent to the attention of Kronos as specified on the invoice. Except as expressly set forth in this Agreement, all amounts paid to Kronos are non-refundable. Customer is responsible for all applicable federal, state, country, provincial or local taxes relating to the goods and services provided by Kronos hereunder (including without limitation GST and/or VAT if applicable), excluding taxes based on Kronos' income or business privilege.

3.2 If any amount owing under this or any other agreement between the parties is thirty (30) or more days overdue, Kronos may, without limiting Kronos' rights or remedies, suspend Services until such amounts are paid in full. Kronos will provide at least seven (7) days' prior written notice that Customer's account is overdue before suspending Services.

3.3 At the latest of (i) one (1) year after the effective date of this Agreement, or (ii) expiration of the Initial Term, and at each annual anniversary of that date thereafter, Kronos may increase the Monthly Service Fee rates in an amount not to exceed four percent (4%). The increased Monthly Service Fees will be reflected in the monthly invoice following the effective date of such increase without additional notice.

4. RIGHTS TO USE

4.1 Subject to the terms and conditions of the Agreement, Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use during the Term and for internal business purposes only: a) the Applications and related services, including the Documentation; b) training materials and KnowledgePass Content; and, c) any embedded third party software, libraries, or other components, which form a part of the Services. The Services contain proprietary trade secret technology of Kronos and its Suppliers. Unauthorized use and/or copying of such technology are prohibited by law, including United States and foreign copyright law. Customer shall not reverse compile, disassemble or otherwise convert the Applications or other software comprising the Services into uncompiled or unassembled code. Customer shall not use any of the third party software programs (or the data models therein) included in the Services except solely as part of and in connection with the Services. Customer acknowledges that execution of separate third party agreements may be required in order for Customer to use certain add-on features or functionality, including without limitation tax filing services.

4.2 Customer acknowledges and agrees that the right to use the Applications is limited based upon the amount of the Monthly Service Fees paid by Customer. Customer agrees to use only the modules and/or features for the number of employees and users as described on the Order Form. Customer agrees not to use any other modules or features nor increase the number of employees and users unless Customer pays for such additional modules, features, employees or users, as the case may be. Customer may not license, relicense or sublicense the Services, or otherwise permit use of the Services (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Services without the express prior written consent of Kronos. No license, right, or interest in any Kronos trademark, trade name, or service mark, or those of Kronos' licensors or Suppliers, is granted hereunder.

4.3 Customer may authorize its third party contractors and consultants to access the Services through Customer's administrative access privileges on an as needed basis, provided Customer: a) abides by its obligations to protect Confidential Information as set forth in this

Agreement; b) remains responsible for all such third party usage and compliance with the Agreement; and c) does not provide such access to a competitor of Kronos who provides workforce management services.

4.4 Customer acknowledges and agrees that, as between Customer and Kronos, Kronos retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with Customer, Customer shall not obtain or claim any rights in or ownership interest to the Services or Applications or any associated intellectual property rights in any of the foregoing. Customer agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by Customer through the Services.

4.5 When using and applying the information generated by the Services, Customer is responsible for ensuring that Customer complies with applicable laws and regulations. If the Services include the Workforce Payroll Applications or Workforce Absence Management Applications: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using these Applications, (ii) using these Applications does not release Customer of any professional obligation concerning the preparation and review of any reports and documents, (iii) Customer does not rely upon Kronos, Best Software, Inc. or these Applications for any advice or guidance regarding compliance with federal and state laws or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using these Applications and satisfy itself that those calculations are correct.

5. ACCEPTABLE USE

5.1 Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Services, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Agreement.

5.2 Customer represents and warrants to Kronos that Customer has the right to publish and disclose the Customer Content in connection with the Services. Customer represents and warrants to Kronos that the Customer Content: (a) does not infringe or violate any third-party right, including but not limited to intellectual property, privacy, or publicity rights, (b) is not abusive, profane, or offensive to a reasonable person, or, (c) is not hateful or threatening.

5.3 Customer will not (a) use, or allow the use of, the Services in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (b) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services, or alter, damage, delete, retrieve or record information about the Services or its users; (c) excessively overload the Kronos systems used to provide the Services; (d) perform any security integrity review, penetration test, load test, denial of service simulation or vulnerability scan; (e) use any tool designed to automatically emulate the actions of a human user (e.g., robots); or, (f) otherwise act in a fraudulent, malicious or negligent manner when using the Services.

6. CONNECTIVITY AND ACCESS

Customer acknowledges that Customer shall (a) be responsible for securing, paying for, and maintaining connectivity to the Services (including any and all related hardware, software, third party services and related equipment and components); and (b) provide Kronos and Kronos' representatives with such physical or remote access to Customer's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under the Agreement. Customer will make all necessary arrangements as may be required to provide access to Customer's computer and network environment if necessary for Kronos to perform its obligations under the Agreement.

7. IMPLEMENTATION AND SUPPORT

7.1 Implementation Services. Kronos will provide the Implementation Services to Customer. Implementation Services described in an SSS are provided on a time and materials basis, billed monthly as delivered unless otherwise indicated on the Order Form. Implementation Services described in the Services Implementation Guideline are provided on a fixed fee basis. If Customer requests additional Implementation Services beyond those described in the Services Implementation Guideline, Kronos will create a change order for Customer's review and approval and any additional Implementation Services to be provided by Kronos will be billed as delivered at the then-current Kronos professional services rates. Kronos' configuration of the Applications will be based on information and work flows that Kronos obtains from Customer during the discovery portion of the implementation. Customer shall provide Kronos with necessary configuration-related information in a timely manner to ensure that mutually agreed implementation schedules are met. In the event that Kronos is required to travel to Customer's location during the implementation, Customer agrees to pay any travel expenses, such as airfare, lodging, meals and local transportation, plus an administrative fee of ten percent (10%) of the amount of such travel expenses, incurred by Kronos in accordance with the then-current standard Kronos travel and expense policies, which Kronos will provide to Customer upon request. Kronos shall invoice Customer for such travel expenses and payment thereof shall be due net thirty (30) days from date of invoice.

7.2 Additional Services. Customer may engage Kronos to provide other services which may be fixed by activity ("a la carte") or provided on a time and materials basis ("bill as you go") as indicated on the applicable Order Form.

7.3 Support. Kronos will provide 24x7 support for the cloud infrastructure, the availability to the cloud environment, and telephone support for the logging of functional problems and user problems. Customer may log questions online via the Kronos Customer Portal. As part of such support, Kronos will make updates to the Services available to Customer at no charge as such updates are released generally to Kronos' customers. Customer agrees that Kronos may install critical security patches and infrastructure updates automatically as part of the Services. Kronos' then-current Support Services Policies shall apply to all Support Services provided by Kronos and may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies"). In the event of a conflict between the Support Policies and this Agreement, the terms of this Agreement shall prevail.

7.4 Support Services for Equipment. Provided Customer has purchased support services for the Equipment, the following terms shall apply (Depot Exchange support services for rented Equipment are included in the rental fees for such Equipment):

(a) Customer may select, as indicated on an Order Form, an Equipment Support Services option offered by the local Kronos entity responsible for supporting the Equipment if and as such offerings are available within the Kronos territory corresponding to the Equipment's location. Kronos shall provide each Equipment Support Services offering as specified herein.

(i) **Depot Exchange and Depot Repair.** If Customer has selected Depot Exchange or Depot Repair Equipment Support Services, the following provisions shall apply: Upon the failure of installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies. Service packs for the Equipment (as described in subsection (ii) below) are included in both Depot Exchange and Depot Repair Support Services.

Depot Exchange: Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

Depot Repair: Upon failure of installed Equipment, Customer shall install a Spare Product (as defined below) to replace the failed Equipment. Customer shall then return the failed Equipment, with the required RMA, to the applicable Kronos Depot Repair Center. Customer shall make reasonable efforts to return the failed Equipment using the same or substantially similar packing materials in which the original Equipment was sent. Customer shall also specify the address to which the repaired Equipment should be return shipped. Upon receipt of the failed Equipment, Kronos shall repair the failed Equipment and ship it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Equipment by regular surface transportation to Customer.

(ii) **Device Software Updates Only.** If Customer has selected Device Software Equipment Support Services, Customer shall be entitled to receive:

(A) Service packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements) available for download at Kronos' customer portal. Service packs for the Equipment are not installed by the Kronos Depot Repair Center but are available for download at Kronos' customer portal, provided Customer is maintaining the Equipment under an annual Equipment Support Services plan with Kronos.; and

(B) Access to the Kronos Support Services Center for the logging of requests for assistance downloading service packs for the Equipment.

(b) **Warranty.** Kronos warrants that all service packs and firmware updates provided under this Agreement shall materially perform in accordance with the Kronos published specifications for a period of ninety (90) days after download by Customer. In the event of a breach of this warranty, Customer's exclusive remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the specifications.

(c) **Responsibilities of Customer.** It is Customer's responsibility to purchase and retain, at Customer's location and at Customer's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow Customer to replace failed Equipment at Customer's locations in order for Customer to continue its operations while repairs are being performed and replacement Equipment is being shipped to Customer. For each of the Depot Exchange and Depot Repair Equipment Support Services options, Customer agrees that it shall return failed Equipment promptly as the failures occur and that it shall not hold failed Equipment and send failed Equipment to Kronos in "batches" which shall result in a longer turnaround time to Customer. In addition, Customer agrees to:

(i) Maintain the Equipment in an environment conforming to the Kronos published specifications for such Equipment;

(ii) Not perform self-repairs on the Equipment (i.e., replacing components) without prior written authorization from Kronos;

(iii) De-install all failed Equipment and install all replacement Equipment in accordance with Kronos' written installation guidelines;

(iv) Ensure that the Equipment is returned to Kronos properly packaged; and

(v) Obtain an RMA before returning any Equipment to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Equipment authorized by Kronos when issuing the RMA.

(d) **Delivery.** All domestic shipments within the United States are FOB Destination to/from Customer and Kronos with the shipping party bearing all costs and risks of loss, and with title passing upon delivery to the identified destination. All international shipments from Kronos to Customer are DAP (Incoterms 2010) to the applicable Customer location, and are DDP (Incoterms 2010) to the applicable Kronos Depot Repair Center when Customer is shipping to Kronos. Customer is responsible for all duties and taxes when sending Equipment to Kronos.

7.5 KnowledgePass Education Subscription. When KnowledgePass Education Subscription is purchased on an Order Form, Kronos will provide Customer with the KnowledgePass Education Subscription. The KnowledgePass Education Subscription provides access to certain educational offerings provided by Kronos (the "KnowledgePass Content"). Customer recognizes and agrees that the KnowledgePass Content is copyrighted by Kronos. Customer is permitted to make copies of the KnowledgePass Content provided in *.pdf form solely for Customer's internal use. Customer may not disclose such KnowledgePass Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the KnowledgePass Content without the written consent of Kronos, provided that Customer may download and modify contents of training kits solely for Customer's internal use.

7.6 Training Points. "Training Points" which are purchased by Customer may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos. Training Points may be redeemed only during the Term at any time no more than twelve (12) months after the date of the applicable Order Form, after which time such Training Points shall expire and be of no value. Training Points may not be exchanged for other Kronos products or services.

7.7 Training Courses. When Training Points or training sessions are set forth in an SSS, the SSS applies. When Training Points or training sessions are not set forth in an SSS, as part of the Services, for each SaaS application module included in the Services purchased by

Customer, Customer's employees shall be entitled to attend, in the quantity indicated, the corresponding training courses set forth at: www.kronos.com/products/workforce-central-saas/training-guidelines.aspx
Participation in such training courses is limited to the number of seats indicated for the courses corresponding to the modules forming a part of the Services purchased by Customer.

7.8 Technical Account Manager. Customers purchasing a Kronos Technical Account Manager ("TAM") as indicated on the Order Form shall receive the services of a dedicated, but not exclusive, TAM for one production instance of the Software. Customer will designate up to two primary and three secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos training for the Applications covered under this Agreement at Customer's expense.

8. Customer content

Customer shall own all Customer Content. Kronos acknowledges that all of the Customer Content is deemed to be the Confidential Information of Customer. Kronos may, but shall have no obligation to, monitor Customer Content from time to time to ensure compliance with the Agreement and applicable law.

9. EQUIPMENT

If Customer purchases or rents Equipment from Kronos, a description of such Equipment (model and quantity), the applicable pricing, and delivery terms shall be listed on the Order Form.

9.1 Rented Equipment. The following terms apply only to Equipment Customer rents from Kronos:

- a) **Rental Term and Warranty Period.** The term of the Equipment rental and the "Warranty Period" for such Equipment shall run coterminously with the Term of the other Services provided under the Agreement.
- b) **Insurance.** Customer shall insure the Equipment for an amount equal to the replacement value of the Equipment for loss or damage by fire, theft, and all normal extended coverage at all times. No loss, theft or damage after shipment of the Equipment to Customer shall relieve Customer from Customer's obligations under the Agreement.
- c) **Location/Replacement.** Customer shall not make any alterations or remove the Equipment from the place of original installation without Kronos' prior written consent. Kronos shall have the right to enter Customer's premises to inspect the Equipment during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to Customer, to replace any Equipment with newer or alternative technology Equipment as long as the replacement Equipment at least provides the same level of functionality as that being replaced.
- d) **Ownership.** All Equipment shall remain the property of Kronos. All Equipment is, and at all times shall remain, separate items of personal property, notwithstanding such Equipment's attachment to other equipment or real property. Customer shall not sell or otherwise encumber the Equipment. Customer shall furnish any assurances, written or otherwise, reasonably requested by Kronos to give full effect to the intent of terms of this paragraph (d).
- e) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in Section 7.
- f) **Return of Equipment.** Upon termination of the Agreement or the applicable Order Form, Customer shall return, within thirty (30) days of the effective date of termination and at Customer's expense, the Equipment subject to this Section 9.1. Equipment will be returned to Kronos in the same condition as and when received, reasonable wear and tear excepted. If Customer fails to return Equipment within this time period, upon receiving an invoice from Kronos, Customer shall pay Kronos the then list price of the unreturned Equipment.

9.2 Purchased Equipment. The following terms apply only to Equipment Customer purchases from Kronos:

- a) **Ownership and Warranty Period.** Title to the Equipment shall pass to Customer upon delivery to the carrier. The "Warranty Period" for the Equipment shall be for a period of ninety (90) days from such delivery (unless otherwise required by law).
- b) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in this Agreement if purchased separately by Customer as indicated on the applicable Order Form. If purchased, Equipment support services have a term of one (1) year commencing upon expiration of the Warranty Period. Equipment support services will be automatically extended for additional one year terms on the anniversary of its commencement date ("Renewal Date"), unless either party has given the other thirty (30) days written notification of its intent not to renew. Kronos may change the annual support charges for Equipment support services effective at the end of the initial one (1) year term or effective on the Renewal Date, by giving Customer at least thirty (30) days prior written notification.

10. SERVICE LEVEL AGREEMENT

Kronos shall provide the service levels and associated credits, when applicable, in accordance with the Service Level Agreement attached hereto as Exhibit D-1 and which is hereby incorporated herein by reference. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE or INTERRUPTION OF the SERVICES OR FAILURE BY KRONOS TO MEET THE TERMS OF the APPLICABLE service level agreement, SHALL BE THE REMEDIES PROVIDED IN exhibit D-1.

11. LIMITED WARRANTY; DISCLAIMERS OF WARRANTY

11.1 Kronos represents and warrants to Customer that the Applications, under normal operation as specified in the Documentation and when used as authorized herein, will perform substantially in accordance with such Documentation during the Term.

11.2 Kronos' sole obligation and Customer's sole and exclusive remedy for any breach of the foregoing warranty is limited to Kronos' reasonable commercial efforts to correct the non-conforming Services at no additional charge to Customer. In the event that Kronos is unable to correct material deficiencies in the Services arising during the Warranty Period, after using Kronos' commercially reasonable efforts to do so, Customer shall be entitled to terminate the then remaining Term of the Agreement as Customer's sole and exclusive remedy. Kronos' obligations hereunder for breach of warranty are conditioned upon Customer notifying Kronos of the material breach in writing, and providing Kronos with sufficient evidence of such non-conformity to enable Kronos to reproduce or verify the same.

11.3 Kronos warrants to Customer that each item of Equipment shall be free from defects in materials and workmanship during the Warranty Period. In the event of a breach of this warranty, Customer's sole and exclusive remedy shall be Kronos' repair or replacement of the deficient Equipment, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Documentation for such Equipment. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) in the event of:

- a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including without limitation modification or

replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;

- b) failure of Customer to provide and maintain a suitable installation environment, as specified in the published specifications for such Equipment; or
- c) malfunctions resulting from the use of badges or supplies not approved by Kronos.

Except as provided for in this Section 11, Kronos hereby disclaims all warranties, conditions, guaranties and representations relating to the Services, express or implied, oral or in writing, including without limitation the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and whether or not arising through a course of dealing. The Services are not guaranteed to be error-free or uninterrupted. Except as specifically provided in this Agreement, Kronos makes no warranties or representations concerning the compatibility of the Services, the SaaS Applications or the Equipment nor any results to be achieved therefrom.

12.0 DATA SECURITY

12.1 As part of the Services, Kronos shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data as described at: <http://www.kronos.com/products/workforce-central-cloud/cloud-guidelines.aspx>. Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under the Agreement.

12.2 As between Customer and Kronos, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of Customer's knowledge such Personally Identifiable Data supplied to Kronos is accurate. Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Kronos and Kronos' Suppliers wherever located only for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out Kronos' duties and responsibilities under the Agreement or as required by law.

12.3 Prior to initiation of the Services under the Agreement and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's industry and which could be imposed on Kronos as a result of provision of the Services. Customer will ensure that: (a) the transfer to Kronos and storage of any Personally Identifiable Data by Kronos or Kronos' Supplier's data center is permitted under applicable data protection laws and regulations; and, (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

13. INDEMNIFICATION

13.1 Kronos shall defend Customer and its respective directors, officers, and employees (collectively, the "Customer Indemnified Parties"), from and against any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party (each a "Claim") alleging that the permitted uses of the Services infringe or misappropriate any United States or Canadian copyright or patent and will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including without limitation reasonable attorneys' fees) actually awarded to a third party as a result of such Claim by a court of applicable jurisdiction or as a result of Kronos' settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Services by reason of infringement or misappropriation of such copyright or patent, or if in Kronos' opinion, the Services are likely to become the subject of a successful claim of such infringement or misappropriation, Kronos, at Kronos' option and expense, will use commercially reasonable efforts to (a) procure for Customer the right to continue using the Services as provided in the Agreement, (b) replace or modify the Services so that the Services become non-infringing but remain substantively similar to the affected Services, and if neither (a) or (b) is commercially feasible, to (c) terminate the Agreement and the rights granted hereunder after provision of a refund to Customer of the Monthly Service Fees paid by Customer for the infringing elements of the Services covering the period of their unavailability.

13.2 Kronos shall have no liability to indemnify or defend Customer to the extent the alleged infringement is based on: (a) a modification of the Services by anyone other than Kronos; (b) use of the Services other than in accordance with the Documentation for such Service or as authorized by the Agreement; (c) use of the Services in conjunction with any data, equipment, service or software not provided by Kronos, where the Services would not otherwise itself be infringing or the subject of the claim; or (d) use of the Services by Customer other than in accordance with the terms of the Agreement. Notwithstanding the foregoing, with regard to infringement claims based upon software created or provided by a licensor to Kronos or Suppliers, Kronos' maximum liability will be to assign to Customer Kronos' or Supplier's recovery rights with respect to such infringement claims, provided that Kronos or Kronos' Supplier shall use commercially reasonable efforts at Customer's cost to assist Customer in seeking such recovery from such licensor.

13.3 Customer shall be responsible and liable for all damages and cost of Kronos, its Suppliers and their respective directors, officers, employees, agents and independent contractors any and all Claims alleging that: (a) employment-related claims arising out of Customer's configuration of the Services; (b) Customer's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification or combination is the cause of such infringement and was not authorized by Kronos; or, (c) a claim that the Customer Content infringes in any manner any intellectual property right of any third party, or any of the Customer Content contains any material or information that is obscene, defamatory, libelous, or slanderous violates any person's right of publicity, privacy or personality, or has otherwise caused or resulted in any tort, injury, damage or harm to any other person.

13.4 The Indemnified Party(ies) shall provide written notice to the indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party shall be relieved from providing such indemnity to the extent of the delay's impact on the defense. The indemnifying party shall have sole control of the defense of any indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party shall not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other party. The Indemnified Parties shall cooperate fully, at the indemnifying party's request and expense, with the indemnifying party in the defense, settlement or compromise of any such action. The indemnified party may retain its own counsel at its own expense, subject to the indemnifying party's rights above.

14. LIMITATION OF LIABILITY

14.1 Except as specifically provided in this agreement, Kronos and its Suppliers will not be liable for any damages or injuries caused by the use of the services or by any errors, delays, interruptions in transmission, or failures of the Services.

14.2 Except for Kronos' indemnification obligations set forth in Section 13 above, the total aggregate liability of Kronos or Kronos' suppliers to Customer and/or any third party in connection with the Agreement shall be limited to direct damages proven by Customer, such direct damages not to exceed an amount equal to the total net payments received by Kronos for the Services in the twelve (12) month period immediately preceding the date in which such claim arises.

14.3 except for Kronos' indemnification obligations set forth in Section 13 above, in no event shall Kronos or Kronos' suppliers, their respective affiliates, service providers, or agents be liable to Customer or any third party for any incidental, special, punitive, consequential or other indirect damages or for any lost or imputed profits or revenues, lost data or cost of procurement of substitute services resulting from delays, nondeliveries, misdeliveries or services interruption, however caused, arising from or related to the Services or the Agreement, regardless of the legal theory under which such liability is asserted, whether breach of warranty, indemnification, negligence, strict liability or otherwise, and whether liability is asserted in contract, tort or otherwise, and regardless of whether Kronos or Supplier has been advised of the possibility of any such liability, loss or damage.

14.4 Except with respect to liability arising from Kronos' gross negligence or willful misconduct, Kronos disclaims any and all liability, including without limitation liability related to a breach of data security and confidentiality obligations, resulting from any externally introduced harmful program (including without limitation viruses, trojan horses, and worms), Customer's Content or applications, third party unauthorized access of Equipment, SaaS Applications or systems, or machine error.

EXHIBIT D-1

SERVICE LEVEL AGREEMENT (SLA)

Service Level Agreement: The Services, in a production environment and as described in the Statement of Work (aka Services Scope Statement), are provided with the service levels described in this Exhibit D-1. SLAs are only applicable to production environments. SLAs will be available upon Customer's signature of Kronos' Go Live Acceptance Form for Customer's production environment.

99.75% Application Availability

Actual Application Availability % = (Monthly Minutes (MM) minus Total Minutes Not Available (TM)) multiplied by 100 and divided by Monthly Minutes (MM), but not including Excluded Events

Service Credit Calculation: An Outage will be deemed to commence when the Applications are unavailable to Customer in Customer's production environment hosted by Kronos and end when Kronos has restored availability of the Services. Failure to meet the 99.75% Application Availability SLA, other than for reasons due to an Excluded Event, will entitle Customer to a credit as follows:

Actual Application Availability % (as measured in a calendar month)	Service Credit to be applied to Customer's monthly invoice for the affected month
<99.75% to 98.75%	10%
<98.75% to 98.25%	15%
<98.25% to 97.75%	25%
<97.75 to 96.75%	35%
<96.75	50%

"Outage" means the accumulated time, measured in minutes, during which Customer is unable to access the Applications for reasons other than an Excluded Event.

"Excluded Event" means any event that results in an Outage and is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos, including without limitation Customer Content, failures or malfunctions resulting from circuits provided by Customer, any inconsistencies or changes in Customer's source environment, including either intentional or accidental connections or disconnections to the environment; (c) Force Majeure events; (d) scheduled or emergency maintenance, alteration or implementation provided during the Maintenance Period defined below; (e) any suspension of the Services in accordance with the terms of the Agreement to which this Exhibit D-1 is attached; (f) the unavailability of required Customer personnel, including as a result of failure to provide Kronos with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.

"Maintenance Period" means scheduled maintenance periods established by Kronos to maintain and update the Services, when necessary. During these Maintenance Periods, the Services are available to Kronos to perform periodic maintenance services, which include vital software updates. Kronos will use its commercially reasonable efforts during the Maintenance Period to make the Services available to Customer; however, some changes will require downtime. Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least one day in advance of any known downtime so planning can be facilitated by Customer.

Currently scheduled Maintenance Periods for the Services are:

Monday through Friday 04:00 am – 06:00 am (U.S. eastern time)
 Saturday and Sunday 12:00 am – 06:00 am (U.S. eastern time)

Maintenance Periods include those maintenance periods mutually agreed upon by Customer and Kronos.

"Monthly Minutes (MM)" means the total time, measured in minutes, of a calendar month commencing at 12:00 am of the first day of such calendar month and ending at 11:59 pm of the last day of such calendar month.

"Total Minutes Not Available (TM)" means the total number of minutes during the calendar month that the Services are unavailable as the result of an Outage.

Limitations: Service Credits will not be provided if: (a) Customer is in breach or default under the Agreement at the time the Outage occurred; or (b) the Outage results from an Excluded Event. If Kronos does not provide the appropriate Service Credit as due hereunder, Customer must request the Service Credit within sixty (60) calendar days of the conclusion of the month in which the Service Credit accrues. Customer waives any right to Service Credits not requested within this time period. All performance calculations and applicable Service Credits are based on Kronos records and data unless Customer can provide Kronos with clear and convincing evidence to the contrary.

The Service Level Agreements in this Exhibit, and the related Service Credits, apply on a per production environment basis. For the avoidance of doubt, Outages in one production environment may not be added to Outages in any other production environment for purposes of calculating Service Credits.

Customer acknowledges that Kronos manages its network traffic in part on the basis of Customer's utilization of the Services and that changes in such utilization may impact Kronos' ability to manage network traffic. Therefore, notwithstanding anything else to the contrary, if Customer significantly changes its utilization of the Services than what is contracted with Kronos and such change creates a material and adverse

impact on the traffic balance of the Kronos network, as reasonably determined by Kronos, the parties agree to co-operate, in good faith, to resolve the issue.

SECTION E
KRONOS WORKFORCE READY® - SOFTWARE AS A SERVICE TERMS AND CONDITIONS

Customer and Kronos agree that the terms and conditions set forth in this Section E shall apply to the Kronos supply of the commercially available version of the Workforce Ready® SaaS Applications in Kronos' hosting environment, the services related thereto, and the sale or rental of Equipment (if any) specified on a Kronos Order Form. The Applications described on the Order Form shall be delivered by means of Customer's permitted access to the Kronos infrastructure hosting such Applications.

1. DEFINITIONS

"Agreement" means these terms and conditions and the Order Form(s).

"Application(s)" or **"SaaS Application(s)"** means those Kronos software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Agreement. **"Billing Start Date"** means the date the billing of the Monthly Service Fees commences as indicated on the applicable Order Form. The Billing Start Date of the Monthly Service Fees for any Services ordered by Customer after the date of this Agreement which are incremental to Customer's then-existing Services shall be the date the applicable Order Form is executed by Kronos and Customer.

"Customer Content" means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Services.

"Documentation" means technical publications published by Kronos relating to the use of the Services.

"Educational Content" has the meanings ascribed in Section 7.3.

"Equipment" means the Kronos equipment purchased or rented by Customer under this Agreement.

"Initial Term" means the initial term of the Services as indicated on the Order Form.

"Monthly Service Fee(s)" means the monthly fees described in an Order Form. Monthly Service Fees include fees for usage of the Applications, the Services, and Equipment rental, if any. Billing of the Monthly Service Fee(s) commences on the Billing Start Date.

"Order Form" means an order form mutually agreed upon by Kronos and Customer setting forth the items ordered by Customer and to be provided by Kronos and the fees to be paid by Customer.

"Personally Identifiable Data" means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

"Renewal Term" means the renewal term of the Services as indicated on the Order Form.

"Services" means (i) accessibility to the commercially available version of the Applications by means of access to the password protected customer area of a Kronos website, and all such services, items and offerings accessed by Customer therein, and (ii) the Equipment rented hereunder, if any.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Services.

"Term" means the Initial Term and any Renewal Terms thereafter.

2. TERM

2.1 The Services shall commence on the Billing Start Date, and shall continue for the Initial Term or until terminated in accordance with the provisions hereof. At the expiration of the Initial Term and each Renewal Term as applicable, the Services shall automatically renew for additional Renewal Terms until terminated in accordance with the provisions hereof.

2.2 Customer may terminate the Services and this Agreement for convenience upon ninety (90) days prior written notice subject to Customer's payment of the Services performed and Equipment delivered prior to the effective date of termination. Kronos may terminate the Services and this Agreement to be effective at the expiration of the then current Term upon no less than sixty (60) days prior written notice.

2.3 Either party may terminate the Services and the Agreement upon a material breach of the Agreement by the other party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Kronos may suspend the Services immediately upon notice in the event of any Customer breach of Sections 4 (Rights to Use), 5 (Acceptable Use), or Section B.4 (Confidential Information).

2.4 In the event that either party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated a bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization, the other party may request adequate assurances of future performance. Failure to provide adequate assurances, in the requesting party's reasonable discretion, within ten (10) days of delivery of the request shall entitle the requesting party to terminate the Agreement immediately upon written notice to the other party.

2.5 If the Agreement is terminated for any reason:

(a) Customer shall pay Kronos within thirty (30) days of such termination, all fees accrued under this Agreement prior to the effective date of such termination, provided however, if Customer terminates for material breach of the Agreement by Kronos, Kronos shall refund Customer

- any pre-paid fees for services not delivered by Kronos;
- (b) Customer's right to access and use the Applications shall be revoked and be of no further force or effect and return rented Equipment as provided in Section 9.1 below;
- (c) No more than fifteen (15) days after termination (or upon Customer's written request at any time during the Term), Kronos will provide to Customer, at no charge to Customer, the Customer Content. After such time period, Kronos shall have no further obligation to store or make available the Customer Content and will securely delete any or all Customer Content without liability;
- (d) Customer agrees to timely return all Kronos-provided materials related to the Services to Kronos at Customer's expense or, alternatively, destroy such materials and provide Kronos with an officer's certification of the destruction thereof; and
- (e) All provisions in the Agreement, which by their nature are intended to survive termination, shall so survive.

3. FEES AND PAYMENT

3.1 Customer shall pay Kronos the Setup Fees, the Monthly Service Fees and any additional one time, set-up or recurring fees, all as defined on the Order Form. Billing will commence on the Billing Start Date with the Monthly Service Fees to be billed on the frequency set forth on the Order Form ("Billing Frequency"). Unless otherwise indicated on the Order Form, Kronos will bill Customer for all implementation services in advance. Purchased Equipment will be billed upon shipment of such Equipment. Customer authorizes Kronos to charge the debit card or credit card on file with Kronos in an amount equal to the Monthly Service Fees as all such fees become due under this Agreement. For all other payments and fees due under this Agreement, payment shall be due 30 days following date of invoice unless otherwise indicated on an Order Form. Except as expressly set forth in the Agreement, all amounts paid to Kronos are non-refundable. Customer is responsible for all applicable taxes relating to the goods and services provided by Kronos hereunder (including without limitation GST and/or VAT if applicable), excluding taxes based on Kronos' income or business privilege.

3.2 The Setup Fees shall be invoiced upon execution of the Agreement and shall be due net 30 days following date of invoice. Customer acknowledges that setup fees may be charged to Customer by third parties for Add-on Features. Third party setup and monthly fees shall be set forth on an Order Form. Monthly Service fees shall be based on monthly periods that begin on the Billing Start Date. Monthly Service Fees shall include fees for Equipment rental, if any. Monthly Service Fees for Services added on or before the 15th day of a given month will be charged for that full monthly period and each monthly period of the Term thereafter; Monthly Service Fees for Services added after the 15th day of a given month will begin to accrue as of the 1st day of the following month and will be charged for each monthly period of the Term thereafter. Monthly Service Fees shall be invoiced promptly following the end of the calendar month in which the Monthly Service Fees were accrued. Kronos will monitor Customer's "Usage" of the Services (as defined below) in order to calculate the Usage portion of the Monthly Service Fees to be charged. Usage of the Services, depending on applicable features, components, or services, shall be priced as identified on the Order Form either on a: (a) per month basis; (b) per active employee (herein "Active Employee") per month usage basis; (c) per transaction basis (e.g.: pay statement); or, (d) per access point. For purposes of the Agreement, an employee shall be deemed an Active Employee during any applicable billing period if through the Services: (i) time has been entered for such employee; (ii) records have been included for such employee for the purpose of processing payroll; (iii) records have been included for such employee within an import/export process; (iv) such employee has accessed the Services, regardless of the purpose; (v) benefit time has been accrued for such employee; or (vi) such employee has been marked by Customer as having an "Active" status during the period.

3.3 Customer agrees that except in those circumstances in which Customer is entitled to invoke the termination for cause provision set forth in Section 2.3 above, in consideration of Kronos' delivery of the Services on a variable fee basis, Customer agrees to pay Kronos each month during the Term in which charges accrue no less than the minimum monthly fees ("Minimum Monthly Fees") which shall be calculated by Kronos based the amounts identified on all Order Forms for Customer's Usage of the Services, plus Equipment rental fees, if any. In the event that Customer does not reach the anticipated Usage upon which the Minimum Monthly Fees was based for any given month during the Term, Customer shall remain responsible for paying the Minimum Monthly Fees for that month. If an Order Form or the Agreement is suspended by Kronos for non-payment or otherwise terminated by Kronos for cause, Customer shall remain liable to pay the applicable Minimum Monthly Fees up to and including the last day of the month in which the effective date of termination occurs.

3.4 If any amount owing under this or any other agreement between the parties is thirty (30) or more days overdue, Kronos may, without limiting Kronos' rights or remedies, suspend Services until such amounts are paid in full. Kronos will provide at least seven (7) days' prior written notice that Customer's account is overdue before suspending Services.

3.5 At the latest of (i) one (1) year after the effective date of this Agreement, or (ii) expiration of the Initial Term, and at each annual anniversary of that date thereafter, Kronos may increase the Monthly Service Fee rates in an amount not to exceed four percent (4%). The increased Monthly Service Fees will be reflected in the monthly invoice following the effective date of such increase without additional notice.

4. RIGHTS TO USE

4.1 Subject to the terms and conditions of the Agreement, Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use during the Term and for internal business purposes only: a) the Applications and related services, including the Documentation and training materials; and, b) any embedded third party software, libraries, or other components, which form a part of the Services. The Services contain proprietary trade secret technology of Kronos and its Suppliers. Unauthorized use and/or copying of such technology are prohibited by law, including United States and foreign copyright law. Customer shall not reverse compile, disassemble or otherwise convert the Applications or other software comprising the Services into uncompiled or unassembled code. Customer acknowledges and agrees that the right to use the Services is limited based upon authorized Usage and the amount of the Monthly Service Fees to be paid by Customer. Customer agrees to use only the modules and/or features described on the Order Form. Customer agrees not to use any other modules or features unless Customer has licensed such additional modules or features. Customer may not relicense or sublicense the Services, or otherwise permit use of the Services (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Services without the express prior written consent of Kronos. No license, right, or interest in any Kronos trademark, trade name, or service mark, or those of Kronos' licensors or Suppliers, is granted hereunder. When using and applying the information generated by the Services, Customer is responsible for ensuring that Customer complies with applicable laws and regulations.

4.2 Customer may authorize its third party contractors and consultants to access the Services through Customer's administrative access

privileges on an as needed basis, provided Customer: a) abides by its obligations to protect Confidential Information as set forth in this Agreement; b) remains responsible for all such third party usage and compliance with the Agreement; and c) does not provide such access to a competitor of Kronos who provides workforce management services.

4.3 Customer acknowledges and agrees that, as between Customer and Kronos, Kronos retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with Customer, Customer shall not obtain or claim any rights in or ownership interest to the Services or any associated intellectual property rights in any of the foregoing. Customer agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by Customer through the Services.

4.4 Kronos will make updates and upgrades to the Services (tools, utilities, improvements, third party applications, general enhancements) available to Customer at no charge as they are released generally to its customers as part of the Services. Customer agrees to receive those updates automatically as part of the Services. Kronos also may offer new products and/or services to Customer at an additional charge. Customer shall have the option of purchasing such new products and/or services under a separate Order Form.

4.5 Kronos reserves the right to change the Services, in whole or in part, including but not limited to, the Internet based services, technical support options, and other Services-related policies. Customer's continued use of the Services after Kronos posts or otherwise notifies Customer of any changes indicates Customer's agreement to those changes.

5. ACCEPTABLE USE

5.1 Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Services, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Agreement.

5.2 Customer represents and warrants to Kronos that Customer has the right to publish and disclose the Customer Content in connection with the Services. Customer represents and warrants to Kronos that the Customer Content: (a) does not infringe or violate any third-party right, including but not limited to intellectual property, privacy, or publicity rights, (b) is not abusive, profane, or offensive to a reasonable person, or, (c) is not hateful or threatening.

5.3 Customer will not (a) use, or allow the use of, the Services in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (b) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services, or alter, damage, delete, retrieve or record information about the Services or its users; (c) excessively overload the Kronos systems used to provide the Services; (d) perform any security integrity review, penetration test, load test, denial of service simulation or vulnerability scan; (e) use any tool designed to automatically emulate the actions of a human user (e.g., robots); or, (f) otherwise act in a fraudulent, malicious or negligent manner when using the Services.

6. CONNECTIVITY AND ACCESS

Customer acknowledges that Customer shall (a) be responsible for securing, paying for, and maintaining connectivity to the Services (including any and all related hardware, software, third party services and related equipment and components); and (b) provide Kronos and Kronos' representatives with such physical or remote access to Customer's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under the Agreement. Customer will make all necessary arrangements as may be required to provide access to Customer's computer and network environment if necessary for Kronos to perform its obligations under the Agreement. Kronos is hereby (i) granted access to such Customer data to perform its obligations under the Agreement and (ii) authorized to audit the number of Active Employee counts or other transactions that have occurred to measure Usage.

7. IMPLEMENTATION AND SUPPORT

7.1 Implementation. Kronos will configure the Services utilizing scheduled remote resources. Software module configuration will be based on information and work flows obtained from Customer during the discovery portion of the implementation. Customer shall provide Kronos with necessary configuration-related information in a timely manner to ensure that mutually agreed implementation schedules are met. Kronos and Customer's implementation responsibilities are described more specifically in the Services Implementation Guideline set forth at: <http://www.kronos.com/products/workforce-ready/implementation-guidelines.aspx>

7.2 Standard Support. Kronos will provide telephone support 8:00 a.m. to 5:00 p.m., local time, Monday – Friday. Customers also shall be provided the capability to log questions online via the Kronos Customer Portal.

7.3 Equipment Support. If Equipment is rented in accordance with Section 9.1 below or if Equipment Support Services are purchased for Equipment purchased in accordance with Section 9.2 below, Kronos will provide the following Depot Exchange Support Services to Customer: (a) Upon the failure of installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies.

(b) Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

(c) Equipment support also includes Customer access to Equipment service packs via the Kronos Customer Portal.

7.4 Educational Materials and Content. Customer will have access to certain educational materials and content (the "Educational Content") within the Services. Customer recognizes and agrees that the Educational Content is copyrighted by Kronos. Customer is permitted to make copies of the Educational Content provided in pdf form solely for Customer's internal training purposes and may not disclose such Educational Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the Educational Content without the written consent of Kronos, provided that Customer may download and modify contents of Training Kits solely for Customer's internal use

8. Customer content

Customer shall own all Customer Content. Kronos acknowledges that all of the Customer Content is deemed to be the Confidential Information of Customer. Notwithstanding the foregoing, Customer grants Kronos permission to combine Customer's business data with that of other customers in a manner that does not identify the Customer or any individual in order to evaluate and improve the services Kronos offers to customers. In addition, Kronos may, but shall have no obligation to, monitor Customer Content from time to time to ensure compliance with the Agreement and applicable law.

9. EQUIPMENT

If Customer purchases or rents Equipment from Kronos, a description of such Equipment (model and quantity), the applicable pricing, and delivery terms shall be listed on the Order Form.

9.1 Rented Equipment. The following terms apply only to Equipment Customer rents from Kronos:

- a) **Rental Term and Warranty Period.** The term of the Equipment rental and the "Warranty Period" for such Equipment shall run coterminously with the Term of the other Services provided under the Agreement.
- b) **Insurance.** Customer shall insure the Equipment for an amount equal to the replacement value of the Equipment for loss or damage by fire, theft, and all normal extended coverage at all times. No loss, theft or damage after shipment of the Equipment to Customer shall relieve Customer from Customer's obligations under the Agreement.
- c) **Location/Replacement.** Customer shall not make any alterations or remove the Equipment from the place of original installation without Kronos' prior written consent. Kronos shall have the right to enter Customer's premises to inspect the Equipment during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to Customer, to replace any Equipment with newer or alternative technology Equipment as long as the replacement Equipment at least provides the same level of functionality as that being replaced.
- d) **Ownership.** All Equipment shall remain the property of Kronos. All Equipment is, and at all times shall remain, separate items of personal property, notwithstanding such Equipment's attachment to other equipment or real property. Customer shall not sell or otherwise encumber the Equipment. Customer shall furnish any assurances, written or otherwise, reasonably requested by Kronos to give full effect to the intent of terms of this paragraph (d).
- e) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in Section 7.
- f) **Return of Equipment.** Upon termination of the Agreement or the applicable Order Form, Customer shall return, within thirty (30) days of the effective date of termination and at Customer's expense, the Equipment subject to this Section 9.1. Equipment will be returned to Kronos in the same condition as and when received, reasonable wear and tear excepted. If Customer fails to return Equipment within this time period, upon receiving an invoice from Kronos, Customer shall pay Kronos the then list price of the unreturned Equipment.

9.2 Purchased Equipment. The following terms apply only to Equipment Customer purchases from Kronos:

- a) **Ownership and Warranty Period.** Title to the Equipment shall pass to Customer upon delivery to the carrier. The "Warranty Period" for the Equipment shall be for a period of ninety (90) days from such delivery (unless otherwise required by law).
- b) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in this Agreement if purchased separately by Customer as indicated on the applicable Order Form. If purchased, Equipment support services have a term of one (1) year commencing upon expiration of the Warranty Period. Equipment support services will be automatically extended for additional one year terms on the anniversary of its commencement date ("Renewal Date"), unless either party has given the other thirty (30) days written notification of its intent not to renew. Kronos may change the annual support charges for Equipment support services effective at the end of the initial one (1) year term or effective on the Renewal Date, by giving Customer at least thirty (30) days prior written notification.

10. SERVICE LEVEL AGREEMENT

Kronos shall: (a) provide basic support for the Services at no additional charge, (b) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (when it shall give at least 8 hours notice via the Services and shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday, Eastern Time), or (ii) any unavailability caused by circumstances beyond Kronos' reasonable control, including without limitation, acts of nature, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Kronos employees), internet service provider failures or delays, or denial of service attacks, and (iii) provide Services in accordance with applicable laws and government regulations.

11. LIMITED WARRANTY; DISCLAIMERS OF WARRANTY

11.1 Kronos represents and warrants to Customer that the Services, under normal operation as specified in the Documentation and when used as authorized herein, will perform substantially in accordance with such Documentation during the Term.

11.2 Kronos' sole obligation and Customer's sole and exclusive remedy for any breach of the foregoing warranty is limited to Kronos' reasonable commercial efforts to correct the non-conforming Services at no additional charge to Customer. In the event that Kronos is unable to correct material deficiencies in the Services arising during the Warranty Period, after using Kronos' commercially reasonable efforts to do so, Customer shall be entitled to terminate the then remaining Term of the Agreement as Customer's sole and exclusive remedy. Kronos'

obligations hereunder for breach of warranty are conditioned upon Customer notifying Kronos of the material breach in writing, and providing Kronos with sufficient evidence of such non-conformity to enable Kronos to reproduce or verify the same.

11.3 Kronos warrants to Customer that each item of Equipment shall be free from defects in materials and workmanship during the Warranty Period. In the event of a breach of this warranty, Customer's sole and exclusive remedy shall be Kronos' repair or replacement of the deficient Equipment, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Documentation for such Equipment. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) in the event of:

- a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including without limitation modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- b) failure of Customer to provide and maintain a suitable installation environment, as specified in the published specifications for such Equipment; or
- c) malfunctions resulting from the use of badges or supplies not approved by Kronos.

Except as provided for in this Section 11, Kronos hereby disclaims all warranties, conditions, guaranties and representations relating to the Services, express or implied, oral or in writing, including without limitation the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and whether or not arising through a course of dealing. The Services are not guaranteed to be error-free or uninterrupted. Except as specifically provided in this Agreement, Kronos makes no warranties or representations concerning the compatibility of the Services, the SaaS Applications or the equipment nor any results to be achieved therefrom.

12.0 DATA SECURITY

12.1 As part of the Services, Kronos shall provide administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer data. Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under the Agreement.

12.2 As between Customer and Kronos, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of Customer's knowledge such Personally Identifiable Data supplied to Kronos is accurate. Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Kronos and Kronos' Suppliers wherever located only for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out Kronos' duties and responsibilities under the Agreement or as required by law.

12.3 Prior to initiation of the Services under the Agreement and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's industry and which could be imposed on Kronos as a result of provision of the Services. Customer will ensure that: (a) the transfer to Kronos and storage of any Personally Identifiable Data by Kronos or Kronos' Supplier's data center is permitted under applicable data protection laws and regulations; and, (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

13. INDEMNIFICATION

13.1 Kronos shall defend Customer and its respective directors, officers, and employees (collectively, the "Customer Indemnified Parties"), from and against any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party (each a "Claim") alleging that the permitted uses of the Services infringe or misappropriate any United States or Canadian copyright or patent and will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including without limitation reasonable attorneys' fees) actually awarded to a third party as a result of such Claim by a court of applicable jurisdiction or as a result of Kronos' settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Services by reason of infringement or misappropriation of such copyright or patent, or if in Kronos' opinion, the Services are likely to become the subject of a successful claim of such infringement or misappropriation, Kronos, at Kronos' option and expense, will use commercially reasonable efforts to (a) procure for Customer the right to continue using the Services as provided in the Agreement, (b) replace or modify the Services so that the Services become non-infringing but remain substantively similar to the affected Services, and if neither (a) or (b) is commercially feasible, to (c) terminate the Agreement and the rights granted hereunder after provision of a refund to Customer of the Monthly Service Fees paid by Customer for the infringing elements of the Services covering the period of their unavailability.

13.2 Kronos shall have no liability to indemnify or defend Customer to the extent the alleged infringement is based on: (a) a modification of the Services by anyone other than Kronos; (b) use of the Services other than in accordance with the Documentation for such Service or as authorized by the Agreement; (c) use of the Services in conjunction with any data, equipment, service or software not provided by Kronos, where the Services would not otherwise itself be infringing or the subject of the claim; or (d) use of the Services by Customer other than in accordance with the terms of the Agreement. Notwithstanding the foregoing, with regard to infringement claims based upon software created or provided by a licensor to Kronos or Suppliers, Kronos' maximum liability will be to assign to Customer Kronos' or Supplier's recovery rights with respect to such infringement claims, provided that Kronos or Kronos' Supplier shall use commercially reasonable efforts at Customer's cost to assist Customer in seeking such recovery from such licensor.

13.3 Customer shall be responsible and liable for all damages and cost of Kronos, its Suppliers and their respective directors, officers, employees, agents and independent contractors (collectively, the "Kronos Indemnified Parties") from and against any and all Claims alleging that: (a) employment-related claims arising out of Customer's configuration of the Services; (b) Customer's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification or combination is the cause of such infringement and was not authorized by Kronos; or, (c) a claim that the Customer Content infringes in any manner any intellectual property right of any third party, or any of the Customer Content contains any material or information that is obscene, defamatory, libelous, or slanderous violates any person's right of publicity, privacy or personality, or has otherwise caused or resulted in any tort, injury, damage or harm to any other person. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise.

13.4 The Indemnified Party(ies) shall provide written notice to the indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party shall be relieved from providing such indemnity to the extent of the delay's impact on the defense. The indemnifying party shall have sole control of the defense of any indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party shall not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other party. The Indemnified Parties shall cooperate fully, at the indemnifying party's request and expense, with the indemnifying party in the defense, settlement or compromise of any such action. The indemnified party may retain its own counsel at its own expense, subject to the indemnifying party's rights above.

14. LIMITATION OF LIABILITY

14.1 Except as specifically provided in this Agreement, Kronos and its Suppliers will not be liable for any damages or injuries caused by the use of the Services or by any errors, delays, interruptions in transmission, or failures of the Services.

14.2 except for Kronos' indemnification obligations set forth in Section 13 above, the total aggregate liability of Kronos or Kronos' Suppliers to Customer and/or any third party in connection with the Agreement shall be limited to direct damages proven by Customer, such direct damages not to exceed an amount equal to the total net payments received by Kronos for the services in the Twelve (12) month period immediately preceding the date in which such claim arises.

14.3 Except for Kronos' indemnification obligations set forth in Section 13 above, in no event shall Kronos or Kronos' Suppliers, their respective affiliates, service providers, or agents be liable to Customer or any third party for any incidental, special, punitive, consequential or other indirect damages or for any lost or imputed profits or revenues, lost data or cost of procurement of substitute services resulting from delays, nondeliveries, misdeliveries or services interruption, however caused, arising from or related to the Services or the Agreement, regardless of the legal theory under which such liability is asserted, whether breach of warranty, indemnification, negligence, strict liability or otherwise, and whether liability is asserted in contract, tort or otherwise, and regardless of whether Kronos or Supplier has been advised of the possibility of any such liability, loss or damage.

14.4 EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY, INCLUDING WITHOUT LIMITATION LIABILITY RELATED TO A BREACH OF DATA SECURITY AND CONFIDENTIALITY OBLIGATIONS, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING WITHOUT LIMITATION VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT, SAAS APPLICATIONS OR SYSTEMS, OR MACHINE ERROR.



EXHIBIT 2

Order Form

Creation Date: 10-Feb-2017
 Quote#: 560475-1
 Prepared By: David Herndon

Expiration Date: 11-May-2017
 Order Type: Upgrade

Bill To: Attention:
 Pam Russell
 City of Murfreesboro
 111 W Vine St
 Murfreesboro, TN 37130

Ship To: Attention:
 Pam Russell
 City of Murfreesboro
 111 W Vine St
 Murfreesboro, TN 37130

Solution ID: 6118446
 Primary Contact Name: Pam Russell
 Primary Contact Phone: 615-848-2553
 Primary Contact Email: prussell@murfreesborotn.gov

License Email: exception@kronos.com
 FOB: Shipping Point
 Ship Method: Fedex Ground
 Freight terms: Prepay & Add
 Payment Terms: N30
 DataCenter Location: USA

Currency: USD
 Customer PO#

Initial Term: 36 Months

Kronos Contact Information: Kronos Incorporated
 297 Billerica Road

Co-Term Months Remaining

Renewal Term: One Year
 Billing Start Date: 90 Days from execution of Order Form

Chelmsford, MA 01824
 Telephone # 978-250-9800
 Fax # 978-367-5900

PERPETUAL TO SAAS CONVERSION TABLE

Billing Frequency: Annual in Advance

Applications	License Count	PEPM	Monthly Service Fee
Perpetual License to SaaS Conversion Monthly Service Fee	N/A	N/A	\$6,514.66
Workforce Timekeeper	1,450	\$0.00	\$0.00
Workforce Manager	275	\$0.00	\$0.00
Workforce Employee	1,450	\$0.00	\$0.00
Workforce Integration Manager	1,450	\$0.00	\$0.00
Workforce Mobile Employee	480	\$0.00	\$0.00
Workforce Mobile Manager	30	\$0.00	\$0.00
Workforce Leave	1,450	\$0.00	\$0.00
Total			\$6,514.66

FUTURE CAPACITY ADD PER EMPLOYEE RATES

For a period of 36 Months from the date of this Order Form, Customer may purchase additional employee capacity for the Applications set forth herein at the following prices:

The costs of any individual Application(s) included in the Timekeeper Bundle (i.e., Workforce Manager) will be set forth on a mutually agreed upon Order Form based on Kronos' then current list price.

Applications	PEPM
Workforce Timekeeper	\$5.23
Workforce Manager	Included
Workforce Employee	Included
Workforce Integration Manager	Included
Workforce Mobile Employee	Included
Workforce Mobile Manager	Included
Workforce Leave	\$1.04

PROFESSIONAL AND EDUCATIONAL SERVICES

Billing Frequency: Monthly in Arrears as Delivered

Professional Services Part # / Description	Hours	Rate	Role	Total Price
999002-ONL Paragon Online Remote Team	8	\$180.00	Project Manager	\$1,440.00
999002-ONL Paragon Online Remote Team	24	\$200.00	Technology Consultant	\$4,800.00
999002-ONL Paragon Online Remote Team	16	\$200.00	Application Consultant	\$3,200.00
Total Professional Services				\$9,440.00

SUMMARY

Offering Types	Summary Total
Total Monthly Fee (Applications / Cloud Services / Equipment Rental)	\$6,514.66
Professional & Educational Fees (Time & Materials)	\$9,440.00
Equipment Purchased & Support	\$0.00
Miscellaneous Purchased Items	\$0.00

Order Notes:

This order is made as part of a Kronos promotion. All pricing is discounted solely in connection with such promotion and will not be applied to future orders.

Customer agrees that in consideration of the foregoing and discounted pricing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Customer is giving up its right to use Customer's existing Kronos Workforce Central software on a perpetual basis. Customer's existing Kronos Workforce Central software will remain in effect and subject to the license and maintenance agreement for such software for a period of ninety (90) days from signature of this document by both parties, at which time Customer's license in such software shall terminate. The Kronos Workforce Central Software as a Service Terms and Conditions as agreed upon by Customer and Kronos apply to the WFC Applications set forth on this order. As of the Billing Start Date, Kronos will credit any pre-paid but unused fees for support and maintenance for such perpetual software licenses to be applied against amounts owed by Customer to Kronos hereunder until such pre-paid but unused fees are expended.

Future Capacity and Capacity Added above Converted license counts will be added via the Timekeeper bundle, which includes: Workforce Timekeeper, Workforce Manager 1:10 Ratio, Workforce Employee, Workforce Integration Manager, Workforce Mobile Employee, Workforce Mobile Manager. The costs of any individual Application(s) included in the Timekeeper Bundle (i.e., Workforce Manager) will be set forth on a mutually agreed upon Order Form based on Kronos' then current list price.

This order entered into between the Customer and Kronos is subject to the terms and conditions of the Contract #14-JLR-003 dated March 18th, 2014 between the Lead Agency (acting as the "Owner") and Kronos Incorporated (as the "Contractor"), as amended.

City of Murfreesboro

Signature:

Name:

Title:

Effective Date:

Shane McFarland
Shane McFarland
Mayor
3/22/17

Kronos Incorporated

Signature:

Name:

Title:

Effective Date:

SUMMARY

Offering Type	Summary Total
Total Monthly Fee (Applications / Cloud Services / Equipment Rental)	\$8,514.66
Professional & Educational Fees (Time & Materials)	\$9,440.00
Equipment Purchased & Support	\$0.00
Miscellaneous Purchased Items	\$0.00

Order Notes:

This order is made as part of a Kronos promotion. All pricing is discounted solely in connection with such promotion and will not be applied to future orders.

Customer agrees that in consideration of the foregoing and discounted pricing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Customer is giving up its right to use Customer's existing Kronos Workforce Central software on a perpetual basis. Customer's existing Kronos Workforce Central software will remain in effect and subject to the license and maintenance agreement for such software for a period of ninety (90) days from signature of this document by both parties, at which time Customer's license in such software shall terminate. The Kronos Workforce Central Software as a Service Terms and Conditions as agreed upon by Customer and Kronos apply to the WFC Applications set forth on this order. As of the Billing Start Date, Kronos will credit any pre-paid but unused fees for support and maintenance for such perpetual software licenses to be applied against amounts owed by Customer to Kronos hereunder until such pre-paid but unused fees are expended.

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This order entered into between the Customer and Kronos is subject to the terms and conditions of the Contract #14-2LR-001 dated March 18th, 2014 between the Lead Agency (acting as the "Owner") and Kronos Incorporated (as the "Contractor"), as amended.

City of Murfreesboro

Signature:

Name:

Title:

Effective Date:

Shane McFarland
Mayor

Kronos Incorporated

Signature:

Name:

Title:

Effective Date:

John O'Brien
Sr. Vice President, Global Sales

April 5, 2017

Exhibit 3

Professional Services Work Order

Customer Name: City of Murfreesboro SID: 6118446
 Customer Contact: Pam Russell Phone Number: 615-848-2553
 Email Address: prussell@murfreesboro tn.gov Currency: USD


Scope:
 The City of Murfreesboro is an existing Workforce Central v8 customer who will be moving to the Kronos Cloud. Kronos will provide Professional Services to move the customer solution to the Cloud and assist with testing.
 Any additional time required to assist customer will be managed through a mutually agreed upon change order signed by both parties.

Budget


Professional Services Part #	Billing Role	Contract Type	UDM	Qty.	Rate	Total Price
9990002-ONL	Project Manager	Time and Materials	Hours	8	\$180.00	\$1,440.00
9990002-ONL	Application Consultant	Time and Materials	Hours	16	\$200.00	\$3,200.00
9990002-ONL	Technology Consultant	Time and Materials	Hours	24	\$200.00	\$4,800.00
Total Professional Services						\$9,440.00

Sales Executive: <u>David Herndon</u>	Create Date: <u>12/13/2016</u>
Author: <u>Scott Kopco</u>	Expiration Date: <u>1/12/2017</u>

City of Murfreesboro

Signature: 
 Name: Shane McFarland
 Title: Mayor
 Effective Date: 3/23/17

Kronos Incorporated

Signature: 
 Name: John O'Brien
 Title: Sr. Vice President Global Sales
 Effective Date: April 5, 2017

Professional Services Work Order

Customer Name: City of Murfreesboro

SID: 6118446

Customer Contact: Pam Russell

Phone Number: 615-848-2553

Email Address: prussell@murfreesborotn.gov

Currency: USD

Scope:
 The City of Murfreesboro is an existing Workforce Central v8 customer who will be moving to the Kronos Cloud. Kronos will provide Professional Services to move the customer solution to the Cloud and assist with testing.
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Total Professional Services							\$9,440.00

Sales Executive:	David Herndon	Create Date:	12/13/2016
Author:	Scott Kopco	Expiration Date:	1/12/2017

EXHIBIT 4

Payment Terms:	Net 30 Days	Quote Type:	Renewal
Currency:	USD	Customer:	CITY OF MURFREESBORO
Customer PO Number:		Solution ID:	6118446
		Contract #:	1193395 R22-NOV-16
		Date:	30-NOV-2016
		Prepared by:	Lesa Smith / US Southeast2

Bill To:	CITY OF MURFREESBORO P.O. BOX 1139 MURFREESBORO TN 37133-1139 UNITED STATES	Ship To:	CITY OF MURFREESBORO 111 W VINE ST MURFREESBORO TN 37130 UNITED STATES
Contact:	PAM RUSSELL		
Email:	PRUSSELL@MURFREESBOROTN.GOV		

CONTRACT SUMMARY

Contract Period: 23-MAR-2017 - 04-JUN-2018

Description	Support Services	Estimated Tax	Subtotal
Software Support Services	\$53,995.56	\$0.00	\$53,995.56
Equipment Support Services	\$6,702.59	\$0.00	\$6,702.59
Educational Services	\$2,126.22	\$0.00	\$2,126.22
Total	\$62,824.37	\$0.00	\$62,824.37

Annualized Contract Value: \$63,161.95
The Annualized Contract Value is the value of the contract if all services are priced for 365 days. The Annualized Contract Value does not include estimated tax. Please note that this quote may include services priced for prorated periods.

IMPORTANT NOTES

This renewal quote entered into between the Customer and Kronos is subject to the terms and conditions of the Contract #14-JLR-003 dated March 18th, 2014 between the Lead Agency (acting as the "Owner") and Kronos Incorporated (as the Contractor), as amended.

Support Services are subject to applicable taxes. The tax amount shown on this quote is only an estimate. The actual tax due will be reflected on the invoice.

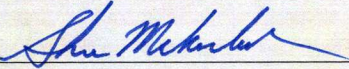
CITY OF MURFREESBORO	KRONOS INCORPORATED
Signature: <u></u>	Signature: _____
Name: <u>Shane McFarland</u>	Name: _____
Title: <u>Mayor</u>	Title: _____
Date: <u>3/23/17</u>	Date: _____

EXHIBIT 4

Payment Terms:	Net 30 Days	Quote Type:	Renewal
Currency:	USD	Customer:	CITY OF MURFREESBORO
Customer PO Number:		Solution ID:	6118446
		Contract #:	1193395 R22-NOV-16
		Date:	30-NOV-2016
		Prepared by:	Lesa Smith / US Southeast2

Bill To:	CITY OF MURFREESBORO P.O. BOX 1139 MURFREESBORO TN 37133-1139 UNITED STATES	Ship To:	CITY OF MURFREESBORO 111 W VINE ST MURFREESBORO TN 37130 UNITED STATES
Contact:	PAM RUSSELL		
Email:	PRUSSELL@MURFREESBOROTN.GOV		

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Support Services are subject to applicable taxes. The tax amount shown on this quote is only an estimate. The actual tax due will be reflected on the invoice.

CITY OF MURFREESBORO	KRONOS INCORPORATED
Signature: _____	Signature:  _____
Name: <u>Shane McFarland</u>	Name: <u>John O'Brien</u>
Title: <u>Mayor</u>	Title: <u>Sr. Vice President, Global Sales</u>
Date: _____	Date: <u>April 5, 2017</u>

Payment Terms: Net 30 Days
 Currency: USD
 Customer PO Number:

Quote Type: Renewal
 Customer: CITY OF MURFREESBORO
 Solution ID: 6118446
 Contract #: 1193395 R22-NOV-16
 Date:
 Prepared by: Lesa Smith / US Southeast2

Bill To: CITY OF MURFREESBORO
 P.O. BOX 1139
 MURFREESBORO TN 37133-1139
 UNITED STATES

Ship To: CITY OF MURFREESBORO
 111 W VINE ST
 MURFREESBORO TN 37130
 UNITED STATES

Contact: PAM RUSSELL
 Email: PRUSSELL@MURFREESBOROTN.GOV

SOFTWARE SUPPORT SERVICES

Line	Support Service Level	Covered Product	License Count	Start Date	End Date	Duration (days)
1	Gold	WORKFORCE MOBILE EMPLOYEE V8	75	23-MAR-2017	04-JUN-2018	439
2	Gold	WORKFORCE EMPLOYEE V8	1,450	05-JUN-2017	04-JUN-2018	365
3	Gold	WORKFORCE INTEGRATION MANAGER V8	1,450	05-JUN-2017	04-JUN-2018	365
4	Gold	WORKFORCE LEAVE V8	1,450	05-JUN-2017	04-JUN-2018	365
5	Gold	WORKFORCE MANAGER V8	250	05-JUN-2017	04-JUN-2018	365
6	Gold	WORKFORCE MOBILE EMPLOYEE V8	405	05-JUN-2017	04-JUN-2018	365
7	Gold	WORKFORCE MOBILE MANAGER V8	30	05-JUN-2017	04-JUN-2018	365
8	Gold	WORKFORCE TIMEKEEPER V8	1,450	05-JUN-2017	04-JUN-2018	365
9	Gold	WORKFORCE MANAGER V8	25	04-AUG-2017	04-JUN-2018	305

	Support Services	Estimated Tax	Subtotal
Software Support Services		\$53,995.56	\$0.00
			\$53,995.56

EQUIPMENT SUPPORT SERVICES

Line	Support Service Level	Covered Product	Quantity	Start Date	End Date	Duration (days)
1	Depot Exchange	Data Collection: InTouch	21	05-JUN-2017	04-JUN-2018	365
2	Depot Exchange	Options: InTouch	1	05-JUN-2017	04-JUN-2018	365
3	Depot Exchange	Data Collection: InTouch	1	09-SEP-2017	04-JUN-2018	269
4	Depot Exchange	Options: InTouch	1	09-SEP-2017	04-JUN-2018	269

	Support Services	Estimated Tax	Subtotal
Equipment Support Services		\$6,702.59	\$0.00
			\$6,702.59

EDUCATIONAL SERVICES

Line	Support Service Level	Covered Product	License Count	Start Date	End Date	Duration (days)
1	Ed Services Subscription	KNOWLEDGE PASS		05-JUN-2017	04-JUN-2018	365

	Support Services	Estimated Tax	Subtotal
Educational Services		\$2,126.22	\$0.00
			\$2,126.22

COUNCIL COMMUNICATION

Meeting Date: 07/25/2024

Item Title: Dr. Martin Luther King Jr. Blvd. Sidewalk Project Phase 2 Design Contract Addendum No. 1

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Addendum No. 1 of agreement between the City of Murfreesboro and Neel Schaffer Inc.

Staff Recommendation

Approval of Addendum No. 1, pending legal department review.

Background Information

On March 21, 2019, the City entered into a professional services agreement for the NEPA-PE and design services for the Dr. Martin Luther King Jr. Blvd. Sidewalk Project Phase 2. During the TDOT Final Design and ROW Phases, various circumstances arose requiring work to address plan development needs not anticipated. Service beyond original scope of work include additional utility coordination, multiple ROW and design revisions due to property owner’s request, as well as updating the NEPA Document.

The original professional service ceiling is set at \$235,870 the addendum request would raise the ceiling to \$272,432. Since this is a TDOT Transportation Alternative Program (TAP) funded project, all design cost are 100% local 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.

Safe and Livable Neighborhoods

Addition of sidewalks along major corridors enhances the safety and operations of the City’s roadway network.

Fiscal Impact

The additional expense, or \$36,562, will be funded through the FY 21 CIP.

Attachments

1. Attachment Addendum Number 1 to Contract with Neel Schaffer Inc.
2. Dr. Martin Luther King Jr. Blvd. Sidewalk Project Phase 2 Executed Contract.

February 29, 2024
NSI Project Number: NS.15131.000



Mr. Jim Kerr
Transportation Director
City of Murfreesboro
111 W. Vine Street
Murfreesboro, TN 37133

**RE: Professional Engineering Services - Addendum #1
Dr. Martin Luther King, Jr Blvd – Sidewalk Extension (TAP) – Phase 2
PIN 126616.00; 75LPLM-F3-076; TAP-1(395)**

Dear Jim:

Per recent discussion, please accept this correspondence as documentation and request of Addendum #1 for additional services under the referenced contract. As part of the project's Final Design and ROW Acquisition phases, the project has required completion of certain tasks not anticipated under the original professional services contract. The following tasks have been conducted and identified as additional services:

- NEPA Re-Evaluation 1 by Griggs & Maloney, subconsultant (2022)
- Multiple and various ROW revision updates as determined during ROW acquisition process
- Procurement and payment of SWPPP permit application
- Additional Utility Coordination Services, as requested by TDOT Region 3
- Design revisions during ROW and Construction Field Review plan preparation – adjustments to driveway connection for tract 12

Based on quote of services from our subconsultant partner (for NEPA re-evaluation services) and additional tasks performed by Neel-Schaffer, we request a fee addendum of \$36,562.00 for the identified tasks. With the original professional services ceiling established at \$235,870.00, the current addendum request would establish an updated fee ceiling of \$272,432.00. Neel-Schaffer will invoice labor and expenses for costs incurred up to contract ceiling. All other terms and conditions will remain the same and follow the originally executed professional services agreement.

Thank you for your assistance. Please let us know if any additional information is needed.

Sincerely,

NEEL-SCHAFFER, INC.

A handwritten signature in blue ink that reads 'Gregory D. Judy'.

Gregory D. Judy, P.E., PTOE
Engineer Manager/Vice President

Attachments

P: 615.217.0500 | F: 615.383.9984

201 East Main Street, Suite 325
Murfreesboro, TN 37130

www.neel-schaffer.com

engineers | planners | surveyors | environmental scientists | landscape architects



Signature Page

ISSUED AND AUTHORIZED BY:

ACCEPTED AND AGREED TO BY:

CITY OF MURFREESBORO
Mayor

NEEL-SCHAFFER, INC.

Date Signed: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:

CITY OF MURFREESBORO
City Attorney

Date Signed: _____



AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

CITY OF MURFREESBORO

AND

NEEL-SCHAFFER, INC.

This is an Agreement made on March 21, 2019, between the CITY OF MURFREESBORO, the OWNER, and NEEL-SCHAFFER, INC., the ENGINEER.

OWNER intends to enter into agreement with ENGINEER to provide professional design and engineering services associated with the development of construction plans for the Mercury Boulevard (US 70/SR 1) Sidewalk Construction Project- Phase 2, which is described in more detail in Exhibit A, Scope of Design Phase Services, hereinafter called the "Project."

OWNER and ENGINEER, in consideration of the mutual covenants herein, agree with respect to the performance of professional engineering services by ENGINEER with respect to the Project and the payment for these services by OWNER as set forth herein.

SECTION 1 — BASIC SERVICES OF ENGINEER

1.1 **ENGINEER** shall provide for **OWNER** professional engineering services for all phases of the **Project** to which this **Agreement** applies as hereinafter provided. These services will include serving as **OWNER's** professional engineering representative for the **Project**, providing consultation and advice and furnishing customary engineering services.

1.2 By execution of this **Agreement**, **OWNER** authorizes **ENGINEER** to provide Basic Services for the Design Phase of the **Project** in accordance with **Exhibit A, "Scope of Design Phase Services."**

SECTION 2 — ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by **OWNER**, **ENGINEER** shall provide, or obtain from other qualified persons or firms, Additional Services which are not included as part of the Basic Services specified in Section 1. Additional Services shall include, but are not limited to, the following:

2.1. Services resulting from material changes in the general scope, extent or character of the **Project** designed or specified by **ENGINEER** or its design including, but not limited to, changes in size, complexity, **OWNER's** schedule, character of construction and

revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond **ENGINEER's** control.

2.2. Except for bid documents contemplated and included as part of Basic Services in Section 1, preparing documents for alternate bids requested by **OWNER** for Contractor's work that is not executed or documents for out-of-sequence work.

2.3. Services resulting from the award of more than one separate prime contract for construction, materials or equipment for the **Project** unless multiple awards were contemplated and included as part of Basic Services in Section 1.

2.4. Assistance in connection with rebidding or renegotiating contracts for construction which involve modifying the Contract Documents to revise the **Project's** general scope, extent or character as necessary to reduce or increase the Construction Cost to bring it within the cost limit.

2.5. Preparing to serve or serving as a consultant or witness for **OWNER** in any litigation, arbitration, or other legal or administrative proceeding involving the **Project**, except for serving as a witness in litigation that names **ENGINEER** as a party.

2.6. Services in making revisions to Contract Documents occasioned by the acceptance of substitutions proposed by Contractor; and services after the award of the construction contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.7. Services resulting from significant delays in Project schedule which occurred through no fault of **ENGINEER**.

2.8. Additional or extended services during construction made necessary by (a) work damaged by fire or other cause during construction; (b) a significant amount of defective, neglected or delayed work of Contractor or supplier; (c) protracted or extensive assistance in the startup or utilization of any equipment or system; and (d) acceleration of the progress schedule involving services beyond normal working hours.

2.9. To the extent recoverable from the Contractor, evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the **Project**.

2.10. Services during out-of-town travel required of **ENGINEER** other than visits to the **Project** site or **OWNER's** office.

2.11. Additional Services in connection with the **Project**, including services which are to be furnished by

OWNER in accordance with Section 3 and services not otherwise provided for in Basic Services as specified in Section 1 of this **Agreement**.

SECTION 3 — **OWNER's** RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of **ENGINEER** and bear all costs incident thereto:

3.1. Designate in writing a person to act as **OWNER's** representative with respect to the services to be rendered under this **Agreement**.

3.2. Provide all criteria and full information as to **OWNER's** requirements for the **Project**, including design objectives and constraints; space, capacity and performance requirements; and flexibility, expendability, and any budgetary limitations. Also furnish copies of design and construction standards which **OWNER** will require to be included in the Contract Documents.

3.3. Assist **ENGINEER** by placing at **ENGINEER's** disposal available information pertinent to the **Project** including previous reports; geotechnical information; utility locations; property descriptions, zoning, deed, and other land use restrictions; and any other data relative to design or construction of the **Project**. **ENGINEER** shall not be liable for any claims for injury or loss arising from errors, omissions or

inaccuracies in documents or other information provided by the **OWNER**.

3.4. Arrange for access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under this **Agreement**.

3.5. Examine studies, reports, sketches, drawings, specifications, proposals and other documents presented by **ENGINEER** and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **ENGINEER**.

3.6. Acquire property for easements and rights-of-way required for construction of the **Project**.

3.7. Give timely written notice to **ENGINEER** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **ENGINEER's** services, or any defect or nonconformance in the work of the **ENGINEER** or of any Contractor.

3.8 **OWNER** shall timely report to **ENGINEER** any defects or suspected defects in **ENGINEER's** services of which **OWNER** becomes aware, so that **ENGINEER** may take measures to minimize the consequences of such a defect. **OWNER** further agrees to impose a similar notification requirement on all contractors in its **OWNER/Contractor** contract and shall require all subcontracts at any level to contain a like

requirement. Should legal liability for the defects exist, failure by **OWNER** and **OWNERS'** contractors or subcontractors to notify **ENGINEER** shall relieve **ENGINEER** of any liability for costs of remedying the defects above the sum such remedy would have cost had timely notification been given when such defects were first discovered.

SECTION 4 — PERIOD OF SERVICE

4.1. The provisions of this Section 4 and the various rates of compensation for **ENGINEER's** services provided for elsewhere in this **Agreement** have been agreed to in anticipation of the orderly and continuous progress of the **Project** through completion of all phases to which this **Agreement** applies. Specific periods of time and/or completion dates for rendering services are set forth in **Exhibit B, "Project Schedule."**

4.2. If **OWNER** requests modifications or changes in the scope, extent or character of the **Project**, or if periods of time and/or completion dates are exceeded through no fault of **ENGINEER**, the period of service and amount of compensation for **ENGINEER's** services shall be adjusted equitably.

4.3. In the event that the work designed or specified by **ENGINEER** is to be performed under more than one prime construction contract, the period of service and/or amount of compensation for **ENGINEER's**

services shall be adjusted equitably unless multiple awards were contemplated and included as part of Basic Services in Section 1.

SECTION 5 — PAYMENTS TO ENGINEER

5.1. **Methods of Payment.** OWNER shall pay ENGINEER for Basic Services rendered under Section 1 and Additional Services rendered under Section 2 in accordance with the provisions of Exhibit C, "Payments to Engineer."

5.2. **Times of Payment.** ENGINEER shall submit monthly statements for Basic and Additional Services rendered. For lump sum and percentage methods of payment, statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. For cost-plus-fixed-fee method of payment, the amount of fixed fee billed will be based on the proportion of the costs incurred at the time of billing to the maximum allowable costs established for this Agreement. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements. Payment of any invoices by OWNER shall be taken to mean that OWNER is satisfied with ENGINEER's services to the date of the payment and is not aware of any deficiencies in those services.

5.3. **Delinquent Payments.** OWNER recognizes time is critical with respect to payment of ENGINEER's statements, and that timely payment is a material part of the consideration of this Agreement. ENGINEER's statements shall be due and payable within 30 calendar days of statement date. If OWNER fails to make payments; ENGINEER, after giving seven days written notice to OWNER, and after 60 days from the due date, ENGINEER may suspend services until OWNER has paid in full all amounts due for services, expenses, and other related charges without recourse to OWNER for loss or damage caused by such suspension. OWNER waives any and all claims against ENGINEER for any such suspension. Payment of invoices shall not be subject to any discounts unless agreed to in writing by both parties. If OWNER objects to all or any portion of an invoice, OWNER shall notify ENGINEER within 30 calendar days of discovery of the basis of objection, identify the cause of the disagreement and pay when due that portion of the statement not in dispute. If OWNER fails to make any payment due ENGINEER for services and expenses, excepting any portion of the statement in dispute, within 30 calendar days after receipt of ENGINEER's statement, the amounts due ENGINEER shall include a charge at the rate of one percent (.5%) per month from the 30th day unless special

arrangements have been previously made and agreed to by both parties in writing. Payment will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. If either party brings any action at law or in equity to enforce or interpret the terms of this Agreement, or if either party must either prosecute or defend any action related to the subject matter of the Agreement, and prevails in such action, then the prevailing party shall be entitled to reasonable attorney's fees, expenses and costs, including expert witness fees, if applicable.

5.4. **Termination Payment.** In the event of termination by OWNER or ENGINEER under Paragraph 6.2, OWNER shall pay ENGINEER for services and expenses provided to date of termination in accordance with the methods of payment specified in Paragraph 5.1.

5.5. **Records of Costs.** Records of costs pertinent to ENGINEER's compensation will be kept in accordance with generally accepted accounting principles. ENGINEER is only obligated to maintain these records for a period of three years following date of final payment for services rendered under this Agreement.

SECTION 6 — GENERAL TERMS AND CONDITIONS

6.1. Construction Cost.

6.1.1. **Opinions of Cost.** Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable construction cost provided for herein are to be made on the basis of experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional, generally familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable cost prepared by ENGINEER.

6.1.2. **Construction Cost Budget.** A construction cost budget will be established by OWNER and ENGINEER will design to that construction budget. It is recognized that neither ENGINEER nor OWNER has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, ENGINEER cannot and does not warrant or represent

that bids or negotiated prices to construct the part of the **Project** for which it has provided services will not vary from **OWNER's** budget for the **Project** or from an estimate of the Cost of the Work or evaluation prepared or agreed to by **ENGINEER**.

6.1.2.1. The approval by **OWNER** at any time during the provision of services under this **Agreement** of a revised opinion of probable construction cost in excess of the then established budget will constitute a corresponding revision in the construction cost budget to the extent indicated in such revised opinion. Approval of a revised budget by City Council may be required.

6.1.2.2. Any construction cost budget so established will include a contingency of 10 percent unless another amount is agreed upon in writing.

6.1.2.3. **ENGINEER** will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the contract documents and to make reasonable adjustments in the extent of the **Project** to bring it within the budget.

6.1.2.4. If proposals or bids have not been obtained within six months after completion of the design phase, the established construction cost budget will not be binding on **ENGINEER**, and **OWNER** shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the

construction industry between the date of completion of the design phase and the date on which proposals or bids are sought.

6.2. **Termination.** The obligation to provide further services under this **Agreement** may be terminated by either party upon 30 calendar days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This **Agreement** may be terminated by **OWNER**, under the same terms, whenever **OWNER** shall determine that termination is in its best interests.

6.3. **Suspension.** Upon written notice to **ENGINEER**, **OWNER** may suspend all or any part of **ENGINEER's** work. Suspension for any reason exceeding 60 calendar days shall, at **ENGINEER's** option, make this **Agreement** subject to re-negotiation or termination as provided for elsewhere in this **Agreement**. Any suspension shall extend the period of service in a manner that is satisfactory to both **OWNER** and **ENGINEER**.

6.4. **Ownership and Reuse of Documents.**

6.4.1. Contract Documents and reports prepared by **ENGINEER** pursuant to this **Agreement** shall be the property of **ENGINEER**. **ENGINEER** grants to **OWNER** a perpetual, irrevocable license to use,

duplicate, replicated, and modify the Contract Documents and reports.

6.4.2. Contract Documents prepared or furnished by **ENGINEER** and **ENGINEER's** independent professional associates and consultants, pursuant to this **Agreement** are instruments of service with respect to the **Project**. These documents are not intended or represented to be suitable for reuse by **OWNER** or others on extensions of the **Project** or on any other project. Any reuse without written verification or adaptation by **ENGINEER** for the specific purpose intended will be at **OWNER's** sole risk and without liability or legal exposure to **ENGINEER**, or to **ENGINEER's** independent professional associates or consultants. **OWNER** shall indemnify and hold harmless **ENGINEER** and **ENGINEER's** independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from any unauthorized reuse. Any such verification or adaptation by **ENGINEER** will entitle **ENGINEER** to further compensation at rates to be agreed upon by **OWNER** and **ENGINEER**.

6.5. **Insurance.**

6.5.1. **ENGINEER** agrees to maintain the following insurance coverages with the following

available limits of insurance during the performance of **ENGINEER's** work hereunder:

6.5.1.1. Commercial General Liability insurance with standard ISO coverage and available limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate;

6.5.1.2. Automobile Liability insurance with standard ISO coverage and available combined single limits of \$1,000,000 per accident;

6.5.1.3. Workers' Compensation insurance with limits as required by statute and Employer's Liability insurance with limits of \$1,000,000 per employee for bodily injury by accident/\$1,000,000 per employee for bodily injury by disease/\$1,000,000 policy limit for disease; and

6.5.1.4. Professional Liability insurance covering **ENGINEER's** negligent acts, errors, or omissions in the performance of professional services with available limits of \$2,000,000 per claim and annual aggregate.

6.6. **ENGINEER** shall provide evidence of procuring the above insurance coverages by delivering a certificate of insurance to **OWNER** prior to the start of **ENGINEER's** work and annually upon renewal of coverage. **ENGINEER** shall cause **OWNER** to be endorsed as an additional insured on **ENGINEER's** commercial general liability policy, which shall be primary and noncontributory.

6.7. **Personnel and Facilities.** The **ENGINEER** has, or will secure at his own expense, personnel, equipment and other materials and supplies required to perform the services under this **Agreement** within the period of service set forth in Section 4. **ENGINEER** may subcontract a portion of these services, but these Subcontractors shall be subject to written approval by **OWNER**. Such personnel shall not be employees of nor have contractual relationship with **OWNER**.

6.8. **Accounting System.** **ENGINEER** shall maintain an accounting system which accounts for costs in accordance with generally accepted accounting principles. **OWNER** reserves the right to audit **ENGINEER's** accounts which relate to services provided under this **Agreement**.

6.9. **Successors and Assigns.** Neither **OWNER** nor **ENGINEER** shall assign any interest in this **Agreement** without the prior written consent of the other and in no case shall assignment relieve assignor from liability under this **Agreement**. This **Agreement** shall bind the successors and legal representatives of both parties. Nothing in this **Agreement** shall give any rights or benefits to anyone other than **OWNER** and **ENGINEER**.

6.10. **Relationship.** **OWNER** has retained **ENGINEER** to provide professional services. The

relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other, nor is the relationship a fiduciary relationship between **ENGINEER** and **OWNER**. **ENGINEER** shall not be considered to be the agent of **OWNER**. To the extent that **OWNER** is a public entity or a person or entity obligated to repay some or all of an amount borrowed in a municipal securities offering, it is expressly understood and agreed that **ENGINEER** is not acting as a municipal advisor to **OWNER**, as that term applies to the Dodd-Frank Wall Street Reform and Consumer Protection Act and its supporting regulations, that **ENGINEER's** services will not include the provision of advice or recommendations regarding municipal financial products or the issuance of municipal securities, and that **OWNER** is responsible for retaining an independent registered municipal advisor for such advice or recommendation.

6.11. **Standard of Care.** **ENGINEER** will strive to perform services under this **Agreement** in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in

this Agreement or in any report, opinion, document, or otherwise.

6.12. Indemnification.

6.12.1. To the fullest extent permitted by law, ENGINEER agrees to hold harmless, defend (for reasonable defense costs for claims arising out of Consultant's professional negligence), and indemnify OWNER from and against liability arising out of ENGINEER's negligent act, error, or omission in the performance of professional services under this Agreement. It is specifically understood and agreed that in no case shall ENGINEER be required to pay an amount disproportional to ENGINEER's adjudicated culpability, or any share of any amount levied to recognize more than actual economic damages.

6.12.2. To the fullest extent provided by law, the OWNER agrees to hold harmless, defend, and indemnify ENGINEER from and against liability arising out of OWNER's negligence. It is specifically understood and agreed that in no case shall OWNER be required to pay an amount disproportional to OWNER's culpability, or any share of any amount levied to recognize more than actual economic damages.

6.12.3. OWNER shall not be liable to ENGINEER and ENGINEER shall not be liable to OWNER for any special, incidental or consequential

damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by OWNER, or ENGINEER or their employees, agents or subcontractors.

6.11.5 ENGINEER's indemnification obligation, except for the obligation to defend, as set forth herein is expressly subject to and limited by the limitation of liability provision agreed upon by OWNER and ENGINEER as set forth in Risk Allocation Section of this Agreement.

6.13. Compliance with Codes and Standards. ENGINEER's professional services shall exercise due professional care to incorporate those publicly announced federal, state and local laws, regulations, codes and standards that are applicable at the time the services are rendered. In the event of a change in a law, regulation, et al., ENGINEER shall assess its impact. If, in ENGINEER's professional opinion, the impact is such to significantly affect ENGINEER's compensation or the period of service, then the compensation and/or period of service can be renegotiated and OWNER may terminate this Agreement, in which case ENGINEER will be compensated only for completed work at the compensation set forth herein.

6.14. **Force Majeure.** Neither **OWNER** nor **ENGINEER** shall be liable for faults or delays caused by any contingency beyond his control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.

6.15. **Risk Allocation.** In light of the relative risks and rewards of the parties, **OWNER** and **ENGINEER** have allocated the risks such that **OWNER** agrees to limit **ENGINEER's** liability to **OWNER** and all contractors arising from this **Agreement** such that the total aggregate liability of **ENGINEER** shall not exceed the amount of the required professional liability insurance and any retention of **ENGINEER** required by that insurance policy.

6.16. **Waiver of Subrogation.** **OWNER** waives any rights or claims for damage to persons or property that it or any of its successors in interest or insurers may have against **ENGINEER** for any claim or action arising out of **ENGINEER's** operations related to the **Project** or this **Agreement** to the extent that such rights or claims for damages are covered by a third party policy of liability, casualty, property or other insurance procured by **OWNER** but not **OWNER's** self-insurance retention.

6.17. **Hazardous Materials.**

6.17.1. When hazardous materials are known, assumed or suspected to exist at a project site, **ENGINEER** is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. **OWNER** hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform **ENGINEER** in writing prior to initiation of services under this **Agreement**.

6.17.2. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. **OWNER** agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. **ENGINEER** agrees to notify **OWNER** as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. **OWNER** waives any claim against **ENGINEER** and agrees to indemnify, defend and hold **ENGINEER** harmless from any claim or liability for injury or loss arising from **ENGINEER's** encountering unanticipated hazardous materials or suspected hazardous materials to the extent of **ENGINEER's** own negligence or failure to comply with applicable laws and regulations.

6.18. **Subsurface Conditions and Utilities.**

6.18.1. **OWNER** recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of **ENGINEER**, or **ENGINEER**'s subconsultants, with appropriate equipment may fail to detect certain hidden conditions. **OWNER** also recognizes that actual environmental, geological and geotechnical conditions that **ENGINEER** properly inferred to exist between sampling points may differ significantly from those that actually exist.

6.18.2. **ENGINEER** will locate utilities which will affect the **Project** from information provided by **OWNER** and utility companies and from **ENGINEER**'s surveys. In that these utility locations are based, at least in part, on information from others, **ENGINEER** cannot and does not warrant their completeness and accuracy.

6.19. **Anticipated Change Orders.** **OWNER** recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in Contract Documents; that all details of a completed project are not intended to be covered in the Contract Documents; that a certain amount of errors, omissions, ambiguities and inconsistencies are to be expected in Contract Documents; that contractors are expected to furnish and perform work, materials and equipment that

may reasonably be inferred from the Contract Documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of Change Orders are to be expected. As long as **ENGINEER** provides services within professional standards and the standard of care of **ENGINEER**'s profession in accordance with paragraph 6.10, **OWNER** agrees not to make any claim against **ENGINEER** unless **OWNER** can demonstrate that such costs were higher through issuance of the Change Order than they would have been if originally included in the Contract Documents in which case any claim of **OWNER** against **ENGINEER** will be limited to the cost increase and not the entire cost of the Change Order. **ENGINEER** agrees to correct any errors and omissions, as well as any ambiguities and inconsistencies that are outside the standard of care, with no additional fee to **ENGINEER**.

6.20. **Value Engineering.** If **OWNER** retains the services of a Value Engineer (VE) to review the Contract Documents prepared by **ENGINEER**, it shall be at **OWNER**'s sole expense and shall be performed in a timely manner so as not to delay the orderly progress of **ENGINEER**'s services. The **OWNER** shall promptly notify the **ENGINEER** of the identity of the VE and shall define the VE's scope of services and responsibilities for **ENGINEER**. All

recommendations of the VE shall be given to ENGINEER for review, and adequate time will be provided to ENGINEER to respond to these recommendations. If ENGINEER objects to any recommendations made by the VE, it shall so state in writing to OWNER, along with the reasons for objecting. If OWNER requires the incorporation of changes in the Contract Documents to which ENGINEER has objected, OWNER agrees, to the fullest extent permitted by law, to waive all claims against ENGINEER and to indemnify and hold harmless ENGINEER from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, which arise in connection with or as result of the incorporation of such changes required by OWNER. In addition, ENGINEER shall be compensated for services necessary to incorporate recommended VE changes into reports, drawings, specifications, bidding or other documents. ENGINEER shall be compensated as Additional Services for all time spent to prepare for, review and respond to the recommendations of the VE. ENGINEER's time for performance of its services shall be equitably adjusted.

6.21. **Affirmative Action.** During the performance of this Agreement, ENGINEER agrees to take affirmative action to ensure that applicants are

employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin.

6.22. **Conflicts.** In the event of a conflict between the main text of this Agreement and any appendix thereof, provisions of the main text shall govern.

6.23. **Governing Law.** The laws of the State of Tennessee will govern the validity of this Agreement, its interpretations and performance, and remedies for any claims related to this Agreement.

6.24. **Dispute resolution.** All disputes, controversies or claims, or whatever kind or character, between the parties, their agents and/or principals, arising out of or in connection with the subject matter of this Agreement: shall be litigated in no other venue other than the Rutherford County, Tennessee or the United States District Court for the Middle District of Tennessee; and shall be litigated only before a judge hearing the matter alone, as both finder of fact and law, without a jury. By entering into this Agreement, the parties knowingly, purposefully and intelligently agree to waive their individual rights to have any dispute, controversy or claim amongst them, to include OWNER's individual shareholders, directors, and officers, decided, heard or adjudged by a trial by jury.

6.25. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.

6.26. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. OWNER and ENGINEER hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

6.27. **Nonwaiver.** No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by such party.

6.28. **Course of Dealing.** OWNER and ENGINEER agree that these General Terms and Conditions establish a course of dealing between them and shall apply to this and all other services, projects, agreements or dealings between the them, unless

OWNER or ENGINEER gives the other written notice of objection to any term or condition before commencement of performance in connection with any other provision of services or projects involving the two of them

6.29. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.

SECTION 7 — DEFINITIONS

As used herein, the following words and phrases have the meanings indicated, unless otherwise specified in various sections of this Agreement:

7.1. **Addenda.** Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the Contract Documents.

7.2. **Agreement.** This contract including all exhibits and documents included by reference.

7.3. **Application for Payment.** The form accepted by ENGINEER which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

7.4. **Bid.** The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the construction work to be performed.

7.5. **Change Order.** A document recommended by **ENGINEER** which is signed by Contractor and **OWNER** and authorizes an addition, deletion or revision in the construction work, or an adjustment in the contract price or the contract time, issued on or after the effective date of the construction contract. Change orders are written and fully executed documents only. No verbal statement, course of conduct, acknowledgement or acceptance of work shall be deemed a change order.

7.6. **Contract Documents.** The drawings and specifications, addenda, and other documents required to obtain bids from contractors for construction of the **Project**.

7.7. **Contractor.** The person, firm or corporation with whom **OWNER** has entered into a contract for construction of the **Project**.

7.8. **Construction Cost.** Total cost of entire **Project** to **OWNER** not including **ENGINEER's** compensation and expenses, cost of land and rights-of-way, or compensation for or damages to properties, unless this **Agreement** so specifies; nor will it include **OWNER's** legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the **Project** or the cost of services to be provided by others to **OWNER** pursuant to Section 3 of this **Agreement**.

7.9. **Direct Labor Costs.** Salaries and wages paid to **ENGINEER's** personnel engaged directly on the **Project**, including engineers, draftsmen, technicians, designers, surveyors, resident project representatives and other technical and administrative personnel; but does not include indirect payroll related costs or fringe benefits.

7.10. **Drawings.** The drawings which show the character and scope of the **Project** and which have been prepared or approved by **ENGINEER** and are referred to in the Contract Documents.

7.11. **Reimbursable Expenses.** Actual expenses incurred by **ENGINEER** directly in connection with providing services for the **Project**. These include, but are not limited to, transportation and subsistence; reproduction and printing; communications; postage and express mail; equipment rental; and expense of computers and other specialized equipment.

7.12. **Resident Project Representative.** The authorized representative of **ENGINEER** who is assigned to the construction site or any part thereof for the purpose of observing the performance of the work of the Contractor.

7.13. **Shop Drawings.** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate

some portion of the work and all illustrations, brochures, standard schedules and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment for some portion of the **Project**.

7.14. **Specifications.** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the **Project** and certain administrative details applicable thereto.

7.15. **Subcontractor.** An individual, firm or corporation having a direct contract with Contractor or with any other subcontractor for the performance of a part of the **Project** at the site.

7.16. **Supplier** A manufacturer, fabricator, supplier, distributor, material man or vendor of products or equipment used in construction of the **Project**.

SECTION 8 — SPECIAL PROVISIONS AND EXHIBITS

8.1. This **Agreement** is subject to the following Special Provisions. N/A

8.2. The following Exhibits are attached to and made a part of this **Agreement**.

8.2.1. Exhibit A, "Scope of Design Phase Services"

8.2.2. Exhibit B, "Project Schedule"

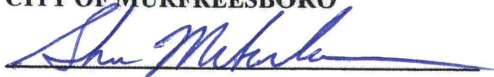
8.2.3. Exhibit C, "Payments to Engineer"

8.3. This **Agreement**, consisting of Pages 1 to 16, inclusive, together with the Exhibits identified above, constitutes the entire agreement between **OWNER** and **ENGINEER** and supersedes all prior written and oral understandings. This **Agreement** and said Exhibits may only be amended, supplemented, modified or canceled through a duly executed written instrument.

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

OWNER: CITY OF MURFREESBORO

BY:



TITLE:

Mayor

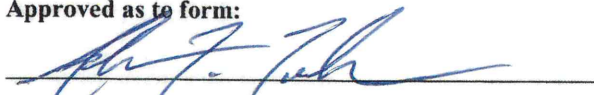
ENGINEER: NEEL-SCHAFFER, INC.

BY:



TITLE: Tennessee Operations Manager

Approved as to form:



Adam Tucker, City Attorney

Exhibit A

Scope of Design Phase Services for the Mercury Boulevard (US 70/SR 1) Sidewalk Construction Project-Phase II City of Murfreesboro, Rutherford County, Tennessee Locally Managed Project

Project Description

This Pedestrian Facilities Improvement Project will include the survey and design of approximately 1.4 miles of Americans with Disabilities Act (ADA) compliant 5-foot wide sidewalks and crosswalks designed in accordance with Public Right-of-Way Accessibility Guidelines (PROWAG) along Mercury Boulevard from Middle Tennessee Boulevard to Apollo Drive on both sides of the route. The project will include retrofitting the existing signalized intersection to accommodate pedestrians.

Project Understanding

Based on our discussion with the City of Murfreesboro, Neel-Schaffer has the following general project understandings:

- The Project Delivery Plan for this project will be conducted in accordance with the Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (TDOT's Local Programs Manual).
- The existing signal along the route will be included as part of this design to accommodate pedestrians by installing crossing push buttons, pedestrian signal indications and marked crosswalks.
- Right-of-Way and/or permanent and temporary easements are expected to be required to construct this project.
- Sidewalk will be a minimum of 5 feet in width and shall be constructed on compacted subgrade using 4 inches of Type "A" Base, Grading "D" and 4 inches of Portland cement concrete, Class "A".
- Both curb and gutter and ditch section roadway design elements will be incorporated utilizing the same typicals as were utilized for the Mercury Phase 1 project.
- No utility design or relocation plans are anticipated (outside of those which may be required from individual utilities).
- The City of Murfreesboro will provide ROW appraisal and acquisition services.

PE – NEPA Services

A NEPA environmental document will to be provided for this project in accordance with the rules and regulations contained in TDOT's Tennessee Environmental Procedures Manual (TEPM). It is anticipated that this project will require a C-List Categorical Exclusion (CE) environmental document.

- Environmental Document – To be performed under subconsultant agreement with Griggs and Maloney, Inc. in accordance with the Scope of Services and Fee Proposal attached hereto.

PE – Final Design Services

Neel-Schaffer will perform a field survey, prepare plans and an Engineer's Opinion of Probable Construction cost in accordance with TDOT's Local Programs Manual. The tasks associated with PE-Final Design will include the following:

- Mobile lidar data previously captured under the ASCT project will be utilized to provide roadway and above ground survey information and data.
- Field Survey – To be performed under subconsultant agreement with Wisser Consultants, LLC in accordance with the Scope of Services and Fee Proposal attached hereto.
- Plans – Plans will be developed based on information obtained from the survey. It is expected that the plans set will include the following sheets:
 - Title Sheet
 - Typical Section(s)
 - Present Layout, Proposed Layout & Profile
 - Drainage Maps
 - Erosion & Sediment Control (including contours)
 - Cross-Sections
 - Preliminary Signal Layouts
 - Sheet(s) may be added or deleted as necessary
- Engineer’s Opinion of Probable Construction Cost – Based on the above plans, Neel-Schaffer will prepare an Engineer’s Opinion of Probable Construction Cost at the end of Preliminary Plans Phase. Unit prices used to develop this Opinion of Probable Construction Cost will be based on TDOT Average Unit Prices.

Right-of-Way (ROW) Services

Right-of-Way and/or permanent and temporary easements will be required to construct this project. This scope of work includes tasks required to receive ROW Plans approval and Utility Certification in accordance with the TDOT’s Local Programs Manual. These tasks include the following:

- Provide ROW descriptions and exhibits.
- Submitting plans to utility companies identified along the project corridor.
- Conduct a ROW Field Review and Utility Coordination Meeting.
- Respond to utility companies’ questions or concerns.
- Compile utility companies’ response letters and submit to TDOT ROW/Utility sections for Utility Certification.
- Provide updated Engineer’s Opinion of Probable Cost for TDOT submission.
- Field Staking – See the attached Wisser Consultants, LLC Scope of Services and Fee Proposal.

Construction Plans Development

Neel-Schaffer will prepare Final Construction Plans, Final Engineer’s Opinion of Probable Construction Cost, specifications and bid book in accordance with TDOT’s Local Programs Manual. The tasks associated with Final Construction Plans will include the following:

- Plans – Final Construction Plans will be developed and are expected to include the following additional sheets:
 - Construction Title Sheet
 - Estimated Quantities
 - Tabulated Quantities
 - Standard Drawings and General Notes
 - Special Details – (Modified catch basin design if needed)
 - Final Signal Design and Details
 - Traffic Control Plans
 - Signing & Pavement Marking
 - Sheet(s) may be added or deleted as necessary

- Signing and pavement marking will be limited to items required at intersections.
- Sidewalks, crosswalks, pedestrian accessible signals, and etc. will be Americans with Disabilities Act (ADA) compliant designed in accordance with Public Right-of-Way Accessibility Guidelines (PROWAG) standards.
- Engineer's Opinion of Probable Construction Cost – Based on the above plans, Neel-Schaffer will prepare an Engineer's Opinion of Probable Construction Cost at the end of Final Construction Plans Phase. Unit prices used to develop this Opinion of Probable Construction Cost will be based on TDOT Average Unit Prices.
- Specifications & Bid Book – Neel-Schaffer will prepare the specifications, special provisions and bid book in accordance with TDOT's Local Program Manual. Advertisement will be coordinated with the City and will be placed on TDOT's website per Local Programs requirements.
- Water Quality Permits –
 - Neel-Schaffer will prepare a SWPPP document under this scope of work. All fees required by the local, state and federal agencies will be the responsibility of the City of Murfreesboro.

If other Water Quality permits are required (that could include wetland mitigation, stream relocation, individual permits, etc.), that are not included in this Scope of Work and if required, Neel-Schaffer will prepare these under a separate Scope of Work.

Bid Services

Neel-Schaffer will prepare construction bid documents in accordance with TDOT and City standards in support of the project bid plans. This task will also include holding a pre-bid meeting and moderating the bid opening. Neel-Schaffer will review all bids and other required bid documentation submitted with the bids for compliance with TDOT and City requirements and make a recommendation to the City as to the acceptance of the most responsive and responsible bid.

Construction Engineering & Inspection (CEI)

If desired by City, Neel-Schaffer will perform CEI services and fee proposal shall be negotiated separately.

Services not included under this Scope of Work

- Right of way appraisal and acquisitions services
- Utility Design or Utility Relocation plans
- SWPPP Submittal Fee
- Water Quality Permits and Fees
- Retaining Wall Design / Geotechnical
- Material Testing Services during construction
- Mitigation Plans (if required)

Exhibit B

Project Schedule for the Mercury Boulevard (US 70/SR 1) Sidewalk Construction Project-Phase II City of Murfreesboro, Rutherford County, Tennessee Locally Managed Project

Project Beginning

The Engineer will begin work immediately upon issuance of a Notice to Proceed by Owner.

Project Design Phase

The Engineer shall provide the Owner with documents, plans, certifications, and clearances necessary to obtain the Tennessee Department of Transportation Notice to Proceed with the construction phase on or before July 1, 2021.

Exhibit C

Fee Proposal - Payments to Engineer

DESCRIPTION: Mercury Boulevard Sidewalk Construction Project - Phase 2
Murfreesboro, Rutherford Co.
CONSULTANT: Neel-Schaffer, Inc
Prepared By: Greg Judy
Contract No. N/A
Date Prepared: 3/1/2019
Federal Project No.: TAP-1(395)
State Project No.: 75LPLM-F3-076
PIN: 126616.00

TASK	Manhours					Total Per Task
	Project Manager	Project Engineer	Engineer	Technician		
PE - NEPA	8	4	0	0		12
NEPA Document Preparation	subcontracted with Griggs & Maloney, Inc.					
NEPA Process Coordination	8	4				12
PE - Design Services	28	176	258	148		610
Conduct & Prepare field survey	subcontracted with Wiser Consultants, LLC					
Sidewalk design (0.6 mile) (both sides of roadway) (Includes Present, Proposed, & Profile Development)	12	68	90	80		250
Sideroad & Driveway Adjustments (21 driveways + 5 sideroads)		12	32	28		72
Drainage design	4	70	76	20		170
Erosion prevention and sediment control plan. (2 phases)		8	18	10		36
Incorporate field review comments into plans	10	4	16	10		40
Signal Design (Prelim Signal Design - 1 int.)		6	18			24
Develop Preliminary Construction Estimate for ROW/Utilities submittal	2	8	8			18
Right-of-Way (ROW) Services	24	72	49	0		145
Preparation of ROW legal descriptions and exhibits, ROW staking	subcontracted with Wiser Consultants, LLC					
Prepare ROW plans and provide coordination with TDOT	8	20	25			53
ROW & Utilities Field Review- Preparation, Attend Review and Report	4	16	4			24
Utility Coordination	8	20				28
ROW Plans Revisions	2	12	20			34
Final ROW Plans Submittal	2	4				6
Construction Plans Development	22	106	124	100		352
Traffic control plans	2	4	8	12		26
Estimated quantities	2	8	20	16		46
Tabulated quantities	2	2	4	8		16
Standard drawings & general notes		4	8			12
Special detail (modified drainage structures)		16	8			24
Signal Design (Final Signal Design & Detail Sheet - 1 int.)	2	24		40		66
Signing & Marking	2	4	16	8		30
Construction field preparation, review & report	8	8	8			24
Incorporate field review comments into plans	2	12	8	8		30
Develop Final Construction Estimate for Final Plans Submittal		10	8			18
Letting Revisions- 2 revisions	2	10	8	8		28
SWPPP Preparation		4	28			32



Exhibit C

Fee Proposal - Payments to Engineer

DESCRIPTION: Mercury Boulevard Sidewalk Construction Project - Phase 2
Murfreesboro, Rutherford Co.
 CONSULTANT: Neel-Schaffer, Inc
 Prepared By: Greg Judy
 Contract No. N/A
 Date Prepared: 3/1/2019
 Federal Project No.: TAP-1(395)
 State Project No.: 75LPLM-F3-076
 PIN: 126616.00

TASK	Manhours				Total Per Task
	Project Manager	Project Engineer	Engineer	Technician	
Bidding Services	11	61	16	0	88
Develop Construction Bid Documents	2	32	16		50
Hold pre-bid meeting	4	8			12
Bid Opening	3	5			8
Bid submittal review, tabulation, and recommendation for award	2	16			18
Other	52	28	0	0	80
Meetings & coordination with City	16	8			24
Project Management	16				16
Invoices	8				8
Internal QA/QC	12	20			32
TOTAL	145	447	447	248	1287
% of Total Project	11%	35%	35%	19%	100%

PERSONNEL	RATE	HOURS	DIRECT LABOR COST
Project Manager	\$ 180.00	145	\$ 26,100.00
Project Engineer	\$ 155.00	447	\$ 69,285.00
Engineer	\$ 98.00	447	\$ 43,806.00
Technician	\$ 78.00	248	\$ 19,344.00
TOTAL		1287	\$ 158,535.00

FEE SUMMARY	
1. Labor Cost	\$ 158,535.00
2. Direct Cost (See Direct Expenses)	\$ 460.00
3. NEPA Document (See Attached Fee Estimate)	\$ 12,249.27
4. ROW Survey Services (See Attached Fee Estimate)	\$ 64,625.00
4. TOTAL (1 + 2 + 3 + 4)	\$ 235,869.27

Cost Basis is "hourly not-to-exceed" in the amount of \$ 235,870.00

Exhibit C Fee Proposal - Payments to Engineer

DIRECT EXPENSES



DESCRIPTION: Mercury Boulevard Sidewalk Construction Project - Phase 2 CONSULTANT: Neel-Schaffer, Inc Prepared By: Greg Judy Date Prepared: 3/1/19 Federal Project No.: TAP-1(395) State Project No.: 75LPLM-F3-076 PIN No.: 126616.00					
Reproduction Costs:				Item Subtotal	Item Total Cost
	Item Description	Number / Unit	Unit Price		
	Photo-copies	300	\$ 0.20	\$ 60.00	
	Full size bond	100	\$ 2.00	\$ 200.00	
	Half size bond	200	\$ 1.00	\$ 200.00	
	Full size vellum		\$ 2.00	\$ -	
	Half size vellum		\$ 1.00	\$ -	
	Full size mylar		\$ 2.00	\$ -	\$ 460.00
Travel:					
	Number of Trips	No. of Miles/No. of People			
Per Diem (75%)				\$ -	
Per Diem	2.00 Man-Days	X 0.00 People	X \$ 44.25 Per Day	\$ -	
Transportation	4.00 Round Trips	X 0.00 Miles	X \$ 0.47 Per Mile	\$ -	
Lodging	2.00 Nights	X 0.00 People	X \$ 92.00 Per Person	\$ -	\$ -
* Rate must agree amounts in effect with State of Tennessee travel regulations. First and last day of travel must be at the 75% Per Diem Rate.					
Other Expenses:					
	Item Description	Number / Unit	Unit Price		
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	
		0	\$ -	\$ -	\$ -
TOTAL DIRECT EXPENSES				\$ 460.00	



Wiser Consultants, LLC
1427 Kensington Square Court
Murfreesboro, Tennessee 37130

www.wiserconsultants.com

p. 615-278-1500

f. 615-890-1479

January 25, 2019

Dana Richardson
Neel-Shaffer
201 East Main Street, Suite 325
Murfreesboro, TN 37130

Subject: Mercury Boulevard Sidewalks Phase II Survey

Dear Mr. Richardson:

Thank you for the opportunity to provide a proposal for the Mercury Boulevard Sidewalks Phase II project. Our scope, assumptions and fee follow:

SCOPE AND ASSUMPTIONS:

Wiser will perform a full engineering design survey along Mercury Boulevard from Middle Tennessee Boulevard to Apollo Drive with a total length of approximately 3,500 feet. Side roads will be collected for 150' from centerline of Mercury Boulevard. Total DTM width will be 300' centered on the Mercury Blvd centerline. All roadway and above-ground survey information will be extracted from mobile lidar data acquired during the Phase I project. No new lidar data will be acquired for this project.

In addition to the extracted features, Wiser will provide field survey services to collect Right of way, underground utilities, storm and sanitary inverts and any areas obscured in the lidar data. Right of way lines will be resolved throughout the survey limits. Property tracts will be shown per City of Murfreesboro GIS information. Tract surveys will be completed on an as-needed basis at the direction of Neel-Shaffer.

Deliverables will include planimetrics, contours, digital terrain model and classified lidar data. CAD deliverables will be in Microstation and Geopak formats per TDOT CADD standards.

Wiser will also perform ROW staking throughout the corridor. This will be a one time staking of ROW and proposed easements. At Neel-Schaffer's request, Wiser will provide tract surveys, ROW/easement exhibits and legal descriptions for specified tracts.

FEE:

Initial Topographic and ROW Survey:	Hourly not to exceed \$27,125
Right of Way Staking:	Hourly not to exceed \$3,500
Tract Surveys/Exhibits & Legals:	Hourly estimated at \$1,000 per tract



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SCHEDULE:

Field work can begin immediately upon notice to proceed with full delivery occurring no later than 16 weeks later.

Please let us know if you have any questions or concerns. Thanks again for the opportunity and we hope that you will consider us in the future.

Sincerely,
Wiser Consultants, LLC

A handwritten signature in blue ink, appearing to read "Justin C. Rains".

Justin C. Rains, PLS
Vice President – Survey & Mapping



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EXHIBIT A

Mercury Boulevard Survey Fee Estimate

Classification	Hours	Rate	Total
Senior Surveyor	4	\$150.00	\$600
Survey PM	10	\$120.00	\$1,200
2 Person Crew	50	\$145.00	\$7,250
Survey Tech	50	\$95.50	\$4,775
Lidar Tech II	140	\$95.00	\$13,300
TOTAL FEE			\$27,125

<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
Initial Topographic and ROW Survey	1	Hourly not to exceed	\$ 27,125.00
ROW Staking	1	Hourly not to exceed	\$ 3,500.00
Tract Syrveys/Exhibits & Legals	34	Hourly Estimated at \$1,000 / tract	\$ 34,000.00
Total Estimated Cost			\$ 64,625.00



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EXHIBIT B

Schedule of Hourly Fees

March 1, 2017 – February 28, 2018

Professional Services	Current Rates
Principal Engineer	\$ 185.00
Senior Project Manager	\$ 160.00
Senior Engineer	\$ 155.00
Project Manager	\$ 135.00
Project Engineer II	\$ 120.00
Project Engineer I	\$ 110.00
Engineering Intern II	\$ 101.00
Engineering Intern I	\$ 82.50
Engineering Technician	\$ 96.00
CAD Technician	\$ 85.00
Resident Project Representative	\$ 75.00
Senior Surveyor	\$ 150.00
Survey Project Manager	\$ 120.00
Registered Land Surveyor	\$ 110.00
1 Person Survey Crew	\$ 95.00
2 Person Survey Crew	\$ 145.00
3 Person Survey Crew	\$ 175.00
Survey Technician	\$ 95.50
Utility Coordinator	\$ 95.00
Cartographic Manager	\$ 115.00
Certified Photogrammetrist	\$ 105.00
Cartographic Tech II	\$ 97.50
Cartographic Tech I	\$ 85.00
Lidar Technician II	\$ 95.00
Lidar Technician I	\$ 85.00
Clerical Staff	\$ 68.25
Equipment	
Static Laser Scanner	\$ 850/Day
Mobile Laser Scanner	\$15,000/Day

PHASE II MERCURY BLVD. ESTIMATE

Sheet 1

Route	Mercury Blvd. , Murfreesbroro , TN
Description	Phase II Mercury Blvd. Sidewalk Project - PE-NEPA - PIN No. 126616.00
County	Rutherford
Consultant	Griggs & Maloney, Inc.
Prepared By	Steve Maloney
Date Prepared	1/18/2019
Project No.	G&M 1155-04

Manhours

Task	PM	Archaeologist	Historic Preservationist	Environmental Scientist	Admin	Total Per Task
Agency Coordination	16.0	6.0	6.0	4.0	2.0	34.0
Cultural Resources - Archaeology/Historical	2.0	6.0	24.0	0.0	2.0	34.0
Documentation/Reporting	8.0	8.0	16.0	24.0	4.0	60.0
						0.0
						0.0
						0.0
TOTAL	26	20	46	28	8	128
% of total project	20.31%	15.63%	35.94%	21.88%	6.25%	100.00%

Personnel	Manhour Rate	Manhours	Direct Labor Cost
Project Manager	\$59.19	26.0	\$1,538.94
Archaeologist	\$40.00	20.0	\$800.00
Historic Preservationist	\$31.15	46.0	\$1,432.90
Environmental Scientist	\$31.06	28.0	\$869.68
Admin	\$37.60	8.0	\$300.80
TOTAL NO OF MANHOURS		128.0	\$4,942.32

Fee Summary

1) Direct Cost	\$4,942.32
2) Overhead (125%)	\$6,177.90
3) Subtotal (1 + 2)	\$11,120.22
4) Net Fee (Direct Labor x 2.35 x 9%)	\$1,045.30
5) Subtotal (3 + 4)	\$12,165.52
6) Direct Cost (See Sheet 2)	\$83.75
TOTAL (5 + 6)	\$12,249.27

PHASE II MERCURY BLVD. ESTIMATE

Sheet 2

Route	Mercury Blvd. , Murfreesbroro , TN
Description	Mercury Blvd. Sidewalk Project - PE-NEPA - PIN No. 12661.00
County	Rutherford
Consultant	Griggs & Maloney, Inc.
Prepared By	Steve Maloney
Date Prepared	1/18/2019
Project No.	G&M 1155-04

Reproduction Costs

Item Description	Number/Unit	Unit Price	Item Subtotal	Item Total Cost
Photocopies	400	\$0.10	\$40.00	\$83.75
Color Photocopies	175	\$0.25	\$43.75	
Half Size Bond	0	\$1.00	\$0.00	
Full Size Vellum	0	\$2.00	\$0.00	
Half Size Vellum	0	\$1.00	\$0.00	
Full Size Mylar	0	\$2.00	\$0.00	

Travel

Item Description	Rate	Number of Miles/Trips/People	Item Subtotal	Item Total Cost
Per Diem (75%)	\$27.00 per day	0 days	\$0.00	\$0.00
Per Diem	\$36.00 per day	0 days	\$0.00	
Transportation	\$0.60 per mile	0 miles	\$0.00	
Lodging	\$115.00 per person	0 nights/(0 people)	\$0.00	

Other Expenses

Item Description	Cost per Unit	Number/Units	Item Subtotal	Item Total Cost
			\$0.00	\$0.00
			\$0.00	
			\$0.00	
			\$0.00	

TOTAL DESIGN DIRECT EXPENSES	\$83.75
-------------------------------------	----------------

COUNCIL COMMUNICATION

Meeting Date: 07/25/2024

Item Title: Amendment 3 to Contract with the Regional Transportation Authority

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Amendment extending term of regional transportation contract to include FY25.

Staff Recommendation

Approve Amendment 3.

Background Information

Each year the RTA determines local subsidies based on ridership, as well as Congestion Mitigation and Air Quality (CMAQ) funds. In addition to the City's funds, the Federal Transit Authority and CMAQ funding, the cost of operating RTA service is subsidized by MTSU, Rutherford County, and Davidson County.

The City subsidizes funding for one route operated by the RTA serving Murfreesboro and providing transportation to/from Nashville. The total cost to operate the service for FY25 is \$1,269,721. Murfreesboro's share of the total cost is \$33,610. The City's share of the service is paid 50% with Federal funds (\$16,805), 25%, State (\$8,403), and 25% Local (\$8,403).

Council Priorities Served

Expand Infrastructure

RTA provides a vital alternative mode of transportation for the City's citizens traveling to Nashville and serves to expand the City's transportation infrastructure. As growth continues in our City it is important to continue our partnership with RTA.

Fiscal Impact

The expenditure, \$33,610, is funded by the Department's FY25 Budget with the sources as listed above.

Attachments

1. Amendment 3 to RTA Contract
2. Original RTA Contract

**THIRD AMENDMENT
TO THE CONTRACT BETWEEN
THE CITY OF MURFREESBORO AND
THE REGIONAL TRANSPORTATION AUTHORITY
FOR THE PROVISION OF
TRANSIT SERVICES**

This 3rd Amendment (“Third Amendment”) to the Contract dated July 8, 2021 (“Contract”) is effective as of _____, by and between the City of Murfreesboro (“City”), a municipal corporation of the State of Tennessee and the Regional Transportation Authority (“RTA”).

RECITALS

WHEREAS, on July 8, 2021, the City entered into a contract with RTA, for the provision of transit services; and,

WHEREAS, on June 24, 2022, the City and RTA executed the First Amendment to extend the term of the Contract and updated certain attachments thereto; and

WHEREAS, on August 18, 2023, the City and RTA executed the Second Amendment to extend the term of the Contract and updated certain attachments thereto; and

WHEREAS, the term of the Contract, per the second amended between the City and RTA, was from July 1, 2023 through June 30, 2024, with the ability to extend the Contract for additional periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, through an amendment to the Contract; and,

WHEREAS, the City and RTA wish to extend the Contract term pursuant to provision B.2. of the current Contract for an additional year; and,

WHEREAS, there have been changes to the routes, the City and RTA wish to replace Revised Attachments 1 & 2 – Second Amendment with Revised Attachments 1 & 2 – Third Amendment; and

NOW THEREFORE, the City and RTA mutually agree to extend the term of the current Contract from July 1, 2024 to June 30, 2025, with the updated budget and route by replacing Revised Attachment 1 and Revised Attachment 2 of the current Contract; and

In all other respects the prior contract between the City of Murfreesboro the Regional Transportation Authority, is affirmed and renewed with no changes or modifications.

IN WITNESS WHEREOF:

CITY OF MURFREESBORO

By: _____
Shane McFarland, Mayor

RTA

DocuSigned by:

By: Steve Bland 7/16/2024
A411E28677F74ED...
Stephen G. Bland, CEO

Approved as to form:

Adam F. Tucker
48A2035E5159401
Adam F. Tucker, City Attorney

Weekdays to Nashville

MTSU/James Union Building	Rover Transit Center	Old Fort Park	Central
5	4	3	1
5:21	5:27	5:35	6:30
5:40	5:47	5:55	7:05
6:15	6:22	6:30	7:40
7:45	7:52	8:00	9:00
9:15	9:22	9:30	10:30
10:40	10:47	10:55	11:55
12:05	12:12	12:20	1:25
1:40	1:47	1:55	3:00
3:15	3:22	3:30	4:35
5:25	5:32	5:40	6:40
6:55	7:02	7:09	7:59
8:35	8:42	8:49	9:39

Bold times denote p.m. hours.

Weekdays from Nashville

Central Bay 2	Greyhound Bus Station	Old Fort Park	Rover Transit Center	MTSU/James Union Building
1	2	3	4	5
6:18	6:28	7:11	7:18	7:26
7:55	8:05	8:50	8:57	9:05
9:20	9:30	10:15	10:22	10:30
10:40	10:50	11:35	11:43	11:51
12:05	12:15	1:05	1:14	1:22
1:40	1:50	2:40	2:49	2:57
3:30	3:44	4:54	5:03	5:11
4:00	4:14	5:29	5:37	5:45
4:35	4:51	6:06	6:14	6:22
5:05	5:19	6:29	6:37	6:45
7:00	7:09	7:54	8:02	8:10

No service Saturdays, Sundays, or holidays.

Title VI of the Civil Rights Act of 1964 states that "No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." For more information on Title VI, visit WeGoTransit.com.

Title VI

WeGo Public Transit makes reasonable accommodations in order for individuals with disabilities to fully use transit services. All requests should be made in advance by filling out and submitting a Reasonable Accommodation Request form. For more information on Reasonable Accommodations, visit WeGoTransit.com.

ADA

Regional Fares

- 1-Ride Regional Bus\$4.25
- 1-Ride Regional Bus Discounted* ...\$2.00
- 20-Ride Regional Bus\$73.50
- Star Shuttles (Routes 64 & 93) ...Free

Active military and veterans ride free with military ID. Children age 4 and younger ride free. *Youth, seniors, persons with disabilities, and Medicare cardholders may be eligible for discounted fares and passes. Apply at WeGo Central.

QuickTicket is WeGo's fare payment system, available as a reloadable card or the QuickTicket by WeGo app. Exact cash is also accepted on the bus. However, no change, charge cards, transfers, or on-bus passes will be given.

For more information on QuickTicket, visit QuickTicketTN.com

For More Information

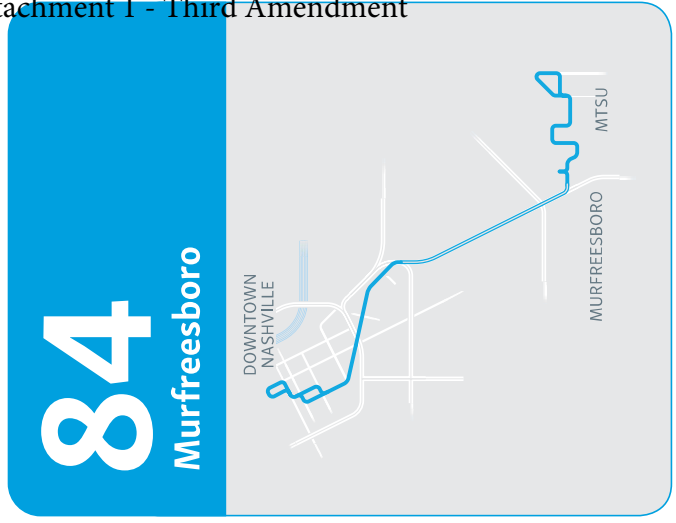
- Customer Care**
615-862-5950
6:30 a.m. to 8:00 p.m. – Monday-Friday
8:00 a.m. to 5:00 p.m. – Saturday
10:30 a.m. to 2:30 p.m. – Sunday
- Elizabeth Duff Transit Center at WeGo Central**
400 Dr. Martin L. King Jr. Blvd.
4:45 a.m. to 1:15 a.m. – Monday-Saturday
5:45 a.m. to 11:15 p.m. – Sundays and holidays

Administrative Offices

- 615-862-5969
430 Myatt Drive
8:00 a.m. to 4:30 p.m. – Monday-Friday
Closed weekends and holidays

Stay Connected

- WeGoTransit WeGoTransit.com
- @WeGoTransit WeGoTransit.com/ride/alerts
- @WeGoTransit customer.comments@nashville.gov

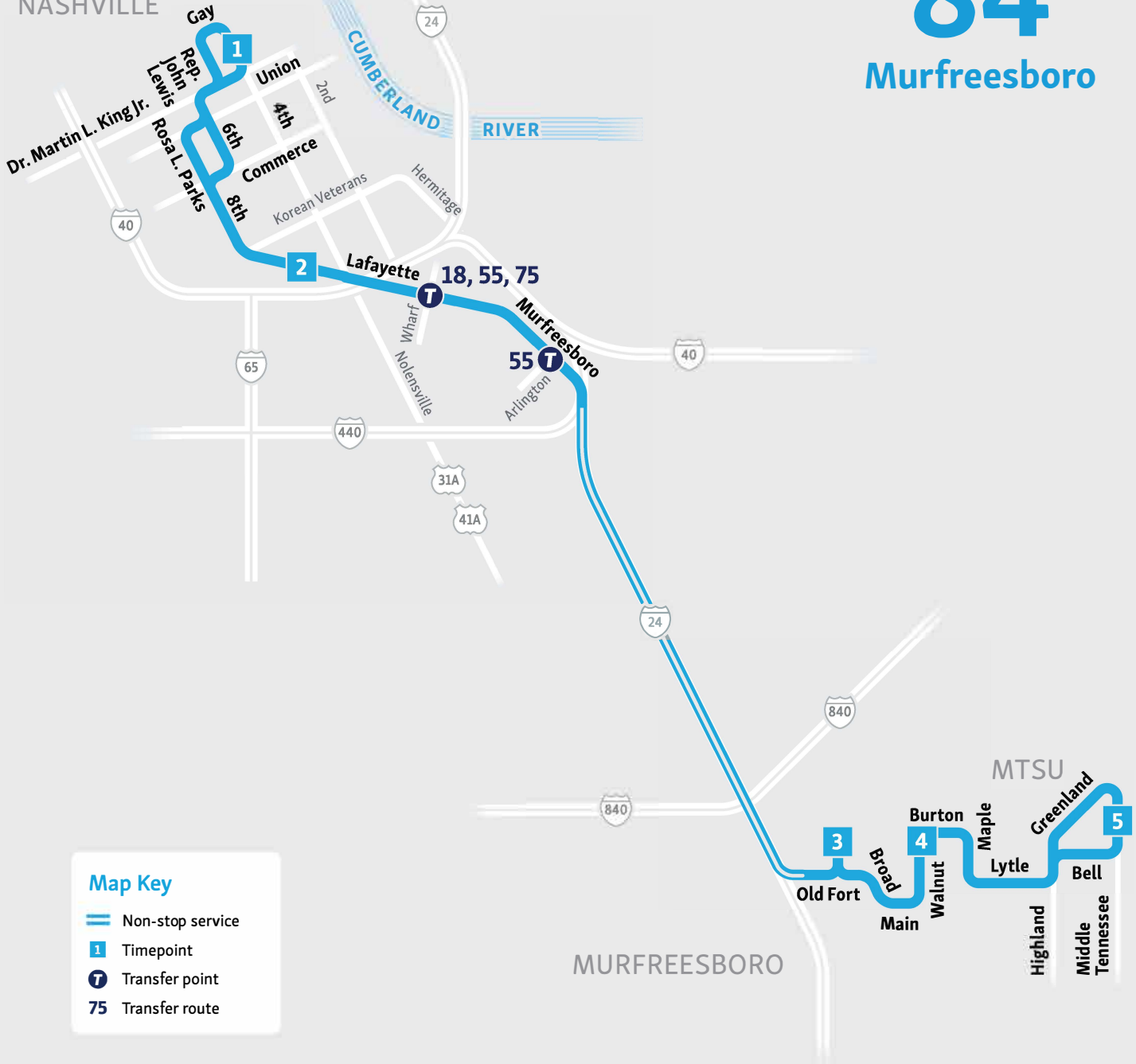


84 Murfreesboro

DOWNTOWN
NASHVILLE

84

Murfreesboro



MURFREESBORO

MTSU



Murfreesboro Express (84X) Commuter Bus Srvc Budget FY2024 Budget with Comparative FY2025 Forecast Budget

	FY2024	FY2025
Days of Service [365 days - 104 days in weekends - 7 weekday holidays]	253	254
Number of Daily Trips	23	23
Ridership (estimate)	25,786	29,859
Operating Hours per Day (including deadhead)	41.46	41.46
Cost per hour of Service	\$120.49	\$127.00
TOTAL Daily Cost of Service	\$4,996	\$5,265
<u>Cost of Service</u>		
Cost of Runs [hrs/day X Cost/hr X 254 days]	1,263,865	1,337,417
Board-Initiated Bus RESERVE	57,639	(67,696)
<i>Total Costs</i>	1,321,504	1,269,721
<u>Estimated Revenues</u>		
Estimated Cash Fares/Pass Sales	67,687	108,522
CARES ACT Funding to "Keep Service Whole"	449,461	0
ADD: RTA \$5307 Operating Funding		
Federal (50%)		
Local Match (50%)		
ADD: CMAQ Funding		
Federal	485,366	798,782
TDOT Match on CMAQ	60,671	99,848
TDOT Operating Subsidy	109,407	112,639
<i>Total Estimated Revenues</i>	1,172,592	1,119,791
<i>Estimated Net Cost</i>	148,912	149,930
<u>Regional Subsidies *</u>		
City of Murfreesboro	33,610	33,610
MTSU	25,000	25,000
Rutherford County	36,915	36,915
Davidson County	53,387	54,405
<small>* includes funds contributed to RESERVE</small>		
<i>Total Partner Contributions</i>	148,912	149,930
Balance	0	0

**CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND THE REGIONAL TRANSPORTATION AUTHORITY
FOR THE PROVISION OF TRANSIT SERVICES**

This Transit Services Contract, effective July 8, 2021 hereinafter referred to as the "Contract", by and between the City of Murfreesboro, hereinafter referred to as the "City" and the Regional Transportation Authority, hereinafter referred to as the "Contractor" or "RTA," is for the provision of certain transit services as described herein, and as further defined in the "SCOPE OF SERVICES".

The Contractor is a governmental entity. The Contractor's address is:

RTA
430 Myatt Drive
Nashville, TN 37115

A. SCOPE OF SERVICES

- A.1. The RTA shall operate or cause to be operated a regularly scheduled transit service for the route and schedule of said project found in ATTACHMENT 1, a map of bus route 84X, between Nashville/Davidson County, Tennessee and Murfreesboro, Tennessee. This service shall service the City as a transit infrastructure.

Marketing of the project will be done through the collaborative regional transit program, RTA Relax and Ride, which is led by RTA. Any direct expenses related to marketing will be paid through the RTA Relax and Ride budgets. Promotion of said services may include, among other things, information requests, surveys and service identification on vehicles.

The City will designate an employee who shall be responsible for the approval or disapproval of RTA invoices and to respond to inquiries and for approval of the RTA's final work product.

Other than responding to inquiries and explanations of issues addressed in this Contract, the City will not control or instruct the work activities of RTA in fulfilling its requirements under this Contract. RTA shall be responsible for obtaining the end results of work product.

It is understood that RTA will provide sufficient prior written notification to the City when opportunities avail themselves to review possible service changes and schedule modifications to make more efficient use of available transit resources as pertaining to the services described in ATTACHMENT 1.

- A.2. The City is a governmental entity and is the Designated Recipient for federal transit funding under the Federal Transit Authority Urbanized Formula Grant program, 49 U.S.C. § 5307.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2021 and ending on June 30, 2022. The City shall have no obligation for services rendered by the Contractor which are not performed within the specified period or between the specified route terminus.

- B.2. Term Extension. The City reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5)

years, provided that the City notifies the Contractor in writing of its intention to do so prior to the Contract expiration date. An extension of the term of this Contract beyond June 30, 2022 will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the City's maximum liability shall only be affected through an amendment to the Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Obligation for Payments. The RTA represents and acknowledges that the RTA has agreements with Rutherford County, Middle Tennessee State University (MTSU) and Davidson County obligating these participating entities to provide local matching funds and other subsidies for this route.

The RTA shall individually bill each participating entity directly for their individual share in accordance with agreements between the RTA and each participating entity.

The Operating Hours per Day x Cost per Hour x Number Days of Service per Year shall constitute the Total Cost per Year for the RTA service. The City of Murfreesboro shall be responsible for payment of its pro rata share of the actual overall service provided that is determined through application of this formula as exhibited in ATTACHMENT 2, the budget.

The RTA shall bill the City its local share of the service. The City, as designated recipient, will be responsible for submission and receipt of any federally and state reimbursable portion of cost from the Federal Transit Administration (FTA) and Tennessee Department of Transportation (TDOT) respectively. The City portion is exhibited in ATTACHMENT 3, the invoice.

- C.2 Maximum Liability. The Contract Budget, attached and incorporated herein as a part of this Contract as ATTACHMENT 2, shall constitute the maximum amount due the Contractor for the services and all of the City's obligations hereunder. The Contract budget line items include, but are not limited to, all applicable taxes, fees, overhead, any new additional service and all other direct and indirect costs incurred or to be incurred by the Contractor.

- C.3. Compensation Firm. The maximum charge per hour is denoted in ATTACHMENT 2 and is not subject to escalation for any reason unless amended.

- C.4. Payment Methodology. The Contractor shall submit invoices, in form and substance acceptable to the City, with all of the necessary supporting documentation, prior to any reimbursement.

The invoice and supporting documentation shall be submitted annually and indicate the amount charged for the period invoiced.

- C.5 Disbursement Reconciliation and Close Out. The Contractor must close out its accounting records at the end of the Contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward. .

- C.6. Payment of Invoice. The payment of the invoice by the City shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.

- C.7. Deductions. The City reserves the right to deduct from amounts which are or shall become due and

payable to the Contractor under this or any Contract between the Contractor and the City any amounts which are or shall become due and payable to the City by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The City is not bound by this Contract until it is approved and executed by the appropriate City officials in accordance with applicable Murfreesboro City laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Murfreesboro City officials in accordance with applicable Murfreesboro City laws and regulations.

D.3. Termination for Convenience. The City or Contractor may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the City or Contractor. The party seeking the termination shall give the other party at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the City be liable to the Contractor for compensation for any service which has not been rendered. The final decision as to the amount, for which the City is liable, shall be determined by the City. Should the City exercise this provision, the Contractor shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. If the Contractor exercises this provision, the City shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the City shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the Contractor.

If the City fails to properly perform its obligations under this Contract in a timely or proper manner, or if the City violates any terms of this Contract, the Contractor shall have the right to immediately terminate the Contract and withhold further services. Notwithstanding the above, the City shall not be relieved of liability to the Contractor for damages sustained by virtue of any breach of this Contract by the City.

D.5. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the City of Murfreesboro as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.6. Lobbying. The Contractor 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 Contractor, 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 contract, the making of any federal Contract, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, Contract, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person

for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

D.7. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, constitutional, or statutory law. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations and other implementing requirements FTA may issue. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the City, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees that upon request by City it will display a sign displaying the necessary information to allow a citizen to file said grievance regarding the services.

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public enters in order to receive Contract supported services.

D.9. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor shall include the statement, "This project is funded, in part, under an agreement with the City of Murfreesboro," Any such notices by the Contractor shall be approved by the City.

D.10. Licensure. The Contractor and its employees and all sub-Contractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

D.11. Records, Retention Period, and Access to Records.

- a. The Contractor shall maintain documentation for all charges against the City under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State of Tennessee, the City of Murfreesboro, the Comptroller of the Treasury, or any of their duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting Manual for the Recipients of Contract Funds in the State of Tennessee*, published by the State Comptroller of the Treasury. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- b. The Contractor agrees to comply with the record retention requirements in accordance with 2

C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required

D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the City, or it's duly appointed representatives.

D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the City as requested. These reports shall include per trip ridership figures and calculated performance based on collected data and performance measures as mutually agreed between the RTA and City.

D.14. Procurement. If the other terms of this Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. 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 Contractor's compliance with applicable federal procurement requirements.

The Contractor shall obtain prior approval from the City before purchasing any equipment under this Contract.

D. 15. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.16. Independent Contractor. The parties hereto, in the performance of this Contract, 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 Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

D.17. City Liability. The City shall have no liability except as specifically provided in this Contract.

D.18. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of

God, riots, wars, strikes, epidemics or any other similar cause.

- D.19. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.20. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Rutherford County in actions that may arise under this Contract.
- D.21. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.22. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.23. Headings. Section headings are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The City:
Jim Kerr, Transportation Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
Phone: (615) 893-6441

The Contractor:
Stephen G. Bland, CEO
Regional Transportation Authority
430 Myatt Drive
Nashville, TN 37115
Phone: (615) 862-6262

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is confirmed telephonically by the sender if prior

to 4:30 p.m. local time. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of state and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the City. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
- E.4. Work Papers Subject to Review. The Contractor shall make all audit accounting, or financial analysis work papers, notes, and other documents available for review by the City, the Comptroller of the Treasury or his representatives, FTA, and TDOT, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.5 Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.6 Program Fraud and False or Fraudulent Statements or Related Acts
- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
 - b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.
 - c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
- E.7 Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.
- E8. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S.

DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- E.9 Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- E.10 Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- E.11 Government-Wide Debarment And Suspension. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
- a. Debarred from participation in any federally assisted Award;
 - b. Suspended from participation in any federally assisted Award;
 - c. Proposed for debarment from participation in any federally assisted Award;
 - d. Declared ineligible to participate in any federally assisted Award;
 - e. Voluntarily excluded from participation in any federally assisted Award; or
 - f. Disqualified from participation in ay federally assisted Award.

By signing this contract, Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a

provision requiring such compliance in its lower tier covered transactions.

- E.12 Public Transportation Employee Protective Arrangements. The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
- a. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
 - b. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
 - c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.
- E.13 Substance Abuse Testing. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Tennessee Department of Transportation or the City of Murfreesboro, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 and to submit the Management Information System (MIS) reports. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- E.14 Energy Conservation. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- E.15 No Federal Government Obligation to Third Parties. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- E.16 Seat Belt Use. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or City.
- E.17 Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic

device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

IN WITNESS WHEREOF, the City and the RTA execute this Contract effective on the date first stated above as shown by the signatures of their authorized representatives herein below.

APPROVED AS TO FORM AND LEGALITY:

CITY OF MURFREESBORO

DocuSigned by:

Adam F. Tucker

43A0D5E6AF01T
Adam F. Tucker, City Attorney

DocuSigned by:

Shane McFarland

CF6A48570074E
Shane McFarland, Mayor

REGIONAL TRANSPORTATION AUTHORITY

ATTEST TO THE AVAILABILITY OF FUNDS:

DocuSigned by:

Steve Bland

411538677FB5D
Stephen G. Bland, CEO

DocuSigned by:

Jim Kerr

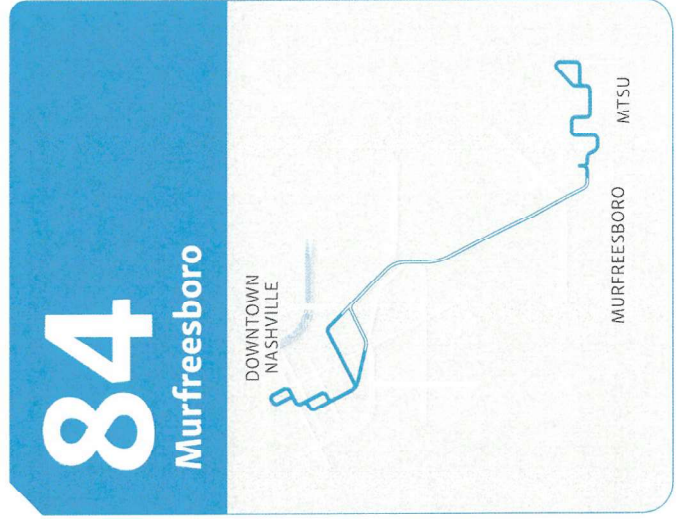
FFC5E904650F05E
Jim Kerr, City of Murfreesboro Transportation Director

Weekdays to Nashville			
MTSU/James Union Building	Rover Transit Center	Old Fort Park	Central Bay 23
5	4	3	1
5:08	5:17	5:25	6:30
5:53	6:02	6:10	7:15
6:33	6:42	6:50	7:55
7:55	8:04	8:12	9:17
11:00	11:09	11:17	12:17
2:00	2:09	2:17	3:17
5:00	5:09	5:17	6:22
8:30	8:38	8:45	9:40

Bold times denote p.m. hours.

Weekdays from Nashville				
Central Bay 23	Greyhound Bus Station	Old Fort Park	Rover Transit Center	MTSU/James Union Building
1	2	3	4	5
6:18	6:28	7:22	7:29	7:37
7:30	7:40	8:34	8:41	8:49
9:30	9:40	10:34	10:42	10:52
12:30	12:40	1:34	1:43	1:53
3:30	3:43	4:41	4:50	5:00
4:15	4:28	5:26	5:35	5:45
5:00	5:13	6:11	6:20	6:30
7:00	7:12	8:06	8:14	8:24

No service Saturdays, Sundays, or holidays.



April 11, 2021



For More Information

Customer Care
 615-862-5950
 6:30 a.m. to 8:00 p.m. – Monday-Friday
 8:00 a.m. to 5:00 p.m. – Saturday
 10:30 a.m. to 2:30 p.m. – Sunday

Central
 400 Dr. Martin L. King Jr. Blvd.
 5:15 a.m. to 11:15 p.m. – Monday-Friday
 6:00 a.m. to 10:15 p.m. – Saturday
 6:00 a.m. to 9:15 p.m. – Sundays and holidays

Administrative Offices
 615-862-5969
 430 Myatt Drive
 8:00 a.m. to 4:30 p.m. – Monday-Friday
 Closed weekends and holidays
 8:00 a.m. to 4:30 p.m. – Monday-Friday
 Closed weekends and holidays

Stay Connected

WeGo Transit WeGoTransit.com
 @WeGoTransit WeGoTransit.com/alerts
 @WeGoTransit customer.comments@nashville.gov

Fares & Passes

1-Ride Regional Bus \$4.25
 1-Ride Regional Bus (Discounted*) \$2.00
 20-Ride Regional Bus \$73.50
 Star Shuttle (Route 93) Free

Children age 4 and younger and veterans ride free.
 *MTSU students, youth, active military, seniors, persons with disabilities, and Medicare cardholders are eligible for discounted fares and passes with proper I.D.

Please Note: Local fares and passes are not valid on regional routes.

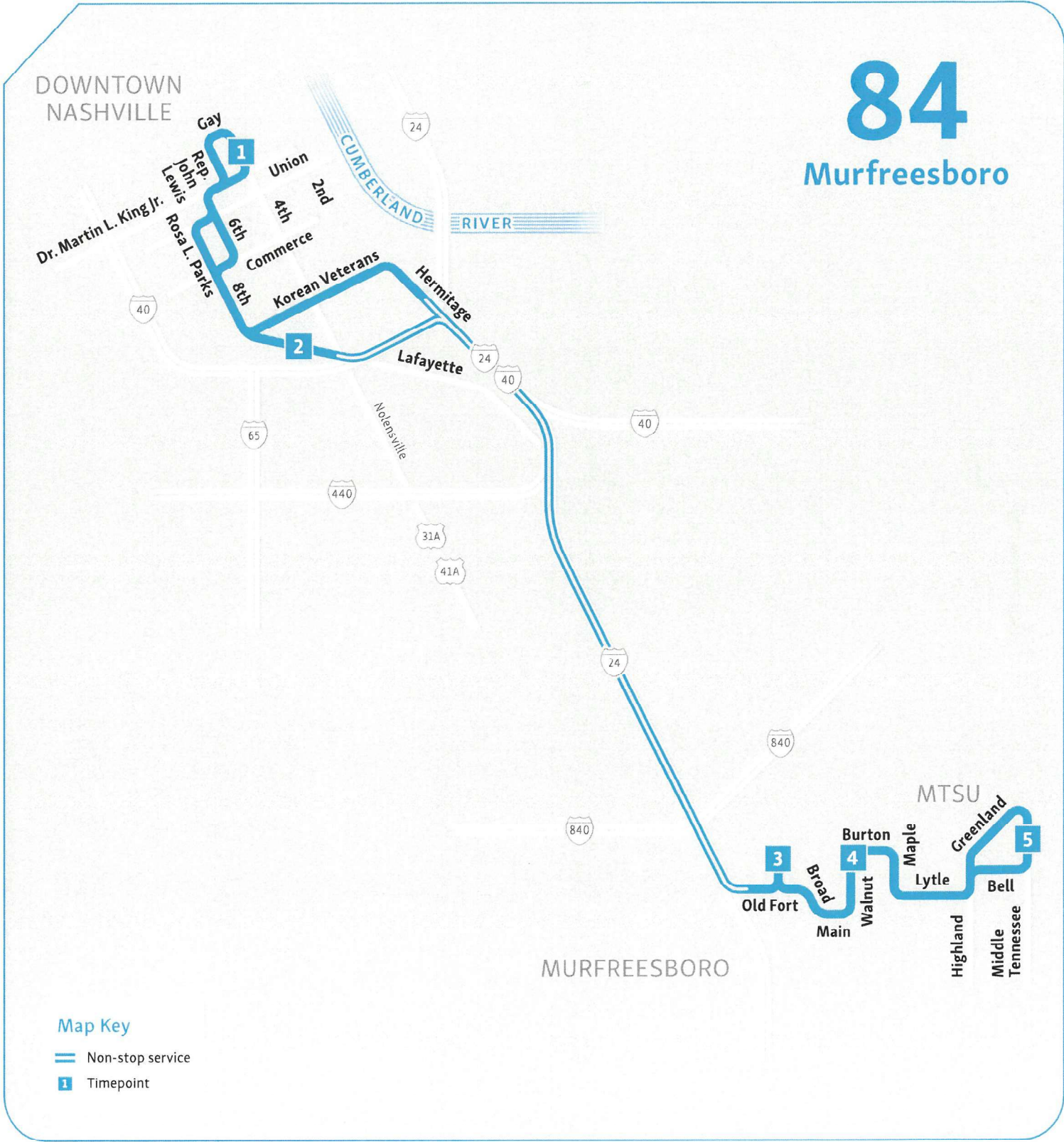
ADA

WeGo Public Transit makes reasonable accommodations in order for individuals with disabilities to fully use transit services. All requests should be made in advance by filling out and submitting a Reasonable Accommodation Request form. For more information on Reasonable Accommodations, visit WeGoTransit.com.

Title VI

Title VI of the Civil Rights Act of 1964 states that "No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." For more information on Title VI, visit WeGoTransit.com.

ATTACHMENT 1





Murfreesboro Express (84X) Relax & Ride Budget
FY2022 Budget with Comparative Prior Year and Forecast Budgets

	FY2021	FY2022	FY2023
Number of Daily Trips	6	22	22
Days of Service [365 days - 104 days in weekends - 7 weekday holidays]	254	254	254
Riders (estimate - pre-COVID)	35,715	61,210	61,822
Operating Hours per Day (including deadhead)	15.47	45.11	45.11
Cost per Hour	\$110.26	\$113.57	\$116.98
TOTAL Daily Cost of Service	\$1,706	\$5,123	\$5,277
<u>Cost of Service</u>			
Cost of Runs [hrs/day X Cost/hr X 254 days]	433,253	1,301,278	1,340,350
Board-Initiated R&R RESERVE	0	0	0
<i>Total Costs</i>	433,253	1,301,278	1,340,350
<u>Estimated Revenues</u>			
Estimated Cash Fares/Pass Sales	21,751	51,263	96,119
One Time Contribution from Other Op Revenues (or Reserves)	0	0	0
CARES ACT Funding to "Keep Service Whole"	87,003	162,334	117,478
ADD: RTA \$5307 Operating Funding			
Federal (50%)			
Local Match (50%)			
ADD: CMAQ Funding			
Federal	210,924	706,993	732,389
TDOT Match on CMAQ	26,366	88,374	91,549
TDOT Operating Subsidy	32,385	108,964	108,884
<i>Total Estimated Revenues</i>	378,429	1,117,928	1,146,419
<i>Estimated Net Cost</i>	54,824	183,350	193,931
Regional Subsidies			
City of Murfreesboro ¥	13,706	33,610	33,610
MTSU ¥	13,706	25,000	25,000
Rutherford County ¥	13,706	33,804	32,921
Davidson County	13,706	45,836	48,482
¥ CARES ACT FUNDS USED TO SUPPLEMENT Partner contributions		45,100	53,918
<i>Total Subsidy (100%)</i>	54,824	183,350	193,931
Balance	0	0	0



INVOICE
FY22-MURF
07/01/21

TO: CITY OF MURFREESBORO
 P.O. BOX 1139
 MURFREESBORO, TN 37133-1139
 ATTN: JIM KERR, TRANSPORTATION DIRECTOR

FROM: Regional Transportation Authority
 430 Myatt Drive
 Madison, TN 37115
 615-862-5969

Description of Charges		AMOUNT
07/01/21	ANNUAL PARTNER SUBSIDY FOR REGIONAL BUS SERVICES FOR ROUTE 84X-MURF EXPRESS FOR THE PERIOD JULY 1, 2021 THRU JUNE 30, 2022	\$45,838.00
	(less CARES Act funding)	(\$12,228.00)
QUESTIONS REGARDING THIS INVOICE PLEASE CONTACT Marcia Mackie @ 615-862-6143		
Please send remittance to REGIONAL TRANSPORTATION AUTHORITY		TOTAL \$33,610.00

COUNCIL COMMUNICATION

Meeting Date: 07/25/2024

Item Title: Ordinance 24-O-23, Amendment to Murfreesboro City Code, Chapter 3, Airport [2nd Reading]

Sec. 3-51 and Sec. 3-53

Department: Airport

Presented by: Chad Gehrke, Airport Director

Requested Council Action:

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

Summary

Amend Murfreesboro City Code, Chapter 3, Airport, Sec. 3-51 and Sec. 3-53.

Staff Recommendation

Approve amendment to Murfreesboro City Code, Chapter 3, Airport Sec. 3-51 Composition; term of office; compensation; removal from office and Sec. 3-53 Purposes.

Background Information

Since Chapter 3 of the Murfreesboro City Code was written, several changes have occurred at the Murfreesboro Municipal Airport. These changes include the City's organizational structure, including staffing at the Airport. Middle Tennessee State University has made several changes as well, including operating their own flight training program. This commercial operation has successfully grown to a point that the University has announced the future relocation of the flight training program and aircraft maintenance labs to allow for continued growth of these programs. The proposed amendments to the City Code Chapter 3 reflect these changes and will continue to enhance the Airport Commission's ability to efficiently and effectively serve as the Airport's recommending board for the Murfreesboro City Council. This proposed change to Chapter 3 was discussed with representatives of the MTSU Aerospace Department Dr. Greg Van Patton and Dr. Chaminda Prelis with no objections. The Airport Commission recommended this revision at its June 17, 2024 meeting.

Council Priorities Served

Improve economic development

It is prudent that City Council review and update its City Codes, also known as the Airport Rules, Regulations, and Minimum Standards, making modifications and adjustments that reflect the current status of the airport.

Attachments

Ordinance 24-O-23

ORDINANCE 24-O-23 amending Murfreesboro City Code, Chapter 3, Airport, Section 3-51, Composition; Term of Office; Compensation; Removal from Office and Section 3-53, Purposes, regarding the Airport Commission.

WHEREAS, the City engages the Airport Commission to oversee the operations, maintenance, and leasing arrangements of the Murfreesboro Municipal Airport; and

WHEREAS, the Airport Commission consists of seven members and two ex-officio non-voting members; and

WHEREAS, one ex-officio member is the City Manager who as City staff has the ability to address the Commission at any time; and

WHEREAS, one ex-officio member is a representative of Middle Tennessee State University, a community partner that has commercially operated flight training and aircraft maintenance labs at the Airport; and

WHEREAS, Middle Tennessee State University has announced the relocation of its flight training and aircraft maintenance labs at or before the term of their Lease Agreement with the City of Murfreesboro; and

WHEREAS, the City Council believes it is in the best interests of the community to enhance the ability of the Airport Commission to further its designated purpose by changing the composition of the Airport Commission to eliminate the ex-officio non-voting member positions.

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

SECTION 1. Murfreesboro City Code Section 3-51, Composition; term of office; compensation; removal from office is amended as follows:

- (i) The first sentence of the first paragraph is amended by deleting the language “and two ex-officio non-voting members” from the end of the sentence; and
- (ii) The seventh sentence of the first paragraph, “The City Manager and a representative of Middle Tennessee State University shall serve as non-voting ex-officio members” shall be deleted entirely.

SECTION 2. Murfreesboro City Code Section 3-53, Purposes, is amended at subsection (E) by deleting the existing language and replacing it with the following sentence:

- “(E) cooperate with all commercial operators in the development and implementation of their businesses and the aeronautical services provided to the community and flying public;”

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

1st reading _____

2nd 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: 7/25/2024

Item Title: Ordinance 24-O-10 City Code, Chapter 12 Changes

Department: Fire Rescue

Presented by: Chief Mark McCluskey

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

The department is requesting revisions to Chapter 12 of the City Code to clarify open burning practices and to rename the Community Risk Reduction division.

Staff Recommendation

Approve revisions to City Code, Chapter 12 by Ordinance 24-O-10.

Background Information

Revisions to Chapter 12 of the City Code are needed to provide guidance and recommendations for safe burning practices and promote compliance and safety at construction sites. The Community Risk Reduction division is changing its title to the Fire Marshal’s Office to stay consistent with industry standards.

Council Priorities Served

Maintain public safety

Establishing guidelines for safe burning practices will help protect citizens and keep communities safe with fewer adverse impacts related to open burning.

Fiscal Impact

There is no fiscal impact on the FY25 operating budget.

Attachments

1. Ordinance 24-O-10

ORDINANCE 24-O-10 amending the Murfreesboro City Code, Chapter 12, Fire Prevention and Fire Rescue Services, Articles II and V, Sections 12-19, 12-51, 12-52, 12-53, and 12-54, regarding open burning.

WHEREAS, the title "Fire Marshal's Office" is consistent with industry standards; and

WHEREAS, adding safety setbacks established in the Fire Code will provide guidance and promote safe burning; and

WHEREAS, the amendment of burning practices will promote burning compliance and fire safety at building sites; and

WHEREAS, the amendment to the hours and days to burn will promote recommended burning practices and improve code enforcement by allowing commercial burning during business hours.

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

SECTION 1. Section 12-19, Community Risk Reduction, of the Murfreesboro City Code is hereby amended by:

- Deleting the words "Community Risk Reduction" in the title and substituting instead the words "Fire Marshal's Office,"
- Replacing references to "Community Risk Reduction Division" and "Division" in the section with "Fire Marshal's Office."

SECTION 2. Section 12-2, International Fire Code-Amended, of the Murfreesboro City Code is hereby amended by inserting the following new subsection (G) and re-lettering the remaining subsections accordingly. Section 12-51 of the Murfreesboro City Code regulates open burning, recreational fires and the use of portable outdoor fireplaces in the City of Murfreesboro:

(G) Section 307 on Open Burning, Recreational Fires and Portable Outdoor Fireplaces is deleted.

SECTION 3. Section 12-50, Definitions, of the Murfreesboro City Code is

hereby amended by adding the following definitions:

“*Approved.*” Acceptable to the fire code official.

“*Dwellings.*” A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

“*Fire Code Official.*” The fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative

“*Owner.*” Any person, agent, operator, entity, firm or corporation having any legal or equitable interest in the property; or recorded in the official records of the state, county, or municipality as holding an interest or title to the property; or otherwise having possession or control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

“*Recreational fires.*” An outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of three (3) feet or less in diameter and two (2) feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

SECTION 4. Section 12-51, Residential/recreational burning, of the Murfreesboro City Code is hereby amended by deleting the section in its entirety and substituting instead the following:

(A) **General.** A person shall not kindle or maintain or authorize to be kindled or maintained any *open burning* unless conducted and approved in accordance with Murfreesboro City Code Article V, Opening Burning.

(1) **Prohibited Open Burning.** *Open burning* shall be prohibited when atmospheric conditions or local circumstances make such fires hazardous.

Exception: Prescribed burning for the purpose of reducing the impact of wildland fire when authorized by the *fire code official*.

(B) **Permit required.** A permit shall be obtained from the *fire code official* in

accordance with Section 105.6 prior to kindling a fire for recognized silvicultural or range or wildfire management practices, prevention or control of disease or pests, or a bonfire. Application for such approval shall only be presented by and permits issued to the *owner* of the land on which the fire is to be kindled.

(1) **Authorization.** Where required by state or local law or regulations, open burning shall only be permitted with prior approval from the state or local air and water quality management authority, provided that all conditions specified in the authorization are followed.

(C) **Extinguishment authority.** Where open burning creates or adds to a hazardous situation, or a required permit for open burning has not been obtained, the *fire code official* is authorized to order the extinguishment of the open burning operation.

(D) **Location.** The location for open burning shall not be less than 50 feet from any structure, and provisions shall be made to prevent the fire from spreading to within 50 feet of any structure.

Exceptions:

- Fires in *approved* containers that are not less than 15 feet from a structure.
- The minimum required distance from a structure shall be 25 feet where the pile size is 3 feet or less in diameter and 2 feet or less in height.

(1) **Recreational fires.** *Recreational fires* shall not be conducted within 25 feet of a structure or combustible material. Conditions that could cause a fire to spread within 25 feet of a structure shall be eliminated prior to ignition.

(2) **Portable outdoor fireplaces.** Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within 15 feet of a structure or combustible material.

Exception: Portable outdoor fireplaces used at one- and two-family *dwelling*s.

(E) **Attendance.** *Open burning, bonfires, recreational fires* and use of portable outdoor fireplaces shall be constantly attended until the fire is extinguished. No fewer than one portable fire extinguisher complying with Section 906 with a minimum 4-A rating or other *approved* on-site fire-extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.

SECTION 5. Section 12-52, Construction site burning, of the Murfreesboro City Code, subsection (d) is hereby amended by deleting the words “the fire is no greater than four feet in diameter” and substituting instead the words “warming fires shall be inside of a fifty-five (55) gallon steel drum.”

SECTION 6. Section 12-53, Commercial burning, of the Murfreesboro City Code is hereby amended by adding the following sentences to the beginning of the section:

“Commercial fires are to be conducted between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Fire pits shall be covered by 5:00 p.m. No commercial burning is allowed on the weekends.”

SECTION 7. Section 12-54, Bonfires, of the Murfreesboro City Code is hereby amended by deleting the words “Community Risk Reduction” in the last sentence of the section and substituting instead the following words “Fire Marshal’s Office.”

SECTION 8. Section 12-54, Bonfires, of the Murfreesboro City Code is hereby amended by adding the following sentences at the end of the section:

“A bonfire shall not be conducted within 50 feet of a structure or combustible material unless the fire is contained in a barbecue pit. Conditions that could cause a fire to spread within 50 feet of a structure shall be eliminated prior to ignition.”

SECTION 9. 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

1st reading _____

2nd 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: 07/25/2024

Item Title: FY25 Budget Amendment
Department: Administration
Presented by: Erin Tucker, Budget Director
Requested Council Action:

Ordinance
Resolution
Motion
Direction
Information

Summary

Amendment to the City's FY25 Budget Ordinance

Staff Recommendation

Approve Ordinance 24-O-27, amending the City's budget.

Background Information

General Fund

Revenue adjustments

The FY25 Budget was developed using preliminary FY24 projections for several revenue sources. Actual revenue data reflect higher than projected results which should be reflected in the FY25 budget, as shown in the chart below:

	FY25 BUDGET - AS APPROVED	RECOMMENDED ADJUSTMENT	F25 BUDGET - REVISED
Local Sales Tax	\$ 72,521,000	\$ 1,050,000	\$ 73,571,000
State Sales Tax	\$ 18,769,082	\$ 190,000	\$ 18,959,082
Gross Receipts Tax	\$ 5,500,000	\$ 600,000	\$ 6,100,000
City Court Fines & Penalties	\$ 1,300,000	\$ 110,000	\$ 1,410,000
	\$ 98,090,082	\$ 1,950,000	\$ 100,040,082

After review of actual FY24 results and comparisons to FY23, it is appropriate to budget an allowance for vacancies City-wide that reflects typical payroll cost savings. This allowance totals \$2 million, exclusive of the already budgeted Police and Parks and Recreation allowance for vacancies.

Public Safety Pay Plan

Staff surveyed neighboring Middle Tennessee cities to compare the City's Police Pay Plan to peer cities. The results of the survey determined that the Police pay plan should be adjusted by 2.5%-7.5% to better attract and retain sworn Police officers. In addition, the survey results reflect that the Fire Pay Plan should be adjusted by 11.5%-13.5%.

Fire Rescue

The Fire Rescue Department's payroll increases result in a recommended increase of approximately \$2,415,000.

Police

The Police Department's payroll increases result in a recommended increase of approximately \$1,670,000. In addition, the allowance for vacancies for Police will increase by \$135,000.

Public Safety Equipment and Fixed Asset adjustments

At the June 20, 2024, City Council meeting, Council approved the purchase of a firing range at a cost of \$1.4 million. An additional \$100,000 is included to fund additional costs, including appraisals and closing costs, for a total budget amendment of \$1.5 million.

Murfreesboro Fire Rescue (MFRD) received a \$358k Assistance to Firefighters grant to promote firefighter wellness. The grant requires a \$36k local match. A budget amendment is needed to recognize the grant revenues and expenditures.

There are \$83k in technology upgrades not completed in FY24 for MFRD that need to be re-budgeted in FY25. These will be included in the Assigned prior-year carryforward in the FY24 audit report.

State Street Aid

At the July 18, 2024, Council meeting, Council approved \$150,000 in fiber optic cable and upgrades between Cason Lane to Veterans Parkway that were not included in the TDOT funded project on New Salem Highway Phase 3. These costs will be funded out of the State Street Aid Fund Balance.

Airport Fund

As part of the Airport Fund's intention to acquire properties as they come available in the Federal Runway Protection Zone, a budget amendment is requested to the increase land purchase expense by \$400k for a potential property purchase.

Council Priorities Served*Responsible Budgeting*

The budget amendments reflect the City's increased revenues and expenses.

Fiscal Impact

The amendment to the City's FY25 budget results in a total increased use of Unassigned Fund Balance of \$1.53 million, an increased use of restricted State Street Aid funds of \$150,000, and an increased use of Airport Fund's fund balance of \$400,000.

Attachments

FY24 City Budget Ordinance 24-O-27 and Exhibit A

ORDINANCE 24-O-27 amending the Fiscal Year 2025 (hereafter “FY2025”) Budget (1st Amendment).

WHEREAS, the City Council adopted the FY2025 Budget by motion; and,

WHEREAS, the City Council adopted an appropriations ordinance, Ordinance 24-O-14, on June 13, 2024 to implement the FY2025 Budget; and,

WHEREAS, it is now desirable and appropriate to adjust and modify the FY2025 Budget and authorized full-time position counts adopted by this Ordinance to incorporate expenditure and hiring decisions made during the 2024-2025 fiscal year.

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

SECTION 1. The FY2025 Budget adopted by the City Council is hereby revised and amended as shown on Exhibit A, attached hereto.

SECTION 2. 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:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Amanda DeRosia
Interim City Recorder

Adam F. Tucker
City Attorney

SEAL

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>General Fund</u>				
<u>Revenues</u>				
	<u>Unassigned</u>			
General	Local Sales Tax	\$ 72,521,000.00	\$ 73,571,000.00	\$ 1,050,000.00
	State Sales Tax	\$ 18,769,082.00	\$ 18,959,082.00	\$ 190,000.00
	Gross Receipts Tax	\$ 5,500,000.00	\$ 6,100,000.00	\$ 600,000.00
	City Court Fines & Penalties	\$ 1,300,000.00	\$ 1,410,000.00	\$ 110,000.00
Fire	Federal Grants	\$ 201,200.00	\$ 558,836.89	\$ 357,636.89
				<u>\$ 2,307,636.89</u>
<u>Expenditures</u>				
	<u>Restricted/Assigned</u>			
State Street Aid	Repair & Maintenance Traffic Lights	\$ 400,000.00	\$ 550,000.00	\$ 150,000.00
Fire	Computer Equipment	\$ 29,805.00	\$ 113,084.75	\$ 83,279.75
	<u>Unassigned</u>			
Police	Land Expense		\$ 1,500,000.00	\$ 1,500,000.00
Police	Salaries & Benefits	\$ 44,991,156.00	\$ 46,661,156.00	\$ 1,670,000.00
Police	Allowance for Vacancies		\$ (135,000.00)	\$ (135,000.00)
General Fund	Allowance for Vacancies		\$ (2,000,000.00)	\$ (2,000,000.00)
Fire	Salaries & Benefits	\$ 26,982,605.00	\$ 29,397,605.00	\$ 2,415,000.00
Fire	Grant Expense	\$ 201,200.00	\$ 594,600.58	\$ 393,400.58
				<u>\$ 4,076,680.33</u>
CHANGE IN RESERVED, RESTRICTED, AND ASSIGNED FUND BALANCE		\$ (82,946,303.00)	\$ (83,179,582.75)	\$ 233,279.75
CHANGE IN UNASSIGNED FUND BALANCE		\$ (1,563,518.00)	\$ (3,099,281.69)	\$ 1,535,763.69
ESTIMATED ENDING FUND BALANCE		\$ 136,077,890.00		
Adjustments for FY24 Closing Entries				
TOTAL ESTIMATED ENDING FUND BALANCE		\$ 136,077,890.00	\$ 134,308,846.56	\$ (1,769,043.44)

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Airport Fund</u>				
<u>Expenditures</u>				
	Land Expense		\$ 400,000.00	\$ 400,000.00
				<u>\$ 400,000.00</u>
	CHANGE IN FUND BALANCE (CASH)	\$ (7,387.00)	\$ (407,387.00)	(400,000.00)

COUNCIL COMMUNICATION

Meeting Date: 7/25/2024

Item Title: Acquire Easements at 106 SE Broad St for Town Creek Daylighting Project

Department: Development Services

Presented by: Gabriel Moore, Project Engineer

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Acquire easements by condemnation at 106 SE Broad St for Town Creek Daylighting Project.

Staff Recommendation

Approve initiation of condemnation proceedings by tendering the appraised value of \$65,500 and authorization to negotiate a settlement to limits allowed under Federal property acquisition requirements.

Background Information

The acquisition of this property will allow for the daylighting of Town Creek at the southern end of the project limits. The City has an appraised value for the easements needed on the subject property in the amount of \$65,500. This amount was determined with the understanding that, in addition to monetary compensation, the City will also abandon unused easements as well as provide new access and signs easements in conjunction with the project. Negotiations with the property owner are ongoing but, in the essence of time, we would like to start the condemnation process if negotiations are unsuccessful. We request authorization to initiate condemnation at the appraised amount by filing a Petition in the amount of \$65,500. Following the Petition filing, the Owner may be amenable to a negotiated settlement and approval of this item includes authorization to accept a negotiated settlement up to the Federal limits.

Council Priorities Served

Responsible budgeting

Utilization of federal stimulus funds for the stormwater elements of this project offset City funds to be applied toward local expenditures.

Improve economic development

Town Creek Project and the related public improvements enhance the entrance to downtown area and encourage redevelopment in the Historic Bottoms.

Fiscal Impact

The Petition will include a tendered amount of \$65,500 to be funded by the General Fund.

Attachments

Appraisal

Appraisal Review Report

LOCAL PUBLIC AGENCY
REAL PROPERTY EMINENT DOMAIN
APPRAISAL REVIEW REPORT
(RIGHT OF WAY ACQUISITION)

This appraisal review has been conducted in accordance with the Scope of Work Rule and Standard 3 and 4 of the *Uniform Standards of Professional Appraisal Practice*, as promulgated by the Appraisal Foundation. This review and this review report are intended to adhere to the Standard 3 and 4 in effect as of the date this review was prepared. The appraisal and appraisal report have been considered in light of the Standards 1 & 2 in effect as of the date the appraisal was prepared - not necessarily the effective date of valuation.

The purpose of this technical review is to develop an opinion as to the compliance of the appraisal report identified herein to the *Uniform Standards of Professional Appraisal Practice*, the *Uniform Relocation Assistance & Real Property Acquisition Act*, and the Tennessee Department of Transportation's *Guidelines for Appraisers*; and further develop opinions as to the completeness, accuracy, adequacy, relevance, reasonableness, and appropriateness of opinions presented in the appraisal report as advice to the acquiring agency in its development of a market value offer to the property owner. This review is conducted for **THE CITY OF MURFREESBORO** and is the intended user.

All estimates of value prepared for agency acquisitions shall be based on "market value" - as defined and set forth in the Tennessee Pattern Jury Instructions to wit: "the amount of money which a purchaser, willing but under no compulsion to buy, would pay, and which a seller, willing but under no compulsion to sell, would accept, taking into consideration all the legitimate uses to which the property was adaptable and might in reason be applied." Compensations are in compliance with the Tennessee State Rule.

Section (A) Identification & Base Data:

(1) State Project Number: N/A (2) County: Rutherford (3) Tract No: N/A
Federal: N/A
Pin: N/A Project ID: Town Creek Phase II

(4) Owner(s) of Record: McDonald's Corporation, A Delaware Corporation

(5) Address/Location of Property Appraised:
106 SE Broad Street, Murfreesboro, TN 37130 Tax Map 102C Group F Parcel 026.00

(6) Effective Date of the Appraisal: 3/6/2024

(7) Date of the Report: 5/13/2024

(8) Type of Appraisal: Formal
 Formal Part-Affected (9) Type of Acquisition: Total
 Partial

(10) Type of Report Prepared: Appraisal Report
 Restricted Appraisal Report (11) Appraisal & Review Were Based On:
 Original Plans
 Plan Revision Dated: Feb-24

(12) Author(s) of Appraisal Report: Robbi Kitchen TN CG-2489

(13) Effective Date of Appraisal Review: 5/13/2024

(14) Appraisal Review Conducted By: R. Rhett Turner, MAI, SR/WA

(15) Ownership Position & Interest Appraised: (Unless indicated herein to the contrary, the appraisal is of a 100% ownership position in fee simple. (Confirm 100% or state the specifics otherwise.))
100% ownership position in fee simple.

(16) Scope of Work in the Performance of this Review: (Review must comply with all elements and requirements of the Scope of Work Rule and Standards 3 & 4 of USPAP, and must include field inspection (at least an exterior inspection of the subject property and all comparable data relied on in the appraisal report.)) **Development of an independent estimate of value is not a part of this review assignment)**

Review complied with all requirements noted above. Comparable sales were visually inspected from the public right of way and confirmed using various data sources (US Titlesearch.com, Titlesearcher.com, CRSdata.com, and actual court house records). The subject property was inspected. Analyses and conclusions contained within the report were reviewed as to their applicability to the subject property, the area being acquired, and to the impact, if any, on the land and improvements remaining. The review appraiser verified the data in the Market Data Brochure or attached sales data sheets. The appraisal report was read, subject information references verified, acquisition areas verified with current plans, math checked. A review report was written.

Section (B): Property Attributes:

(1) Total Tract Size as Taken From the Acquisition Table: 40,075 Sq. Ft.

(2) Does the Appraisal Identify One Or More "Larger Parcels" That Differ In Total Size From the Acquisition Table? (If "Yes," what is it and is it justified?)(Explain)(Describe Land)

No. The subject as identified above and in the appraisal report is the "Larger Parcel."

(3) List/Identify Affected Improvements (If appraisal is "Formal," then all improvements must have been described in the appraisal report and must be listed here. If the appraisal is "Formal Part-Affected," then only those affected improvements should have been described in the appraisal report and listed here.) Listing by Improvement Number & Structure Type is adequate here.)

- | | |
|--|---|
| 1- <u>IMP 1: Fast Food Restaurant Building</u> | 2- <u>IMP 2: Signs</u> |
| 3- <u>IMP 3: Marked Parking Spaces</u> | 4- <u>IMP 4: Paving</u> |
| 5- <u>IMP 5: Curbing</u> | 6- <u>IMP 6: Storage & Dumpster Enclosure</u> |
| 7- <u>IMP 7: Landscaping</u> | 8- <u>IMP 8: Lighting & Flag Pole</u> |
| 9- _____ | 10- _____ |
| 11- _____ | 12- _____ |
| 13- _____ | 14- _____ |
| 15- _____ | 16- _____ |
| 17- _____ | 18- _____ |
| 19- _____ | 20- _____ |

Section (C) Valuation Approaches Processed and Reconciled "Before Value" Estimates

Approaches Utilized: Cost Sales Comparison Income

Reconciled Value Estimates (Total Tract or larger Parcel(s)):

Land:	<u>\$1,041,950</u>
Improvements:	<u>\$1,758,050</u>
Total:	<u>\$2,800,000</u>

Section (D) Acquisitions:

(1) Proposed Land Acquisition Areas (As taken from the appraisal report):

[a] Fee Simple:	<u> - </u>	Sq. Ft.
[b] Permanent Drainage Easement: (A)	<u> 485 </u>	Sq. Ft.
[c] Utility Easement (B)	<u> 2,219 </u>	Sq. Ft.
[d] Utility Easement (C)	<u> 3,982 </u>	Sq. Ft.
[e] Utility Easement (D)	<u> 734 </u>	Sq. Ft.
[f] <u>Permanent Utility Easement</u>	<u> 0 </u>	Sq. Ft.

(2) Proposed Improvement Acquisition(s): Improvement Number & Structure Type

1- <u>None</u>	2- _____
3- _____	4- _____
5- _____	6- _____
7- _____	8- _____
9- _____	10- _____
11- _____	12- _____
13- _____	14- _____
15- _____	16- _____
17- _____	18- _____
19- _____	20- _____

Section (E) Damages/Special Benefits:

Page 21, addresses benefits and damages for the removal of the current access easement and the addition of the proposed alternate easement for access from South Church Street. The damages and benefits are determined to be equal and therefore, offsetting.

Section (F) Valuation Approaches Processed and Reconciled "After-Value" Estimates

Approaches Utilized: Cost Sales Comparison Income

Reconciled Value Estimates (Total Tract or larger Parcel(s)):

Land:	<u> \$976,508.00 </u>
Improvements:	<u> \$1,758,050 </u>
Total:	<u> \$2,734,558.00 </u>

Comments:

Rounding is not applied.

Section (G) Review Comments

"Before" & "After" Valuation (Include Comments For "NO" Responses To Questions 1 - 7 & "YES" Response To Question 8)

(1) Are the conclusions of highest and best use (before & after) reasonable and adequately supported?
Yes. The appraisal report conclusions for the before situation are reasonable and adequately supported. The after situation does not apply.

(2) Are the valuation methodologies (before & after) appropriate?
Yes. The valuation methodologies are appropriate for the before situation as completed in the appraisal report. The after situation does not apply.

(3) Are the data employed relevant & adequate to the (before & after) appraisal problems?
Yes. The data utilized in the appraisal report is relevant and adequate for the before situation as stated and employed in the appraisal report. The after situation does not apply.

(4) Are the valuation techniques (before & after) appropriate and properly applied?
Yes. The valuation techniques in the before situation are appropriate and properly applied. The after situation does not apply.

(5) Are the analyses, opinions, and conclusions (before & after) appropriate and reasonable?
Yes. The analyses, opinions and conclusions presented and utilized in this appraisal report are appropriate. This is a total acquisition.

(6) Is the report sufficiently complete to allow proper review, and is the scope of the appraisal assignment broad enough to allow the appraiser to fully consider the property and proposed acquisitions?

Yes. The appraisal report is sufficiently complete to allow proper review. The scope of work is adequate to properly address the before situation. This is a total acquisition.

(7) Is the appraisal report under review generally compliant with *USPAP*, the *Uniform Act*, and TDOT's *Guidelines for Appraisers*?

Yes. The appraisal report is generally compliant as required by USPAP, the Uniform Act and the TDOT's Guidelines for Appraisers.

(8) Do the general and special "Limiting Conditions and Assumptions" outlined in the appraisal report limit the valuation to the extent that the report cannot be relied on for the stated use?

No. The general and special Limiting Conditions and Assumptions are reasonable and appropriate. These items do not limit or restrict the report in any manner. The appraisal report may be relied on for the stated use.

Appraisal Report Conclusions -- Amounts Due Owner

(a) Fee Simple:	<u>\$0.00</u>
(b) Permanent Drainage Easement:	<u>\$11,349</u>
(c) Utility Easement (B)	<u>\$17,308.20</u>
(d) Utility Easement (C)	<u>\$31,059.60</u>
(e) Utility Easement (D)	<u>\$5,725.20</u>
(f) Temporary Construction Easement:	<u>\$0</u>
(g) Improvements:	<u>\$0</u>
(h) Compensable Damages:	<u>\$312,585</u>
(i) Special Benefits:	<u>-\$312,585</u>
(j) Total Amount Due Owner By Appraisal:	<u>\$65,500</u>

I DO Recommend Approval Of This Report

I DO NOT Recommend Approval Of This Report

Comments:

The appraisal report is well founded and addresses the acquisition areas and the relationship to the remainder. The appraisal report is based on local market data and proper appraisal methodology is applied.



R. Rhett Turner, MAI, SR/WA

TN CG-2244
State License/Certification No(s):

Consultant Staff

May 13, 2024
Date of Appraisal Review Report

Additional Comments:

The final amount due owner is rounded up from \$65,442 to \$65,500.

Section (H) Certification

I certify to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.

I have no present or prospective interest in the property that is the subject of the work under review and no personal interest with respect to the parties involved.

I have performed no services, as an appraiser or in any other capacity, regarding the property that is subject of the work under review within the three-year period immediately preceding acceptance of this assignment.

I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.

My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal review.

My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.

I did personally inspect the exterior of the subject property of the work under review.

No one provided significant appraisal or appraisal review assistance to the person signing this certification.

As of the date of this report, R. Rhett Turner, MAI has completed the continuing education program for Designated Members of the Appraisal Institute.

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.



R. Rhett Turner, MAI, SR/WA

Consultant Staff

May 13, 2024

Date of Appraisal Review Report

Section (I) Limiting Conditions & Assumptions

This appraisal review report has been made with the following general limiting conditions and assumptions:

- (1) Unless stated herein to the contrary, it is specifically assumed that the author of the appraisal report under review made the required contact with the property owner, and conducted the appropriate inspections and investigations.
 - (2) Unless stated herein to the contrary, it is specifically assumed that the right-of-way plans upon which the appraisal was based are accurate.
 - (3) Unless stated herein to the contrary, it is specifically assumed that all property (land & improvement) descriptions are accurate.
 - (4) Unless stated herein to the contrary, no additional research was conducted by the review appraiser.
 - (5) Unless stated herein to the contrary, all specific and general limiting conditions and assumptions outlined in the appraisal report submitted for review are adopted herein.
-

**ROBBI KITCHEN APPRAISAL SERVICES
132 DONMOND DR
HENDERSONVILLE, TN 37075
Office: 615-447-5427**

**Robbi L. Kitchen
Appraiser**

May 13, 2024

City of Murfreesboro

c/o David Ives, Deputy City Attorney
111 West Vine St
Murfreesboro, TN 37130
615-849-2616

RE: 106 SE Broad St, Murfreesboro, TN
Rutherford County Tax Map/Parcel: 102F-C-026.00

Dear Client:

At your request, I have prepared the attached updated appraisal of the referenced property in Rutherford County, Tennessee.

The purpose of the appraisal is to estimate the market value of the property for the purposes of determining a fair market value in order for the Client to acquire the subject property for a City project.

The scope of the appraisal consisted of a thorough investigation into available market data, the application of the applicable appraisal methods and techniques, and an analysis of the data to arrive at the market value estimate.

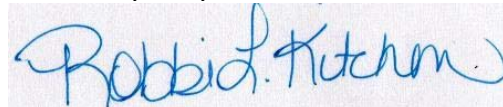
The intended use of the appraisal is to assist the Client in evaluation of the subject property for the acquisition of the subject property for a City project. The intended user of the appraisal report is **City of Murfreesboro, Rutherford County, Tennessee**, and its duly authorized representatives.

The actual date of the appraisal report is May 13, 2024. The effective date of the appraisal is March 6, 2024, which is the most recent date of inspection.

As a result of my inspection and my analysis of available market data, as of March 6, 2024, I estimate the fair market value of the subject property to be: \$2,800,000.00.

**The amount due owner is:
\$65,500.00
Sixty-Five Thousand Five Hundred Dollars**

Yours very truly,



Robbi L. Kitchen
State of TN Certified General Appraiser, CG-2489

rlk
enclosure

**AN APPRAISAL REPORT PREPARED FOR:
City of Murfreesboro, Rutherford County, TN**

THE PURPOSE OF THIS APPRAISAL IS TO ESTIMATE THE FAIR MARKET VALUE FOR ACQUISITION

1. NAME, ADDRESS AND TELEPHONE NUMBER:

(A) Owner: McDonalds Corporation #4244
P.O. Box 182571
Columbia, TN 43218-2571

(B) Tenant: Franchise owner contact:
Jonathan McGuire
(son of FO) 615-788-1909

Contact: Christina Everett
470-418-0641 cell
Christina.everett@us.mcd.com

(C) Address and/or Location of Subject:

106 SE Broad St, Murfreesboro, Rutherford County, TN 37130
The property is located along the south right of way of SE Broad St just +/-165' east of the intersection S Church St in Murfreesboro, TN.

2. DETAIL DESCRIPTION OF ENTIRE TRACT:

SITE DESCRIPTION:

Legal Description: Recorded in the Registers Office of Rutherford County Record Book 342, page 336. For the purpose of this appraisal, the size indicated on the tax card is assumed correct (40,075 sqft).

Size/ Larger Parcel: According to the tax record, the property contains approximately 40,075 sqft along SE Broad St. The appraiser assumes the site size indicated is correct. (Note: The deed indicates 43,248 sqft plus the ingress-egress easement of 3,230 sqft; however, the deed is dated February 1985 and the appraiser assumes that the tax card correctly reflects the exclusion of rights of way which are included in the deed indicated size. A survey would be needed for exact size of the subject parcel. A survey provided by the City indicates that the correct ingress-egress easement size is 3,049 sqft.)

Shape/ Dimensions: See the Tax Map included in the addenda of the report for the shape of the tract. The property is rectangular in shape.

Drainage: The drainage of the property appears to be adequate; however, see Flood information below.

Utilities Available: Public electricity, water, gas, sewer, and telephone services are available to the property.

Frontage: The tax record indicates that the property has frontage along SE Broad St (+/-184').

Topography: The topography of the property may be described as generally level. The property is at and very slightly above road grade.

Corner Influence: The property does not have a corner influence.

Flood Plain/ Wetlands: According to the FEMA flood map concerning the subject property is mostly within the 0.2% annual chance of flood designation (+/-74% in this area) and is otherwise designated Zone X. See the copy of the FEMA Flood Map in the addenda.

Accessibility: Accessibility is considered to be adequate. Ingress and egress are available via two drive entrances leading from the existing right of way of SE Broad St. There is also a drive access leading from S Church Street at the rear of the property via an ingress/egress easement crossing the adjoining property (known as Tax Map 102C-F-024.01 – owned by City of Murfreesboro).

View: The view of the subject property is commercial. There are vacant lots to the west and south.

Off Site Improvements: There are existing curb/gutter and sidewalk sections located along the frontage of the subject property within the existing right of way of SE Broad St. SE Broad St is a public, 7 lane roadway (6 travel lanes with a middle turn lane). S Church Street is a public, 5 lane roadway (4 travel lanes with a middle turn lane).

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

Environment: The value estimate is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.

Minerals: The value estimate is based on the assumption that the property is not affected by the existence of mineral deposits unless otherwise stated in this report. The appraiser is not an expert in the identification of such mineral deposits. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant mineral deposits which would affect the property's market value unless otherwise stated in this report. It is possible that tests and inspections made by a qualified expert would reveal the existence of mineral deposits on or around the property that would affect its value.

Building Improvements:

The property is currently improved with a commercial restaurant building and related improvements. They are as follows: 1) restaurant building; 2) business signs and drive-thru order station (menu signs & speakers); 3) marked parking spaces; 4) paving; 5) curbing; 6) storage building & dumpster enclosure; 7) landscaping; and 8) outdoor lighting. See the following pages for a more detailed description of the improvements on the property.

NOTE: Improvements within the existing right of way are not included in the appraisal.

Personal Property: Personal property (including furnishings, appliances, and equipment) is not included in the appraisal of the real estate.

Assessment:

Property Taxes: According to the Tax Assessor's tax card information, the subject property is appraised for tax purposes as follows: \$623,000 land value; \$665,700 improvements; \$1,288,700 total value. The property is assessed at 40% (\$515,480) and the current taxes are as follows: \$4,910.46 city and \$9,671.44 county (\$14,581.90 total).

3A. TAX MAP, GROUP, AND PARCEL NO.

102C- F- 026.00

3B. IS SUBJECT IN A FEMA FLOOD HAZARD AREA?

Yes No

If yes, show FEMA Map/Zone No: Map 47149C0260J, dated 05/09/2023; Zones X and 0.2%

4. INTEREST ACQUIRED:

Fee Simple Easement

5. ACQUISITION:

Total Partial

6. TYPE OF APPRAISAL:

Formal Formal Part Affected Appraisal (FPA)

Property Rights Appraised: The Client has requested a formal appraisal report for this property, which will be an appraisal of the land and all improvements of value on the property. The property rights appraised are fee simple title when determining the market value of the property.

Intended Use of Report – This "Formal" appraisal of a 100% ownership position is intended for the sole purpose of assisting the City of Murfreesboro in the acquisition of land for right-of-way purposes. This appraisal pursuit excludes those property elements (land and/or improvements) that are not essential considerations to the valuation solution.

This is an Appraisal Report, which is intended to comply with Standard Rule 2-2(a). As such, it presents only summary discussions of the data, reasoning and analysis that were used in the appraisal process. Supporting documentation that is not provided within the report is retained in the appraiser's work file or can be obtained from the addenda of this report. The depth of discussion contained in this report is specific to the needs of the client.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

7. DETAIL DESCRIPTION OF LAND ACQUIRED:

Description of Acquisition and/or Easements:

Size/ Shape/ Location of Acquisition: According to the information provided by the Client, no fee acquisition is acquired from subject property by the project.

The project, however, will acquire multiple easements as described below and will remove an existing ingress/egress easement across an adjoining property (owned by the City: Tax Map 102C-F-024.01) while providing a replacement the ingress/egress easement in a new location (owned by the City: Tax Map 102C-F-024.00).

Most of the easement acquisitions on the subject property are currently "in use" from prior unrecorded agreements between the City and prior property ownership (agreements prior to current ownership) which will not affect existing improvements, but will complete proper recording procedures for these "in use" easements. Also, with this project, there will be removal or abandonment of existing recorded easements which are no longer needed by the City (these may affect some improvements as described). All of these are listed below (labeled as A, B, C, etc. by the appraiser for descriptive purposes in appraisal):

Description of proposed new easement acquisitions on subject property (will affect existing improvements; however, improvements replaced in like-kind, so they are not considered as part acquired):

(A) Permanent drainage & trail easement: 485 sqft (SW corner of property)

Description of proposed (in use) easement acquisitions on subject property (will not affect any existing improvements):

(B) Sanitary sewer & water line easement: 2,219 sqft (along west property line)

(C) Sanitary sewer easement: 3,982 sqft (along south property line)

(D) Water line easement: 734 sqft (along north property line)

Description of abandonment of existing easements:

(E) Public utility easement: 0.05 acre or 2,178 sqft (removal of creek diversion under parking lot: will not affect improvements)

(F) Public utility easement: 4,000 sqft (middle of property and under building: will not affect improvements)

Existing ingress/egress and sign easement to be abandoned (Tax Map 102C-F-024.01):

(G) 0.07 acres or 3,049 sqft (sign to be relocated – See "I" below)

Proposed new ingress/egress or access easement and sign relocation easement (Tax Map 102C-F-024.00):

(H) Permanent access easement: 0.16 acre or 6,970 sqft (drive access paving by contractor for City)

(I) Signage easement: 225 sqft (sign relocation by contractor for City)

Description of improvements acquired/affected by project:

Easement A- covers a very small section of lawn (Structure 7) and a very small portion of asphalt paving (Structure 4); however, the appraiser is instructed that these items affected by a project easement will be replaced in "like-kind" so should not be included as part acquired in the appraisal.

Easement E- Abandonment of this easement will include fill of existing infrastructure (underground creek piping) with appropriate material; however, according to the City all of the fill will be inserted from off-site of the subject property and will not affect any existing improvements on the subject property.

Easements G, H, I: The paving for the existing access (ingress/egress and sign) easement referred to as "G" will be removed, but will be replaced with new paving on an access easement "H" and the existing sign on "G" will be relocated along the new access easement within the new sign easement "I". The sign (portion of Structure 2) is not included as part acquired since it is relocated by the City to the new access/sign easement areas.

Easements B, C, D, F: No improvements are affected by these easement areas.

In summary, because any affected lawn and paving due to the project (See Easement A) will be replaced in Like Kind, there are no improvements considered as part acquired by the project. (ie-No improvements of value are affected by the project.)

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

8. SALES OF SUBJECT:

(Show all recorded sales of subject in past 5 years; show last sale of subject if no sale in past 5 years)

Date of Sale	Grantor	Grantee	Book/ Page	Verified Consideration	How Sale Amount Verified
02/08/1985	Carlyle & Rachel Jennings	McDonalds Corporation	342/336	\$225,000	Deed
Existing Use	Zoning	Utilities Available	Off-Site Improvements	Area Lot or Acreage	
Commercial	CH-Commercial Highway	All public	SE Broad St	40,075 sqft	

Listing Information:

Per the MLS, the property is not currently listed and has not been listed for sale recently.

Sales Information:

The property has not sold within the past ten years as indicated by the tax record.

9. HIGHEST AND BEST USE: (Before Acquisition; If different from existing, make explanation supporting same.)

In determining highest and best use, in addition to the pertinent data regarding the subject property, one must also consider several external factors, such as the market area in general, market activity in the area, the uses of surrounding properties, supply and demand, the local economy, as well as other items which may affect marketability.

Market Data: The market area consists of the commercial areas in the City Central Areas (downtown area) of Murfreesboro along SE Broad Street.

The immediate area is located along SE Broad St, S Front St, and S Church St. Predominant uses of the land along the project are commercial.

This general area consists of primarily commercial uses and special purpose (or governmental) uses. The area is approximately 95-100% built-up. The area has good access to major roadways leading to areas of transportation, employment, shopping, and healthcare in Murfreesboro.

Property values are slightly increasing at present and are higher (in most cases) than indicated 1-3 years ago. Marketing times for reasonably priced commercial properties is 0 – 18 months with the majority being just under 12 months. Over-priced properties tend to have longer marketing times. Currently with regard to commercial properties in this immediate area, supply and demand are near equal. However, as in general, investors are expecting a decrease in interest rates later in the summer months, supply is increasing slightly which in turn is slightly increasing marketing times.

Uses Considered: The appraiser has considered all uses available in arriving at the highest and best use of the subject property.

Existing Use: The subject property is currently used for commercial purposes (fast food restaurant).

Zoning: According to the local government authority, the zoning on the subject property is CH (Commercial Highway). The use of property within this zoning district is for the permitted Commercial use and other complimentary uses.

Per the Murfreesboro Zoning Ordinance: CH.

This district is intended to permit the development and continued maintenance of general commercial uses located in a linear fashion along highways and near transportation facilities and industrial areas. There is no minimum lot size requirement. The setback requirements are as follows: 42' front yard; 10' side yard; 20' rear yard.

There are two types of highest and best use to be considered in an appraisal: 1) highest and best use as if vacant; and 2) highest and best use as improved.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

Definition of Highest And Best Use: The *6th Edition of the Dictionary of Real Estate Appraisal* defines highest and best use as the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

Definition of Highest And Best Use Of Land Or A Site As If Vacant: The *6th Edition of the Dictionary of Real Estate Appraisal* defines highest and best use of land or a site as if vacant as among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.

Highest and Best Use As if Vacant:

Considering all of the property's legitimate potential uses, the highest and best use of the subject property as if vacant is a commercial use. Because the property is zoning permits commercial use and is located in an area of commercial uses, as if Vacant, such possible uses of the subject lot would meet the criteria of Legally Permissible, Physically Possible, Financial Feasible, and Maximally Productive as further described below.

Legally Permissible: The property is currently zoned CH, which allows the existing commercial use. Physically Possible: The property as a whole has adequate topography, public utilities available, and adequate accessibility for use as commercial. Financially Feasible: Use of the property as commercial would be the most financially feasible use based on zoning, location, and size. Maximally Productive: Use as commercial would deliver the most return on investment based on sales and rental data in this market.

Highest and Best Use As Improved:

The subject property is currently used as a fast food restaurant. Because the existing improvements are have sufficient remaining life, continued use for commercial purposes is determined to be the highest and best use as improved.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

DESCRIPTION OF COMMERCIAL IMPROVEMENTS

12. Structure No. 1

Function/ Use: Fast Food Restaurant building
Construction: Steel & Wood Frame/ Concrete block and Stucco Finish
Stories: 1 Story
Condition: Average
Age (Actual and Effective): Actual: (built 2004) 20 years; Effective: 10 years
Remaining Economic Life: 45 years
Exterior Finish: Finished Concrete Block and Stucco
Roof Type/Cover: Flat/Built-up Composition
Heating/Cooling System: Central HVAC
Electrical: Adequate
Plumbing: Adequate
Plumbing Fixtures: 10 fixtures
Interior Finish:
 Walls: Drywall or Wallboard
 Ceiling: Drop tile
 Floors: Commercial Tile Flooring
Gross Area:
 Store Area: 100%
 Basement Area: None
 Other: None
Floor Areas:
 First Floor: 3,612 sqft
 Second Floor: 0
 Total: 3,612 sqft
Net Rental Area: 3,612 sqft
Parking Surface: Asphalt and concrete (38 marked spaces of which 2 are handicap spaces)
Parking Area: +/-28,500 sqft asphalt and concrete
Building Area/ Paving Ratio: 0.13:1
Additional Features: concrete walks

NARRATIVE DESCRIPTION: (other than above)

IMPORTANT INFORMATION REGARDING LEVEL OF INSPECTION BY APPRAISER:

The Owner's contact, Christina Everett of McDonalds USA Nashville Development Team, was contacted by the appraiser (by phone – left message and by multiple emails dated February 20, February 28, and March 7, 2024) as instructed and was given opportunity to accompany the appraiser during her inspection. The owner representative instructed the appraiser to not contact the franchise owner and did not respond to requests to meet the appraiser or schedule a formal inspection of the property. After conferring with the Client that the owner's representative was not responding to inspection scheduling requests, the appraisal inspection was completed of the exterior only. Interior finish was provided by tax records and prior general viewing of public interior spaces as a customer of the current franchise.

The subject commercial building consists of a metal frame structure with finished concrete block and stucco finish exterior. The building was constructed in 2004, but has since been maintained, remodeled, and updated, which is reflected in the lowered effective age.

The interior is finished with commercial tile flooring, sheetrock or wallboard walls, drop-tile ceilings and has central HVAC. There are two public restrooms. The moveable appliances, equipment and any shelving and tools in the building are personal items and are not included in the appraisal. The entire building is occupied by McDonald's. Rental or lease data was not provided to the appraiser.

There is parking available on all sides of the building and a drive thru area immediately surrounding the building (has 2 drive up menu lanes).

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

DESCRIPTION OF OTHER IMPROVEMENTS

Item 11.

STRUCTURE NO. 2					
No. Stories:	<u>**</u>	Age:	<u>Eff 10 years</u>	Function:	<u>Signs</u>
Construction:	<u>Metal-Prefab</u>	Condition:	<u>Average</u>	Sq. Ft. Area:	<u>1 unit each</u>
Repl. Cost:	<u>\$36,400</u>	Depreciation:	<u>50%</u>	Indicated Value:	<u>\$18,200</u>
Other Comments and Explanations of Replacement Cost and Depreciation:					
** front 30' high lighted sign; rear 15' high lighted sign; Two 2'high front entry/exit signs; Two 10' high drive-thru menu stations					
Data Source: Select Sign Service, Murfreesboro, TN (615-494-9200) Front Sign <u>\$9,500</u> installed + Rear Sign <u>\$7,000</u> installed + Entry/Exit sign @ <u>\$450</u> installed x 2 = <u>\$900</u> + \$9,500 drive thru station installed x 2 = <u>\$19,000</u> = \$36,400 replacement cost					
*Depreciation: Economic Age/ Life Method 10 yrs. Effective Age / 20 yrs. Typical Economic Life = 50% Depreciation					

STRUCTURE NO. 3					
No. Stories:	<u>N/A</u>	Age:	<u>Eff. 2 yrs</u>	Function:	<u>Marked Parking</u>
Construction:	<u>Painted</u>	Condition:	<u>Average-Good</u>	Sq. Ft. Area:	<u>38 spaces</u>
Repl. Cost:	<u>\$6,050</u>	Depreciation:	<u>10%</u>	Indicated Value:	<u>\$5,450 rounded</u>
Other Comments and Explanations of Replacement Cost and Depreciation:					
36 typical spaces + 2 handicap spaces + parking lot marking + 4 bollards (curbside pick-up)					
Data Source: Parking Lot Striping Nashville; Nashville, TN (615-610-3314): \$75 each typical x 36 units = <u>\$2,700</u> + \$125 each HC space x 2 spaces = <u>\$250</u> + parking lot markings @ <u>\$2,500</u> + bollards @ \$150 ea x 4 = <u>\$600</u> = \$6,050 replacement cost					
*Depreciation: Economic Age/ Life Method 2 yrs. Effective Age / 20 yrs. Typical Economic Life = 10% Depreciation					

STRUCTURE NO. 4					
No. Stories:	<u>N/A</u>	Age:	<u>Eff. 5 years</u>	Function:	<u>Paving</u>
Construction:	<u>Asphalt & Concrete</u>	Condition:	<u>Average</u>	Sq. Ft. Area:	<u>+/-28,500 sqft</u>
Repl. Cost:	<u>\$109,875</u>	Depreciation:	<u>25%</u>	Indicated Value:	<u>\$82,410 rounded</u>
Other Comments and Explanations of Replacement Cost and Depreciation:					
Data Source: Asphalt Paving Nashville 615-200-6979: \$3.50 per sq.ft. installed asphalt x 24,000 sqft = <u>\$84,000</u> + \$5.75 per sqft concrete x 4,500 sqft = <u>\$25,875</u> = \$109,875 total replacement cost paving					
*Depreciation: Economic Age/ Life Method 5 yrs. Effective Age / 20 yrs. Typical Economic Life = 25 % Depreciation					
NOTE: The appraiser is instructed that paving items affected by the project will be replaced in "like-kind" so they should not be included as part acquired in the appraisal.					

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St
 Name of Appraiser: Robbi L. Kitchen, CG-2489

DESCRIPTION OF OTHER IMPROVEMENTS

Item 11.

STRUCTURE NO. 5					
No. Stories:	<u>N/A</u>	Age:	<u>Eff. 10 yrs</u>	Function:	<u>Curbing</u>
Construction:	<u>Concrete</u>	Condition:	<u>Average</u>	Sq. Ft. Area:	<u>+/-1,300 linear ft</u>
Repl. Cost:	<u>\$21,580</u>	Depreciation:	<u>33%</u>	Indicated Value:	<u>\$14,460 rounded</u>
<u>Other Comments and Explanations of Replacement Cost and Depreciation:</u>					
4" curbing					
Data Source: Asphalt Paving Nashville 615-200-6979; 1,300 linear feet curbing @ \$16.60 per linear foot = \$21,580 replacement cost installed					
*Depreciation: Economic Age/ Life Method 10 yrs. Effective Age / 30 yrs. Typical Economic Life = 33 % Depreciation					
NOTE: The appraiser is instructed that curbing items affected by a project will be replaced in "like-kind" so they should not be included as part acquired in the appraisal.					

STRUCTURE NO. 6					
No. Stories:	<u>1</u>	Age:	<u>Eff. 5 years</u>	Function:	<u>Storage & Dumpster Encl</u>
Construction:	<u>Concrete Block</u>	Condition:	<u>Average-Good</u>	Sq. Ft. Area:	<u>**</u>
Repl. Cost:	<u>\$21,510</u>	Depreciation:	<u>13%</u>	Indicated Value:	<u>\$18,720 rounded</u>
<u>Other Comments and Explanations of Replacement Cost and Depreciation:</u>					
**+/-200 sqft storage; +/-440 sqft dumpster enclosure; two 8' wide dumpster gates					
Data Source: Premier Fence LLC, Murfreesboro, TN 615-327-1397; +/-200 sqft Block Storage Bld x \$42.78 per sqft = \$8,556; plus Block dumpster enclosure +/-440 sqft x \$27.38 per sqft = \$12,047.20; plus two 8' wide gates @ \$450 ea = \$900 = \$21,503.20 or say \$21,510 rounded cost new					
*Depreciation: Economic Age/ Life Method 5 yrs. Effective Age / 40 yrs. Typical Economic Life = 13% Depreciation					

STRUCTURE NO. 7					
No. Stories:	<u>N/A</u>	Age:	<u>Unknown</u>	Function:	<u>Landscaping</u>
Construction:	<u>Lawn, bushes, ground cover, trees, sprinkler system</u>	Condition:	<u>Average</u>	Sq. Ft. Area:	<u>N/A</u>
Contributing Value:	<u>\$14,500</u>	Depreciation:	<u>Not Applicable</u>	Indicated Value:	<u>\$14,500</u>
<u>Other Comments and Explanations of Replacement Cost and Depreciation:</u>					
Data Source: Greenway of Nashville, LLC 615-238-4574					
Contributing value of landscaping included. Note: Sprinkler system is estimated at \$2.15 per sqft replacement cost.					
*Depreciation: Depreciation is not applicable to landscaping – cost provided is contributing value.					
NOTE: The appraiser is instructed that Lawn affected by a project easement or easement abandonment will be replaced in "like-kind" so they should not be included as part acquired in the appraisal.					

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

DESCRIPTION OF OTHER IMPROVEMENTS

Item 11.

STRUCTURE NO. 8					
No. Stories:	<u>See below</u>	Age:	<u>Eff. 15 years</u>	Function:	<u>Lighting & Flag Pole</u>
Construction:	<u>Metal & Other</u>	Condition:	<u>Average</u>	Sq. Ft. Area:	<u>9 units**</u>
Repl. Cost:	<u>\$32,900</u>	Depreciation:	<u>30%</u>	Indicated Value:	<u>\$23,030</u>
<u>Other Comments and Explanations of Replacement Cost and Depreciation:</u>					
**4 parking lot lights with two fixtures each (head lamps); 4 parking lot lights with 1 fixture each; 1 flag pole					
Data Source: Marshall Valuation Service, Section 64, page 3					
Eight 24' light posts, average @ \$1,900 ea = <u>\$15,200</u> ; Plus 12 headlamp fixtures @ \$1,400 ea = <u>\$16,800</u> ; Plus One 24' commercial flag pole @ <u>\$900</u> = Total: \$32,900 replacement cost					
*Depreciation: Economic Age/ Life Method 15 yrs. Effective Age / 50 yrs. Typical Economic Life = 30% Depreciation					

Definitions regarding Improvement Structures:

* Definitions:

Depreciation

The 6th Edition of the *Dictionary of Real Estate Appraisal* defines depreciation as “a loss in property value from any cause; the difference between the reproduction or replacement cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.”

Economic Age Life Method of Depreciation

For the purposes of this Appraisal Report and this project the economic age life method of depreciation will be used to calculate depreciation of improvements. According to the 6th Edition of the *Dictionary of Real Estate Appraisal* the economic age/ life method is defined as “a method of estimating accrued depreciation in which the ratio between the effective age of a structure and its total economic life is applied to the current cost of the improvements to obtain a lump-sum deduction.”

Depreciated Value:

The 6th Edition of the *Dictionary of Real Estate Appraisal* defines depreciated value as “often used to describe cost less a single form of depreciation, or used synonymously with *sound value*, or with *replacement cost less depreciation*; a very nebulous term and purely a cost concept that is frequently related to book value.” Marshall & Swift LP

Economic Life:

The 6th Edition of the *Dictionary of Real Estate Appraisal* defines economic life as “The period over which improvements to real property contribute to property value”.

Effective Age:

The 6th Edition of the *Dictionary of Real Estate Appraisal* defines effective age as “The age indicated by the condition and utility of a structure”.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

VALUE ANALYSIS

Appraisal Problem:

As discussed, the subject property consists of a +/-40,075 sqft commercial property fronting along SE Broad Street with access from SE Broad St. The property is located one lot east of the intersection of S Church Street. The property also has secondary access via an ingress-egress easement leading from S Church Street which includes a sign for the subject property.

The City of Murfreesboro will acquire multiple easement areas within the bounds of the subject property (utility easements) which are currently "in-use" as these easements were set forth via agreements with the prior owner of the subject property (prior to 1985); however, the easement agreements were not properly recorded as recently discovered, so they will need to be recorded properly. Also acquired is a small rectangular easement at the southwest corner of the property for a permanent drainage and trail easement. This is a new easement on the property. Two existing easements crossing the subject property will be abandoned or released by the City to the current property owner.

In addition, the existing ingress-egress (and sign) easement leading from S Church Street will be removed; however, to compensate, the City will provide a new ingress-egress and sign easement from S Church Street to the subject property located just +/-150' south of the existing easement.

The appraiser has been asked to provide an estimate of value of the easement acquisitions on the subject property and to determine an estimate of value of the entire subject property prior to the project, including the contributing value of the existing ingress-egress easement. The appraiser has been asked to provide an estimated value of the subject property after the project, including the contributing value of the addition of the new ingress-egress and sign easement; and therefore, the amount due owner for the effects of the subject project.

To do this, in the analysis of the subject property, the appraiser has considered all three approaches to value, the Sales Comparison Approach, the Income Approach, and the Cost Approach. They are described further below. Only those approaches to value which are applicable to the subject appraisal are utilized in analyzing the subject property.

Sales Comparison Approach: Defined as: A set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sale prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant; it is the most common and preferred method of land valuation when comparable sales data are available (ref. 6th Edition of the Dictionary of Real Estate Appraisal).

The sales comparison approach is considered an applicable approach in arriving at the estimated value of the subject property. The value of the subject property was based on recent sales of somewhat similar properties in the general area. The sales comparison approach as if vacant and as improved is included on the following pages.

Cost Approach: Defined as: A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of, or replacement for, the existing structure; deducting accrued depreciation from the reproduction or replacement cost; and adding the estimated land value plus an entrepreneurial profit. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised (ref. 6th Edition of the Dictionary of Real Estate Appraisal).

The cost approach to value is not reliable with regard to the subject due to the advanced age of the improvements and is not considered necessary for credible assignment results.

Income Approach: Defined as: A set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversions) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived capitalization rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of an investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate (ref. 6th Edition of the Dictionary of Real Estate Appraisal).

The income approach to value is included within the estimate of value analysis as similar properties could be purchased on a rental income producing basis in the area. The income approach analysis can be found following the Sales Comparison Approach.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

Vacant Land Analysis
SALES COMPARISON APPROACH

14. LAND VALUE ANALYSIS

Adjust to subject property using Plus (+) Subject Better, Minus (-) Subject Poorer, Equal (=) Subject Similar or Equal.
Analysis of Comparability

		Sale No. VC-1		Sale No. VC-2		Sale No. VC-3	
Cash Equivalent Sale Price		\$1,654,740		\$1,800,000		\$900,000	
Date of Sale/Market Conditions		03/23/2023	+3.00%	03/21/2023	+3.00%	02/07/2023	+3.25%
Current Cash Equivalent Sale Price		\$1,704,382		\$1,854,000		\$929,250	
Proximity		+/-1.2 miles SW		+/-6.5 miles W/NW		+/-6.5 miles W/NW	
Land Area		82,737 sqft		70,131 sqft		51,676 sqft	
Price		\$20.60 per sqft		\$26.44 per sqft		\$17.98 per sqft	
Elements	Subject	Descriptions	+/- Adj.	Descriptions	+/- Adj.	Descriptions	+/- Adj.
Location	SE Broad St	New Salem Hwy	+	Veterans Pkwy	=	Veterans Pkwy	=
Size	40,075 SqFt	82,737 sf	=	70,131 sf	=	51,676 sf	=
Shape	Rectangular	Generally Rectangular	=	Generally Rectangular	=	Slightly Irregular	=
Site/View	Commercial	Comm./ Ind.	=	Commercial	=	Commercial	=
Topography	Level	Similar	=	Similar	=	Similar	=
Access	PP 5 lane PP 7 lane	PP 3 lane, PP 3 lane	=	PP 5 lane, PP 3 lane	=	PP 5 Lane	+
Zoning	CH	L1	=	Commercial PUD	=	Commercial PUD	=
Utilities Available	All Public	Similar	=	Similar	=	Similar	=
Encumbrance, Easements, Etc.	Typical; 0.2% FEMA Zone X	Utility, Drainage, Setbacks	=	Utility, Drainage, Setbacks	=	Utility, Drainage, Setbacks	=
Off-Site Improvements	Access Easement via S Church St; SE Broad St	MTN Blvd, New Salem Hwy	=	Veterans Pkwy, Shores Rd	=	Veterans Pkwy	=
On-Site Improvements	See items 11 & 12	None of value	=	None of value	=	None of value	=
Qualitative Adjustments			Inferior		Similar		Inferior

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

Comments: Vacant Land Analysis SALES COMPARISON APPROACH

COMMENTS

As previously stated, the subject property consists of a rectangular-shaped, 40,075 sqft property located in a commercial, mostly built-up section of Murfreesboro. The property has adequate frontage and access. Because of the built-up nature of the immediate area, obtaining similar and recent Vacant Lot Sale information was difficult. The most similar and recent vacant lot sales are included to determine an estimated value As if Vacant.

The appraiser reviewed and analyzed sales data in the immediate and any competing areas to find those sales which sold recently and were found to have the most similar comparability to the subject. The most similar and recent vacant lot sales are described on the prior grid page with detailed descriptions in the addenda.

The comparable sales are located in competing areas of Murfreesboro. All comparables sold within the recent past; however, based on paired sales analysis, they are adjusted for market conditions (time) based on a 0.25% per month increase.

Adjustments:

Weighting (Analyzing) Adjustments: All adjustments to the comparables are not weighted equally. The comparable property is weighted as a whole and not just on the amount of each adjustment required.

Location: The comparable VC-1 is adjusted (+) due to location near a less rapidly developing commercial and industrial area.

Access: As discussed, although the subject does not have a corner location, the easement access to S Church Street provides an alternate roadway access point directly to the subject property. Recent sales of similar properties which were not but rather near a corner location, but with direct access to the corner street, were not found in the area. VC-3 is adjusted for inferior access (including lack of corner location).

The subject does not have a corner location, but does have "corner location like" access. To determine the value of the subject's existing ingress-egress easement access, the appraiser compared sales similar with one another but with differing access one with the other (aka- paired sales). This can be demonstrated with Sale VC-2 and VC-3. These two sales are in the same new development and sold within a reasonable time of one another. VC-2 has a corner location (superior accessibility and visibility), while VC-3 does not. The difference in sale price is 32%. Another example is a property adjoining VC-3 (5265 Veterans Parkway – new 7 Eleven Store- which has a corner location similar to VC-1 and sold in December 2022 for \$1,632,742.65 or \$23.73 per sqft adjusted to current market +3.75% equals \$1,693,970.50 or \$24.62 per sqft) which, when compared with VC-3, indicates a difference due to corner access location of 27%. In essence, a reasonable superior access adjustment range is between 27% and 32% contributing to property overall value of the property. A 30% adjustment for access contributing value of the additional easement access to the subject is considered reasonable based on the paired sales analysis**.

Reconciliation: No recent sales of exactly similar properties were found in the area.

The comparables are considered the best available for analysis of the subject property as if vacant.

Based on review of the comparables and considering the qualitative adjustments for each and after careful consideration of the subject property, the estimated value of the subject property is \$26.00 per sqft. After careful consideration of the subject property and the comparable sales data, the estimated value of the subject property is as follows:

Indicated Value of Subject Land (Correlated Unit Value x Units)

40,075 sqft subject property x \$26 per sqft = \$1,041,950 estimated value as if vacant

NOTE: As requested by the client, the contributory value of the existing ingress-egress easement is as follows:
\$1,041,950 value of subject property as if vacant x 30% contributing value of easement access** = \$312,585.00

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

Improved Property Analysis SALES COMPARISON APPROACH

15. ANALYSIS

Adjust to subject property using Plus (+) Subject Better, Minus (-) Subject Poorer, Equal (=) Subject Similar or Equal.

(A) Analysis of Comparability

(Insert Comparable Sale's Numbers from Brochure or Attachments)

	Sale No. IC-1	Sale No. IC-2	Sale No. IC-3
Proximity	+/-1.9 miles SW	+/-1.8 miles N	+/-1.6 miles W
Cash Equivalent Sale Price	\$1,862,745	\$2,355,083	\$3,755,166
Date of Sale	07/12/2023	09/05/2023	12/12/2023
Time Adjustment	+2.00%	+1.50%	+0.75%
Current Cash Equivalent Sale Price	\$1,900,000	\$2,390,409	\$3,783,330

ELEMENTS	SUBJECT	DESCRIPTIONS	+/- ADJ.	DESCRIPTION	+/- ADJ.	DESCRIPTIONS	+/- ADJ.
Location	SE Broad St	New Salem Hwy	+	Memorial Blvd	0	Old Fort Pkwy	0
Construction	Frame/Block & Stucco	Frame/Stucco	0	Frame/Stucco	0	Frame/Sid/Stucco	0
Quality	Average	Average		Average		Average	
Age: Actual/Effective	20/10	3/3	-	29/10	0	36/20	+
Condition	Average	Average		Average		Average	
Finished Living Area:	1st Floor 2nd Floor 3rd Floor	3,612 sqft		1,798 sqft		2,253 sqft	
Basement Area:	Finished Unfinished	0 0		0 0		10,782 sqft	
Total building Area	3,612 sqft	1,798 sqft	+	2,253 sqft	+	0 0	-
No. Restrooms	2 customer restrooms	2 customer restrooms		2 customer restrooms		10,782 sqft	
Store Area: Garage/WHse/Stg:	100% N/A	Similar		Similar		2 customer restrooms	
Heating/Cooling	Central	Similar		Similar		Similar	
Functional Utility	Average	Average		Average		Similar	
Porches, Etc.	Walk	Similar	0	Similar	0	Similar	0
Other Improvements	Signs, Drive-thru station, Paving	Similar	0	Similar	0	Sign, Paving	0
Per sqft annual rent	Not disclosed	\$69.52		\$65.02		\$35.00	
Lot/Site Value	\$1,041,950	\$1,084,000		\$786,000		\$2,660,000	
LOT Size and Adjustment	40,075 SqFt	57,055 sqft	-	30,243 sqft	+	139,967 sqft	-
ADJUSTMENTS	<input checked="" type="checkbox"/> + <input type="checkbox"/> - Inferior			<input checked="" type="checkbox"/> + <input type="checkbox"/> - Inferior		<input type="checkbox"/> + <input checked="" type="checkbox"/> - Superior	
Indicated Value Range	\$2,143,700			\$2,782,300		\$1,616,900	
Indicated Value of Subject Property.....						\$2,700,000	

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

Comments: Analysis SALES COMPARISON APPROACH

COMMENTS

As previously stated, the subject property consists of improved, commercial property consisting of a fast-food restaurant located in a commercial, mostly built-up section of Murfreesboro. The property has appears adequately maintained. Because of the built-up nature of the immediate area, obtaining similar and recent improved property information was difficult. The most similar and recent improved sales are included to determine an estimated value As Improved.

The appraiser reviewed and analyzed sales data in the immediate and any competing areas to find those sales which sold recently and were found to have the most similar comparability to the subject. The most similar and recent restaurant sales are described on the prior grid page with detailed descriptions in the addenda.

The comparable sales are located in competing areas of Murfreesboro. All comparables sold within the recent past; however, based on paired sales analysis, they are adjusted for market conditions (time) based on a 0.25% per month increase.

Adjustments:

Weighting (Analyzing) Adjustments: All adjustments to the comparables are not weighted equally. The comparable property is weighted as a whole and not just on the amount of each adjustment required.

Location: Sale IR-1 is adjusted for inferior location off of the main thoroughfare in SW Murfreesboro.

Age: The comparables are adjusted for differing effective ages based on a 1.5% per year depreciation adjustment (based on a 65 yr typical economic life).

Size (total area): The comparables are adjusted for differing sizes. Smaller buildings tend to sell at higher per sqft values than larger buildings.

Lot Size and Adjustment: The three comparables are adjusted for differing lot value based on lot sales data in the area. Adjustments are based on lot sales in the area.

Reconciliation: No recent sales of exactly similar properties were found in the area.

Each comparable has a characteristic or characteristics bracketing most characteristics of the subject. The comparables are considered the best available for analysis of the subject property.

Based on review of the comparables and considering the adjustments for each, the comparables indicate a value range of \$1,616,900 to \$2,782,300. Comp IC-2 is weighted most heavily as it is the most similar in building size and use, building age, and lot size. After careful consideration of all factors, the estimated value of the subject property based on the sales comparison approach is \$2,700,000.00.

Total Estimated AS Improved Value from Sales Comparison Approach: \$2,700,000.00

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

INCOME APPROACH

16. INCOME APPROACH TO VALUE

Definition of Income Approach

A set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived capitalization rate or at a capitalization rate that reflects a specified income pattern return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.

Source: *Dictionary of Real Estate Appraisal, 6th Edition*

The subject property consists of a commercial fast-food restaurant building on a commercial lot. The lot size for the subject property appears in proportion to the improvements as compared with other similarly utilized properties in the area.

The entire building is occupied by McDonald's Restaurant. Rental/Lease data was not provided.

Based on a review of rental data in the area, somewhat similar properties rent for between \$35 and \$70 per sqft annually (Some were modified gross rents with NNN most common). Cap Rates are ranging from 2.5-7.5% depending on the lease length, tenant type/ rating, building finish, building updates, parking available, location, amenities, and condition of the property.

Sale/Rental #	Property Type	Building Sqft	Annual PGI	Lease Type	Cap Rate
R1 (IC-1)	Fast Food Restaurant	1,798 sqft	\$69.52 psf annual	NNN	5.1%
R2 (IC-2)	Fast Food Restaurant	2,253 sqft	\$65.02 psf annual	NNN	4.7%
R3 (IC-3)	Restaurant	10,782 sqft	\$35.00 psf annual	NNN	7.5%
R4	Fast Food Restaurant	2,831 sqft	\$54.50 psf annual	NNN	2.7%
R5	Restaurant	8,700 sqft	\$38.93 psf annual	NNN	4.6%

Rental Comps 1 and 2 (see sales IC-1 and IC-2), which are similar fast-food restaurants with drive-thru services, are considered somewhat similar to the subject. Comp 3 is an older, large dine-in restaurant and is less similar to the subject. Rental Comp 4 is a newer construction fast food restaurant and is considered very similar to the subject (slightly dated sale of this property not included in sales comparison grid, but considered similar to subject) and Rental Comp 5 is a newer construction dine-in restaurant, which is less similar to the subject. The low Cap Rates of Comps 1, 2, 4, and 5 are reflective of the new or very well-maintained/updated restaurants with long-term leases (many years remaining).

The comparables are weighted based on location, amenities, size, and age to determine an appropriate rental rate for the subject property.

The actual subject rental is not available. However, it appears that a market rental of \$55 per sqft (NNN) for the subject property is reasonable.

Project Town Creek PH 1 County: RUTHERFORD Tract No. 106 SE Broad St

Name of Appraiser: Robbi L Kitchen, CG-2489

Based on a review of the rental data, the appraiser estimates that the appropriate market rent for the subject is \$65 per sqft annually (utilities not included). Based on this information, the appraiser estimates the following:

3,612 sqft. Leasable area subject property @ \$55 per sqft market rent =	\$198,700 PGI rounded
Less Market Derived Vacancy and Collection Loss (\$0 long term lease)=	- \$0 V&C
Effective Gross Income (EGI):	\$198,700
Less Estimated Stabilized Operating Expenses (25%**):	- \$49,700
Net Operating Income (NOI):	\$149,000

**Stabilized operating expenses include estimated expense for Taxes, Insurance, Management, Maintenance, Legal/Accounting, Reserves, and Miscellaneous Expenses. Based on a review of market rentals in the area, SOE ranges from 20-35% for similar properties.

Based on a review of the comparable sales data in the area and considering the age of the subject, a reasonable cap rate for similar properties is between 2.7% and 7.5%. The appraiser estimates that a reasonable cap rate for the subject property is 5.0%.

Based on the Net Operating Income and the Cap Rate, the estimated value of the subject property per the Income Approach is \$2,980,000.

INDICATED VALUE OF ENTIRE TRACT FROM INCOME APPROACH: (before acquisition) \$2,980,000.00

Project Town Creek PH 1 County: RUTHERFORD Tract No. 106 SE Broad St

Name of Appraiser: Robbi L Kitchen, CG-2489

ITEM 17. EXPLANATION AND/OR BREAKDOWN OF LAND VALUES

Land: COMMERCIAL Area: 40,075 S.F. Acre(s) X \$26.00 = \$1,041,950
 S.F. Acre(s)

TOTAL AREA: 40,075 S.F. Acre(s) **TOTAL VALUE** \$1,041,950

REMARKS:

See prior pages for as if vacant lot value analysis.

Item 18. APPROACHES TO VALUE CONSIDERED:

(A) Indicated Value of Property from **SALES COMPARISON APPROACH**..... \$2,700,000
 (B) Indicated Value of Property from **COST APPROACH**..... Not applied
 (C) Indicated Value of Property from **INCOME APPROACH**..... \$2,980,000

RECONCILIATION:

The sales comparison approach is used to determine an estimate of value for the subject property and is considered the most reliable and is weighted more heavily in the appraisal. This approach is described on the prior pages of this report.

The cost approach to value is not reliable due to the advanced age of the subject primary structure.

The income approach to value provides an estimated value for the subject property. The income approach is considered very applicable, but is weighted slightly less than the sales comparison approach due to very limited data and lack of information concerning the subject lease information with which to determine the income approach.

The sales comparison and income approaches are weighted based on their reliability to provide an estimate of value of the subject property.

Item 19. FAIR MARKET VALUE OF SUBJECT PROPERTY: \$2,800,000

(A) Total Amount Due If Entire Tract Part Affected Acquired \$65,500.00

(B) Amount Attributable To: Land \$1,041,950 Improvements: \$1,758,050

REMARKS:

The estimate is in terms of cash. There is no personal property included in the estimate of value. The appraiser is competent to complete the appraisal.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

PARTIAL ACQUISITION

20. Value of Entire Tract (Amount in Item 14 carried forward)..... \$2,800,000

Amount Due Owner If Only Part Acquired (Detail Breakdown)

A.	Land Acquired (Fee)	<u>0</u>	<input type="checkbox"/> Sq. Ft. or <input type="checkbox"/> AC @	=	<u> </u>
	Perm.Drainage/Trail Esmt (A)	<u>485</u>	<input checked="" type="checkbox"/> Sq. Ft. or <input type="checkbox"/> AC @	=	<u>\$23.40</u>
	Utility Easement (B)	<u>2,219</u>	<input checked="" type="checkbox"/> Sq. Ft. or <input type="checkbox"/> AC @	=	<u>\$7.80</u>
	Utility Easement (C)	<u>3,982</u>	<input checked="" type="checkbox"/> Sq. Ft. or <input type="checkbox"/> AC @	=	<u>\$7.80</u>
	Utility Easement (D)	<u>734</u>	<input checked="" type="checkbox"/> Sq. Ft. or <input type="checkbox"/> AC @	=	<u>\$7.80</u>
B.	Improvements Acquired (Identify)	<u>None</u>			<u>\$0</u>
C.	Value of Part Acquired I and Improvements (Subtotal).....				<u>\$65,442.00</u>
D.	Total Damages (See Explanation, Breakdown & Support on Sheet 2A-9).....				<u>\$312,585.00</u>
E.	Sum of A, B and D.....				<u>\$378,027.00</u>
F.	Benefits: (Explain and deduct from D. Amount must not exceed incidental damages)....				<u>\$312,585.00</u>
G.	TOTAL AMOUNT DUE OWNER, if only part is Acquired.....				<u>\$65,442.00 or SAY \$65,500 rounded</u>

21. Value of Remainder (See 2A-9 For Documentation of Remainder Value)

A. Land Remainder			Before Value	After Value	Damages	Remainder Value
Remainder	40,075	<input checked="" type="checkbox"/> Sq. Ft. or <input type="checkbox"/> AC @	\$26.00	\$26.00	0	\$1,041,950
		<input type="checkbox"/> Sq. Ft. or <input type="checkbox"/> AC @				

Remainder Value of Land.....	<u>\$1,041,950.00</u>
Less Amount Paid for Easements in Item 20A (Above).....	<u>\$65,442.00</u>
Less Cost-To-Cure (Line 20D).....	<u>\$0</u>
Total Remainder Value of Land.....	<u>\$976,508.00</u>

B. Improvements Remaining	Before Value	Damages	Remaining Value
Improvement Nos 1-8	\$1,758,050	0	\$1,758,050
Improvement No.			

Remainder Value of Improvements.....	<u>\$1,758,050</u>
Less Fencing Acquired.....	<u>\$0</u>
Total Remainder Value of Land and Improvements.....	<u>\$2,734,558.00</u>

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

22. SUMMARY OF REMAINDER

APPRAISER’S DESCRIPTION OF REMAINDER AND EXPLANATION OF DAMAGES OR BENEFITS:

A full narrative description of the remainder(s) must be given on all partial acquisitions. The after value estimates, both land and improvements, shall be documented and supported by one or more of the applicable approaches to value.

23. HIGHEST AND BEST USE AFTER ACQUISITION

The highest and best use as if vacant and as improved after the acquisition remains the same as in the before situation.

24. DESCRIBE REMAINDER(S):

Remainder Site:

Size: According to the Exhibits provided, there is no fee acquisition from the subject property. The property will remain the same size as before the project.

Shape: The shape of the remainder will not change.

Drainage: The appraiser assumes that the drainage proposed will be adequate and will not adversely affect the remainder of the property.

Utilities: All public utilities which were available to the property in the before situation will be available in the after situation.

Accessibility: As previously stated, the subject property had ingress and egress from existing drives leading from SE Broad Street. The drives along SE Broad Street are not affected by the project. The property also had access via an existing ingress-egress (access) easement leading across a City owned parcel (tax map 102F-C-024.01) from S Church St. As discussed prior, the project will remove the existing ingress-egress easement across an adjoining property (owned by the City: Tax Map 102C-F-024.01) while providing a replacement the ingress/egress easement in a new location (owned by the City: Tax Map 102C-F-024.00). The accessibility remains similar to the before situation. See further discussion under “Damages/Benefits”.

Frontage: The frontage of the subject property along SE Broad Street is not changed by the project.

Topography: The topography will remain the same as in the before situation.

Easements:

As previously discussed and according to the Exhibits, the project will acquire multiple easements as described below. And, as stated, the project will remove an existing ingress/egress easement across an adjoining property (owned by the City: Tax Map 102C-F-024.01) while providing a replacement the ingress/egress easement in a new location (owned by the City: Tax Map 102C-F-024.00). The easements will not adversely affect the subject property as they are typical for similar properties (See the plats for the comparable sales data in the addenda, which indicate these sales have similar easement areas).

Most of the easement acquisitions on the subject property are currently “in use” from prior unrecorded agreements between the City and prior property ownership (agreements prior to current ownership) which will not affect existing improvements, but will complete proper recording procedures for these “in use” easements. Also, with this project, there will be removal or abandonment of existing recorded easements which are no longer needed by the City (these may affect some improvements as described). All of these are listed below (labeled as A, B, C, etc. by the appraiser for descriptive purposes in appraisal):

Description of proposed new easement acquisitions on subject property (will affect existing improvements; however, improvements replaced in like-kind, so they are not considered as part acquired):

(A) Permanent drainage & trail easement: 485 sqft (SW corner of property)

Description of proposed (in use) easement acquisitions on subject property (will not affect any existing improvements):

(B) Sanitary sewer & water line easement: 2,219 sqft (along west property line)

(C) Sanitary sewer easement: 3,982 sqft (along south property line)

(D) Water line easement: 734 sqft (along north property line)

Project: Town Creek PH 1 County: Rutherford Tract No. 106 SE Church St

Name of Appraiser: Robbi L. Kitchen, CG-2489

Description of abandonment of existing easements:

(E) Public utility easement: 0.05 acre or 2,178 sqft (removal of creek diversion under parking lot: will not affect improvements)

(F) Public utility easement: 4,000 sqft (middle of property and under building: will not affect improvements)

Existing ingress/egress and sign easement to be abandoned (Tax Map 102C-F-024.01):

(G) 0.07 acres or 3,049 sqft (sign to be relocated – See “I” below)

Proposed new ingress/egress or access easement and sign relocation easement (Tax Map 102C-F-024.00):

(H) Permanent access easement: 0.16 acre or 6,970 sqft (drive access paving by contractor for City)

(I) Signage easement: 225 sqft (sign relocation by contractor for City)

The easements “A” through “I” are identified on the reduced copies of the Project Exhibits included later in the Addenda.

EASEMENT PAYMENT CALCULATIONS:

The easement payments are a percentage of the estimated fee simple value of the property. The calculation of easement payments are calculated as follows:

Easement A: Permanent Drainage & Trail Easement: \$26 per sqft fee value x 90% easement payment = \$23.40 per sqft payment

Easements B, C, and D: Utility Easements (Sewer & Water Line): \$26 per sqft fee value x 30% easement payment = \$7.80 per sqft payment

Easements E and F: Abandonment of Easements: No payment applicable.

Easements G, H, I: Removal of ingress-egress (access) and sign easement and dedication of new ingress-egress (access) and sign easements= No payment applicable. See further discussion under “Damages/Benefits”.

Remainder Improvements:

Improvements: According to the Client, any existing improvements which are located within the easement areas will be replaced in legally conforming kind (aka- like kind), therefore, the appraisal does not include improvements in the easement areas. The other improvements on the subject property are not affected by the project.

Damages/ Benefits:

As stated, the estimated contributing value of the existing ingress-egress easement to the entire subject property which crosses Tax Map 102C-F-024.01 (shown as Easement G in the appraisal) is \$312,585.00.

The removal of this easement would result in a Damage of -\$312,585.00.

However, because the City is providing an alternate ingress-egress or access and sign easement (shown as Easements H and I in the appraisal) to replace the removal of the existing ingress-egress easement (Easement G), the damage is off-set by the benefit of the new access/sign easement or +\$312,585.00. The new access easement intersection with S Church Street is +/-150’ south of the existing easement and appears to provide similar and comparable access and signage as the prior easement.

*Damage due to easement removal: \$312,585 less *benefit of new easement: \$312,585 = \$0 due for compensable damages and benefits.

In other words, after the calculation of benefits, in the judgment of the appraiser, there are no compensable or payable damages to the property due to the easement acquisitions and the change in the location of the ingress-egress and sign easement leading from S Church St.

After consideration of all factors regarding the project, the appraiser finds no compensable damages or benefits to the subject property.

25.	AMOUNT OF DAMAGE	<u>\$312,585 *</u>	=	<u>\$0 compensable</u>
25A.	AMOUNT OF BENEFITS	<u>\$312,585 *</u>	=	<u>\$0 compensable</u>

Project: Town Creek PH 1 County: Rutherford Tract No. 106 SE Church St

Name of Appraiser: Robbi L. Kitchen, CG-2489

ITEM 26 : PHOTOGRAPHS AND EXHIBITS

(photos taken by R Kitchen 03/06/2024)



Existing Access & Sign Easement from S Church Street (Easement G)



parking lot and view of Abandonment Easement area (Easement E)



Side View Structure 1 and view of abandonment easement (Easement F)



Rear View and south end of Easement C



Proposed new Access Easement (Easement H) looking south from McDonald's parking lot



Existing access/sign easement looking West at S Church St (Easement G) also view of Easement A at SW Corner of property

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

ITEM 26 : PHOTOGRAPHS AND EXHIBITS

(photos taken by R Kitchen 03/06/2024)



Easement C area



**existing parking and drive through area
looking north at SE Broad Street**



Drive Thru area



Storage and Dumpster Enclosure at SE Corner



**Rear/Side Structure 1 and view of
Abandonment Easement Area (Easement F)**



**area in front of Structure 1 along SE Broad
St and view of Easement D area**

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

ITEM 26 : PHOTOGRAPHS AND EXHIBITS

(photos taken by R Kitchen 03/06/2024)



Entrance at SE Broad Street and view of Easement B area



Easement B area along west property line



side view



side view



parking area and view of Easement B



entrance to New Access Easement from S Church St (Easement H) and view of New Sign Easement area (Easement I)

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

ITEM 26 : PHOTOGRAPHS AND EXHIBITS

(photos taken by R Kitchen 03/06/2024)



distance view looking north from New Access Easement entrance (easement H) at old abandoned Access Easement (easement G)



new access easement area (Easement H)



sign at abandoned access easement area - to be relocated to new sign easement area



Front view of property along SE Broad St and easternmost driveway along SE Broad St



Front View



View of NW corner of property and westernmost driveway along SE Broad St

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

28. CERTIFICATE OF APPRAISER

I hereby certify that to the best of my knowledge and belief:

1. I have personally inspected the property herein appraised and that I have also made a personal from roadway inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs contained in said appraisal.
2. The statements of fact contained in this report are true and correct.
3. The reported analysis, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.
4. I understand that such appraisal is to be used in connection with the acquisition of property for use by The City of Murfreesboro.
5. That such appraisal has been made in conformity with the appropriate state laws, regulations and policies and procedures applicable to appraisal right-of-way for such purposes, and that to the best of my knowledge, no portion of the value assigned to such property consists of items which are non-compensable under the established law of said state.
6. That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.
7. That neither my employment nor my compensation is contingent upon the development or reporting of a predetermined value or direction value or direction that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. I have no present or prospective interest in the property that is the subject of this report, and no personal interest or bias with respect to the parties involved.
9. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment. I certify that I HAVE NOT made a prior appraisal inspection, appraisal, or performed any other service as an appraiser or any services in any other capacity with regard to the subject property within the 3 years prior to the acceptance date of this report.
10. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
11. I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the Client and I will not do so until so authorized by said officials, or until I am released from this obligation by having publicly testified as to such findings.
12. No one provided significant professional appraisal assistance to the person signing the report.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

13. That my analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Act.
14. That the Owner, McDonalds Corporation, was contacted by the appraiser (by email and phone) as instructed and was given opportunity to accompany the appraiser during her inspection and the owner and/or representative declined to meet the appraiser for the inspection**. The appraisal inspection was completed of the exterior only. Interior finish was provided by tax records and prior general viewing of public interior spaces as a customer of the current tenant. ** See notes below regarding inspection scheduling and owner contact.

Date(s) of inspection of the subject property: March 6, 2024
 Date(s) of inspection of the comparable sales: March 6, 2024

15. That the Exhibits provided by the Client were labeled appropriately for proper identification on this tract.
16. That Exhibits were furnished me and/or made available and have been used in the preparation of this appraisal.
17. That my opinion of the fair market value of the acquisition as if unaffected by hazardous substances as of March 6, 2024 is \$65,500 based upon my independent appraisal and the exercise of my professional judgment.



 Appraiser' Signature
 Robbi L. Kitchen
 State of Tennessee Certified General Appraiser, TN CG-2489

 May 13, 2024
 Date of Report

**** IMPORTANT INFORMATION REGARDING LEVEL OF INSPECTION BY APPRAISER:**

The Owner's contact, Christina Everett of McDonalds USA Nashville Development Team, was contacted by the appraiser (by phone – left message and by multiple emails dated February 20, February 28, and March 7, 2024) as instructed and was given opportunity to accompany the appraiser during her inspection. The owner representative instructed the appraiser to not contact the franchise owner and did not respond to requests to meet the appraiser or schedule a formal inspection of the property. After conferring with the Client that the owner's representative was not responding to inspection scheduling requests, the appraisal inspection was completed of the exterior only. Interior finish was provided by tax records and prior general viewing of public interior spaces as a customer of the current franchise.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St
 Name of Appraiser: Robbi L. Kitchen, CG-2489

SCOPE OF WORK

The real estate involved in this Appraisal Report is the property shown as the Tax Map and Parcel Number as indicated. The property rights appraised are fee simple as described below.

The scope of work consisted of contacting the property owner/owners (if applicable), inspecting the property, inspecting comparable sales from the public roadway, researching, verifying, and analyzing information pertinent to the appraisal, applying appraisal methods and techniques applicable to the appraisal of the property, and arriving at an opinion of value. The sales information utilized is provided within the body of the appraisal report. The report cannot be properly understood without the information in the addenda and the sales information enclosed.

The appraiser is competent to complete the assignment.

EXTRAORDINARY ASSUMPTIONS, HYPOTHETICAL CONDITIONS, OTHER COMMENTS

Extraordinary Assumptions: None

Hypothetical Conditions: None

The use of Extraordinary Assumptions and/or Hypothetical Conditions may have affected the outcome of this appraisal.

DEFINITION OF MARKET VALUE

All estimates of value prepared for agency acquisitions shall be based on "market value" –as defined and set forth in the *Tennessee Pattern Jury Instructions 2nd* Edition to wit: "the amount of money which a purchaser, willing but under no compulsion to buy, would pay, and which a seller, willing but under no compulsion to sell, would accept, taking into consideration all the legitimate uses to which the property was adaptable and might in reason be applied".

Note: Reasonable exposure time is not a component of the definition for the value opinion being developed. Source: Standards Rule 1-2(c) Comment and Advisory Opinion 35 effective with 2021 edition of USPAP.

PROPERTY RIGHTS APPRAISED

Property rights appraised are those of Fee Simple Title, defined as: "absolute ownership unencumbered by any other interest or estate subject only to the four powers of government." *The Dictionary of Real Estate Appraisal, 6th Ed.*

The proposed acquisition consists of a fee acquisition for the use by the City of Murfreesboro. The extent of the property rights conveyed has been considered in arriving at the estimate of value.

Any and all liens have been disregarded. The property is assumed to be free and clear of all encumbrances except easement or other restrictions as noted on the title report or during the physical inspection of the property and mentioned in this report.

ATTACHMENTS

Sales information and/or other pertinent information which is part of the appraisal report and referenced in the text of this appraisal can be found:

In an addenda attached at the end of the report.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

STATEMENT OF LIMITING CONDITIONS

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
4. The appraiser has noted in the appraisal report any adverse conditions (such as, presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
5. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
6. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
7. The appraiser must provide his or her prior written consent before the Client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.
8. Environment: The value estimate is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.
9. Minerals: The value estimate is based on the assumption that the property is not affected by the existence of mineral deposits unless otherwise stated in this report. The appraiser is not an expert in the identification of such mineral deposits. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant mineral deposits which would affect the property's market value unless otherwise stated in this report. It is possible that tests and inspections made by a qualified expert would reveal the existence of mineral deposits on or around the property that would affect its value.

Project Town Creek PH 1 County: Rutherford Tract No. 106 SE Broad St

Name of Appraiser: Robbi L. Kitchen, CG-2489

ADDENDA

- 1) Subject Data and Area Maps
- 2) Comparable Sale Data

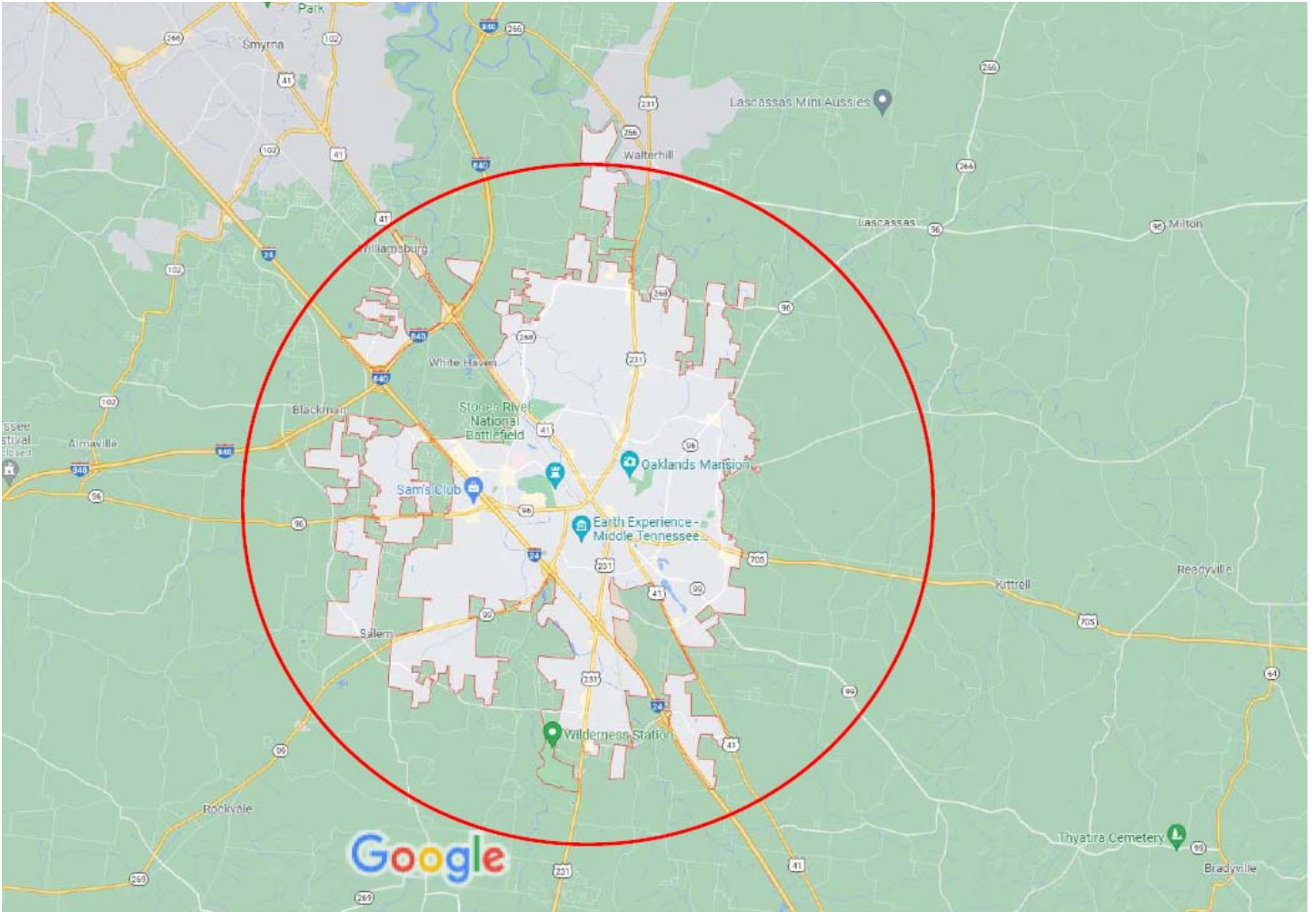
Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St


Appraiser: Robbi L. Kitchen, CG-2489

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SUBJECT DATA AND MAPS

General Market Area – Murfreesboro, Rutherford County, TN

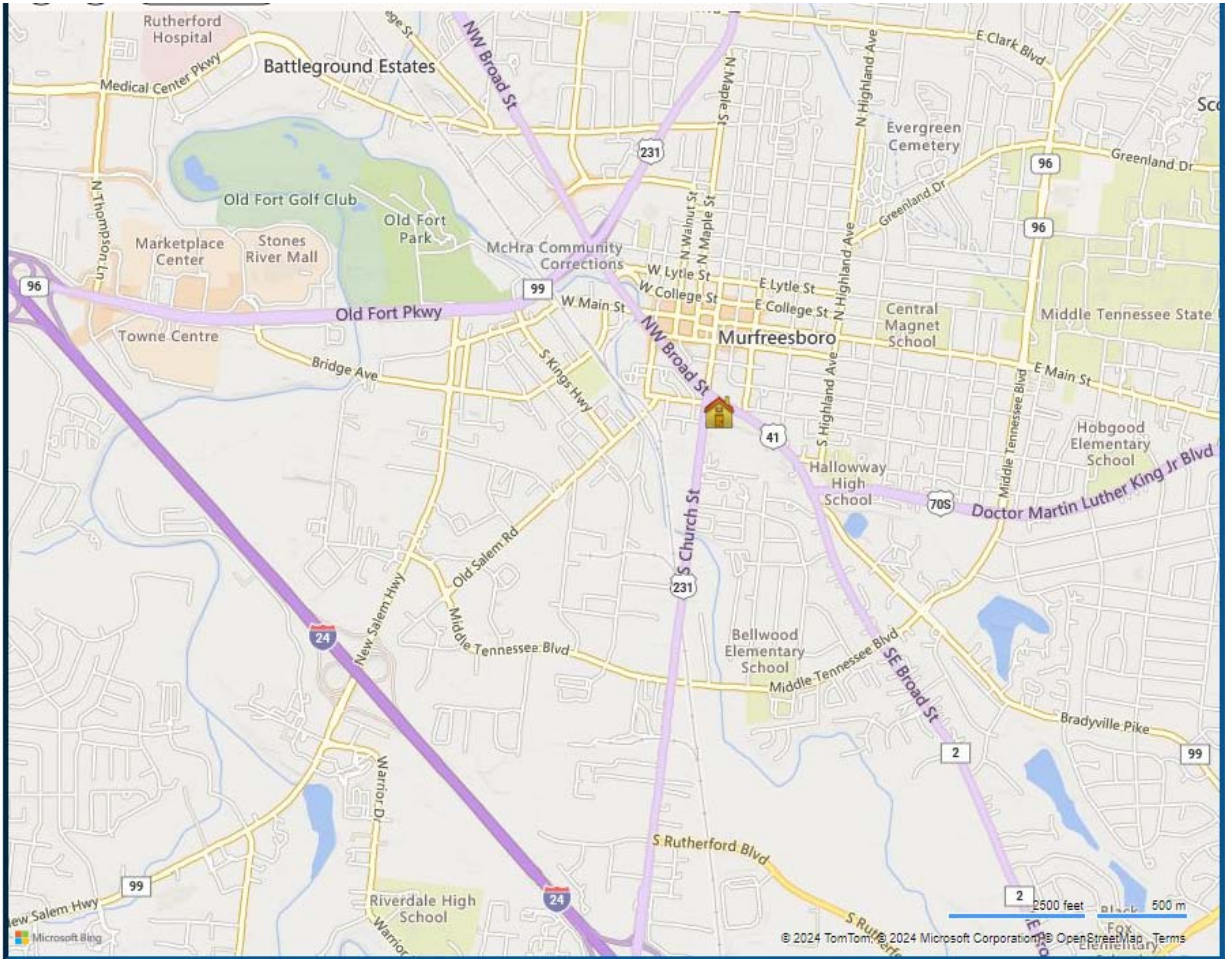


Map data ©2021 Google 2 mi 

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

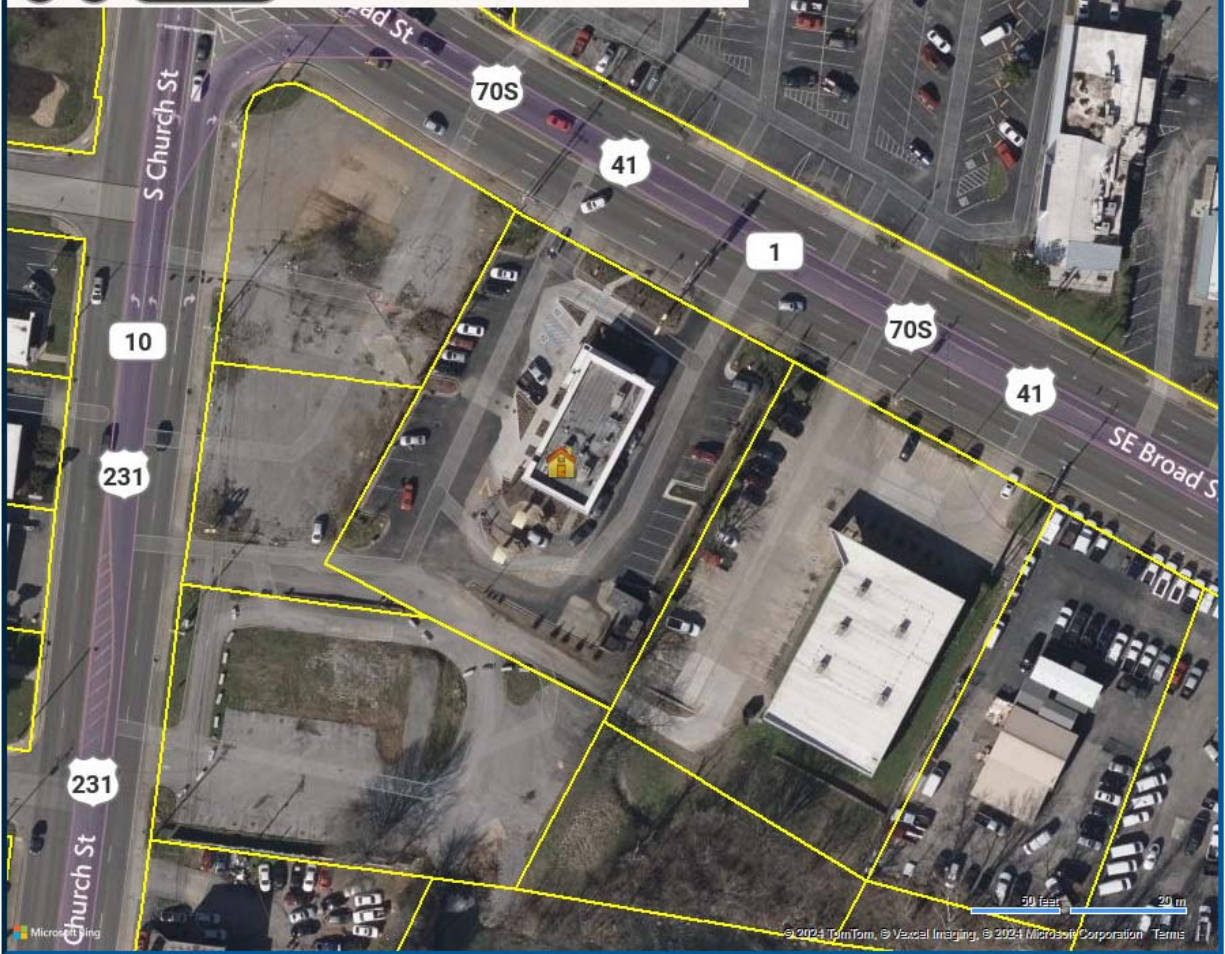
Immediate Subject Area



Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

Subject Tax Parcel



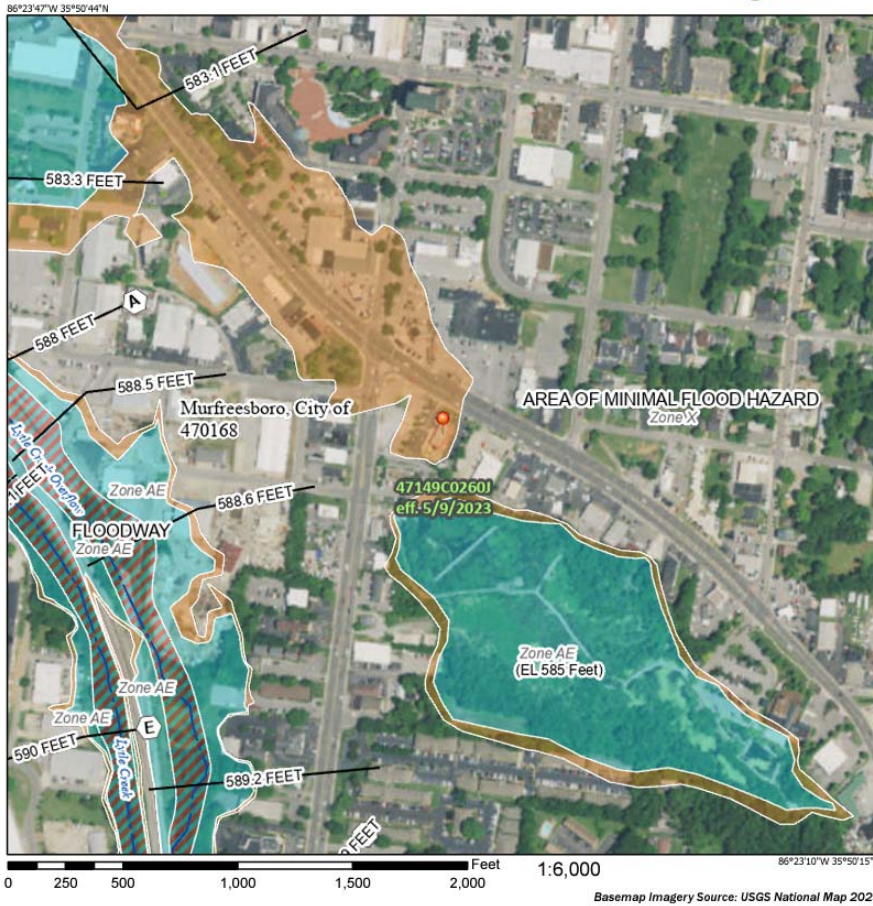
Map For Parcel Address: 106 Se Broad St Murfreesboro, TN 37130-4229, Parcel ID: 102C F 026.00

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

Copy of FEMA Flood Map Concerning Subject – Aerial View

National Flood Hazard Layer FIRMette



Legend

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

SPECIAL FLOOD HAZARD AREAS

- Without Base Flood Elevation (BFE) Zone A, V, AE, AH
- With BFE or Depth Zone AE, AO, AH, VE, AR
- Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD

- 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
- Future Conditions 1% Annual Chance Flood Hazard Zone X
- Area with Reduced Flood Risk due to Levee. See Notes. Zone X
- Area with Flood Risk due to Levee Zone D

OTHER AREAS

- NO SCREEN Area of Minimal Flood Hazard Zone X
- Effective LOMRs
- Area of Undetermined Flood Hazard Zone D

GENERAL STRUCTURES

- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

OTHER FEATURES

- 29.2 Cross Sections with 1% Annual Chance Water Surface Elevation
- 17.6 Coastal Transect
- Coastal Transect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

MAP PANELS

- Digital Data Available
- No Digital Data Available
- Unmapped

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

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

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 3/25/2024 at 10:37 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

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

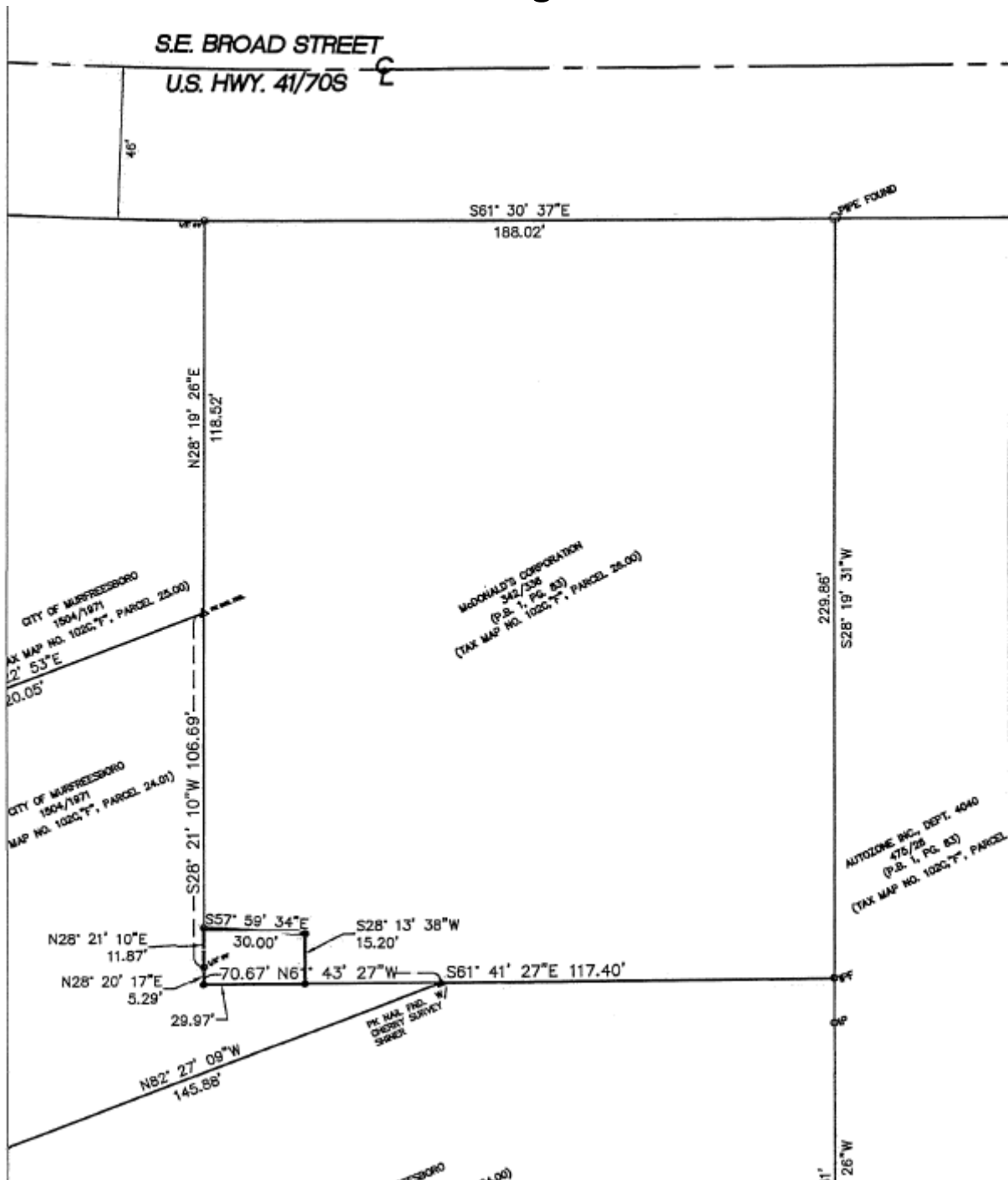
Subject property is +/-74% within the 0.2% flood area designation (0.2% chance of annual flood):
 "An area inundated by 500-year flooding; an area inundated by 100-year flooding with average depths of less than 1 foot or with drainage areas less than 1 square mile; or an area protected by levees from 100- year flooding."

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

SUBJECT PROPERTY PROPOSED EASEMENT EXHIBITS:

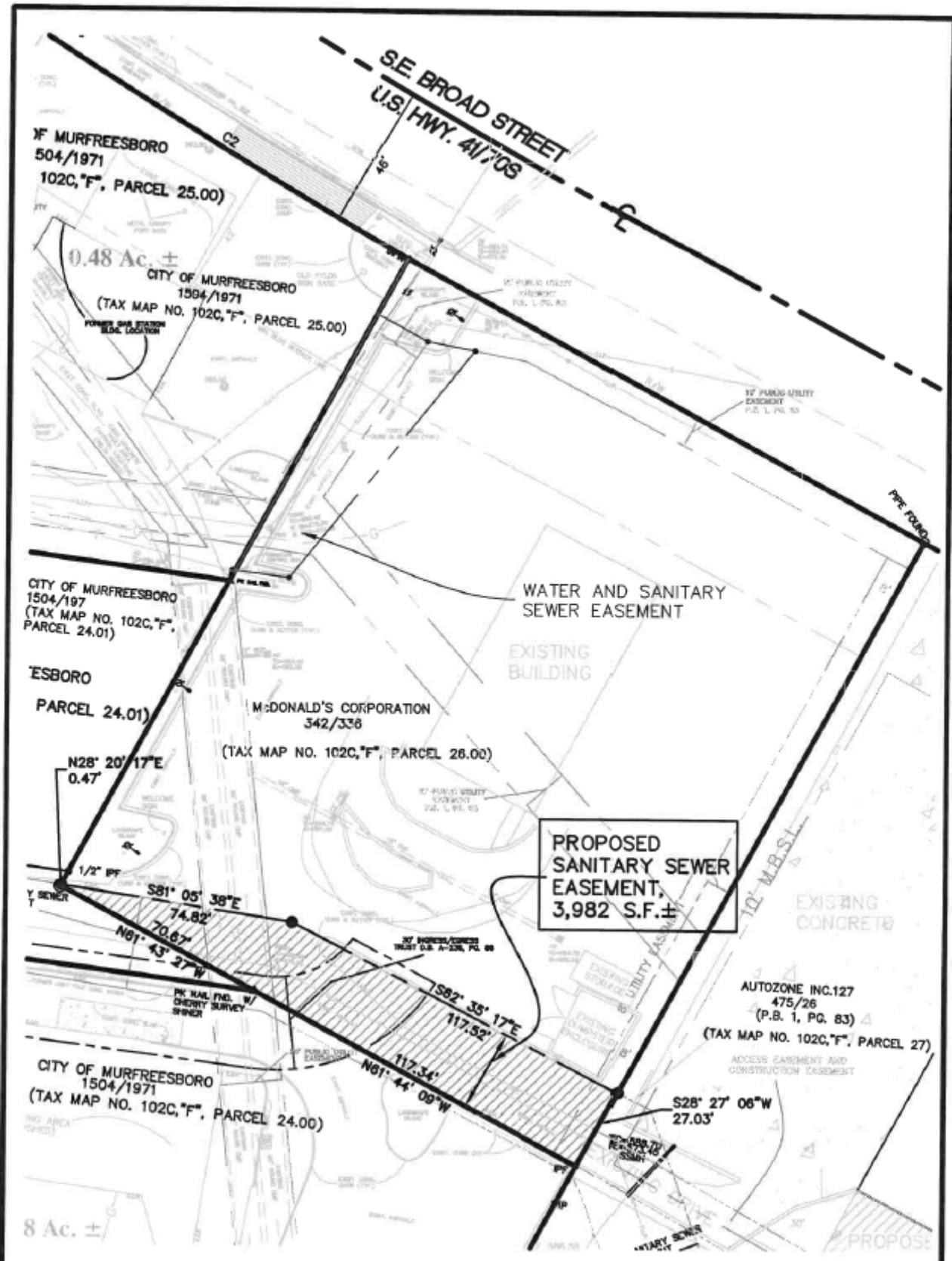
Easement A: Permanent Drainage & Trail Easement: 485 SqFt



Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

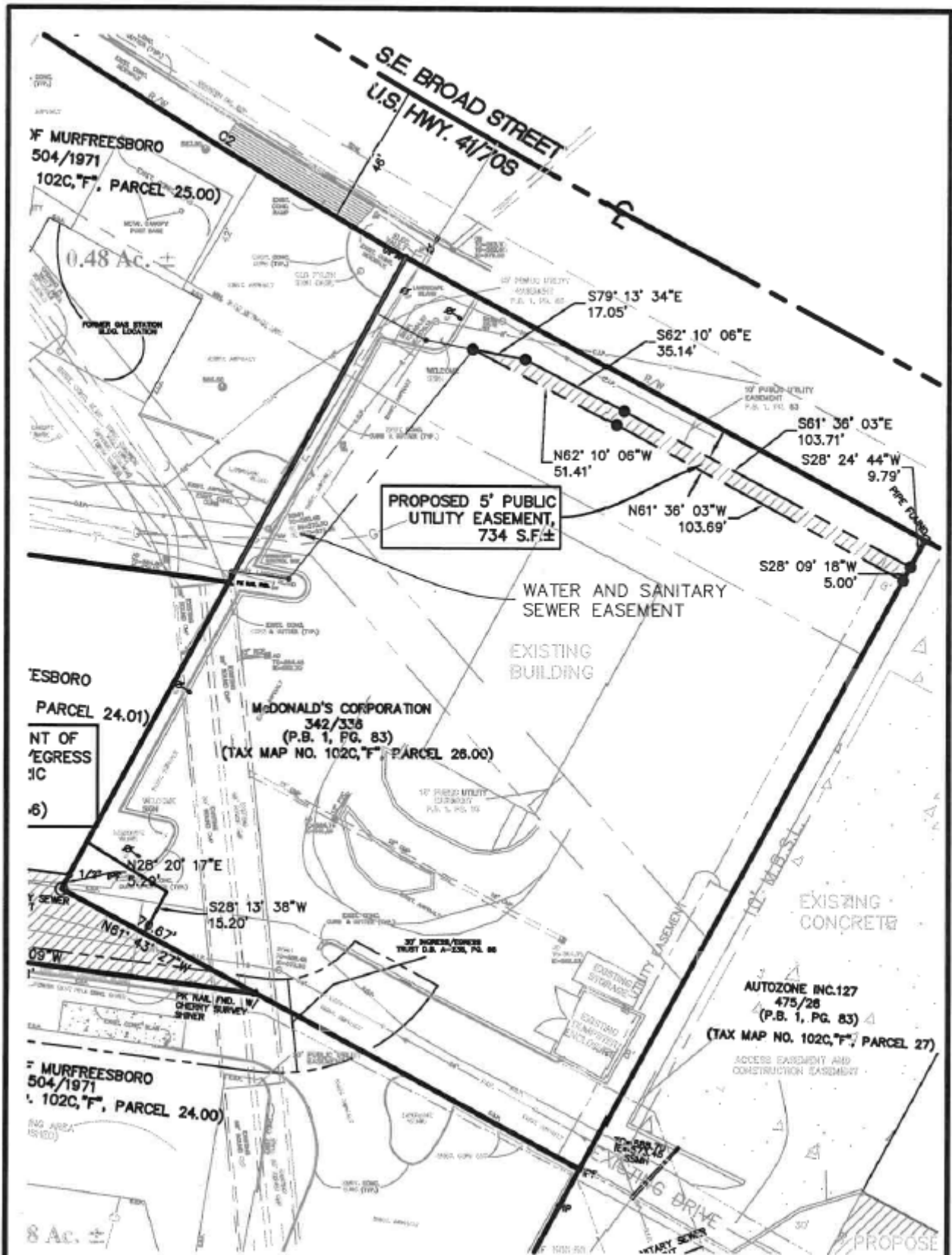
Easement C: Sanitary Sewer Easement:



Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

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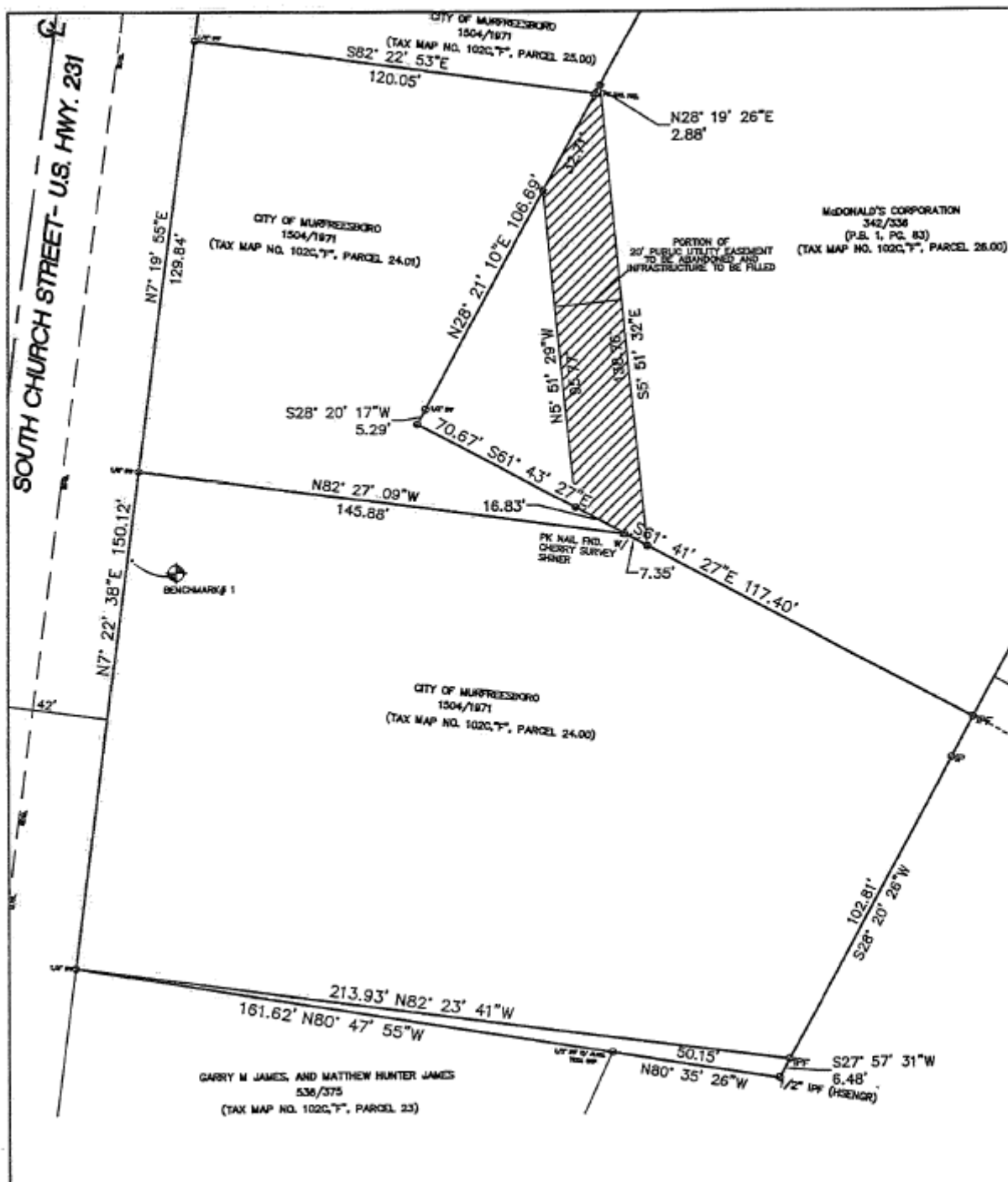
Easement D: Public Utility Easement:



Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

Easement E: Abandonment of Easement (Creek Diversion):



Project

Town Creek PH 1

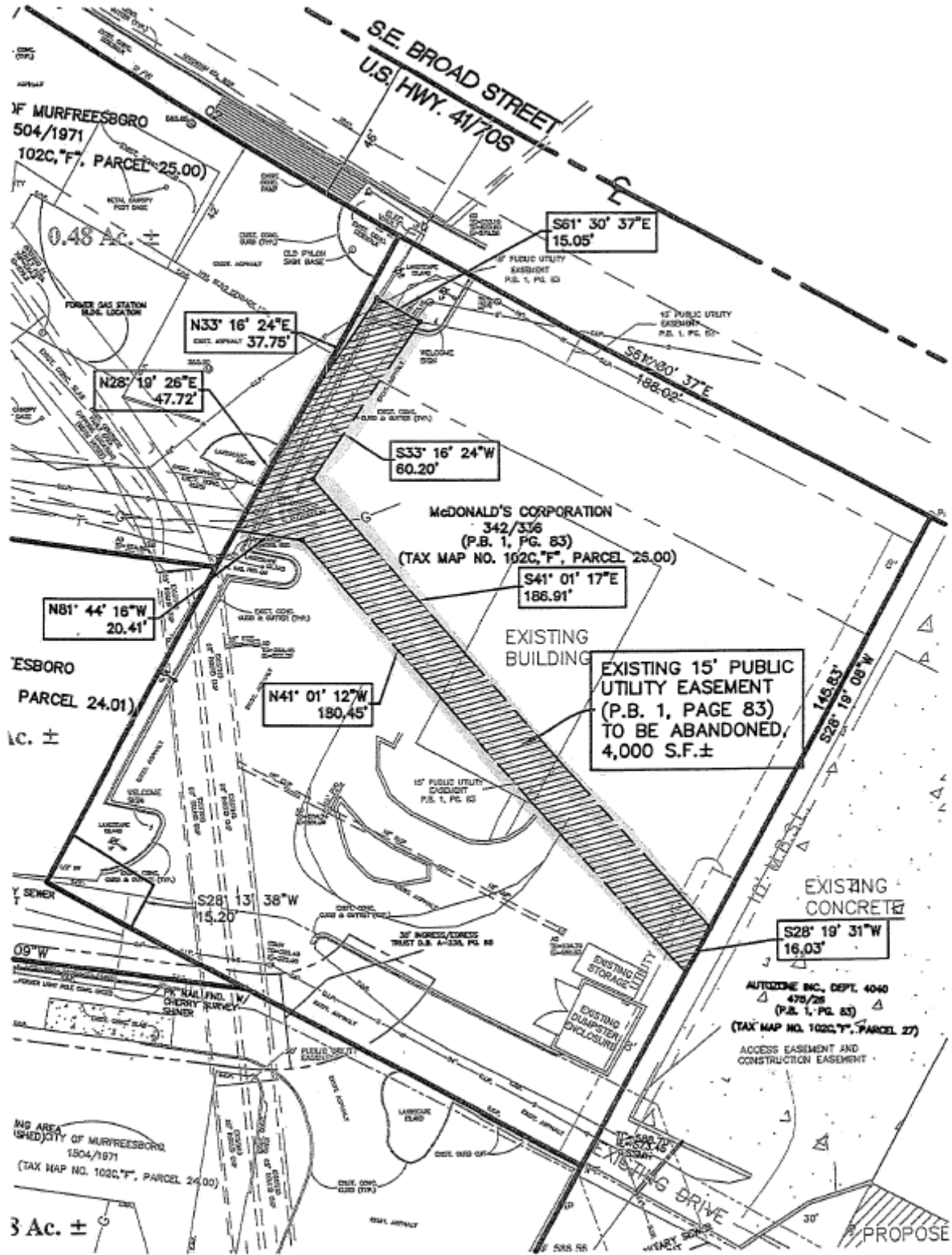
County:

Rutherford

Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

Easement F: Abandonment of 15' Utility Easement:

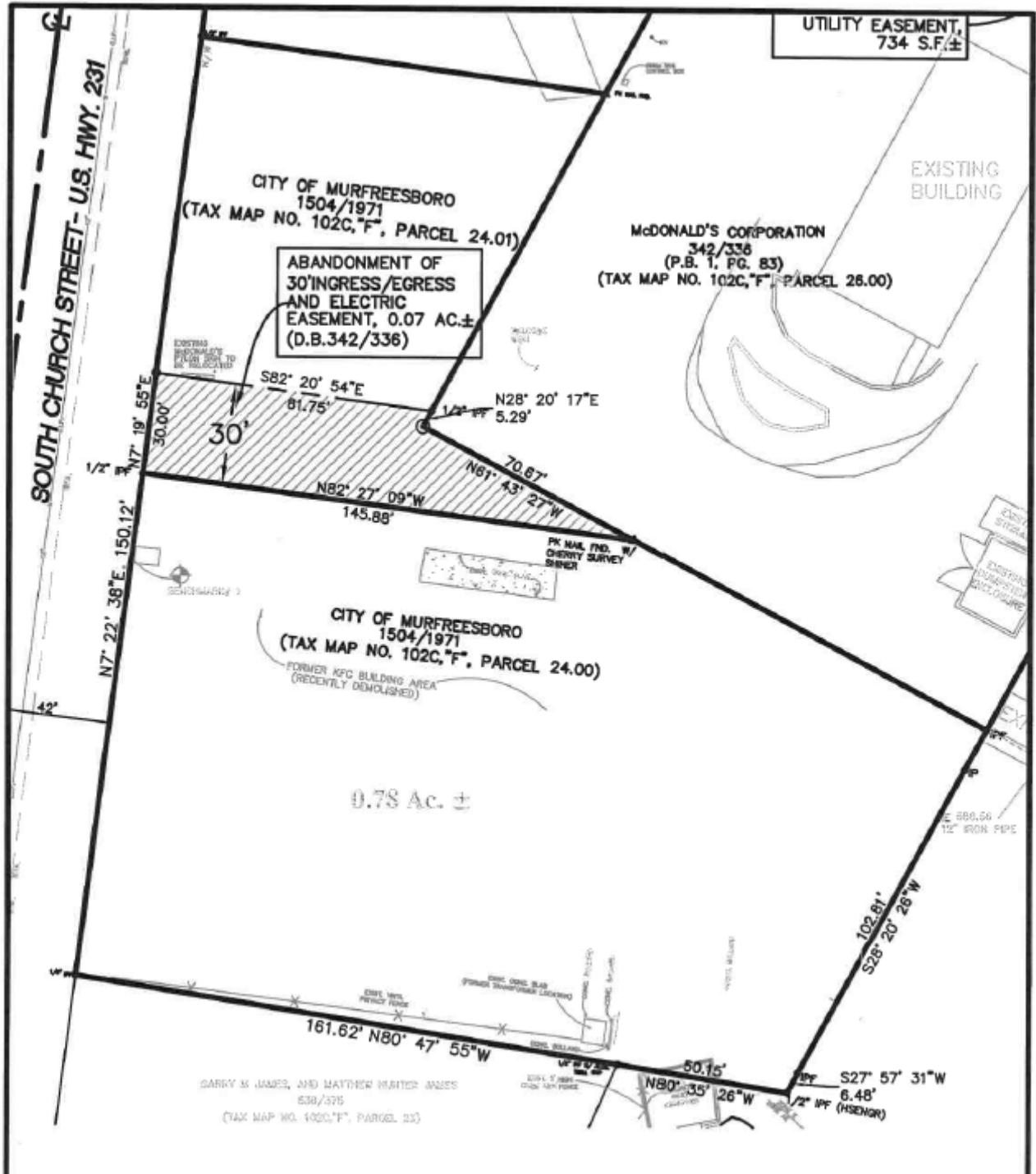


Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

Easement G:

Abandonment of Existing Access & Sign Easement (Parcel 024.01)

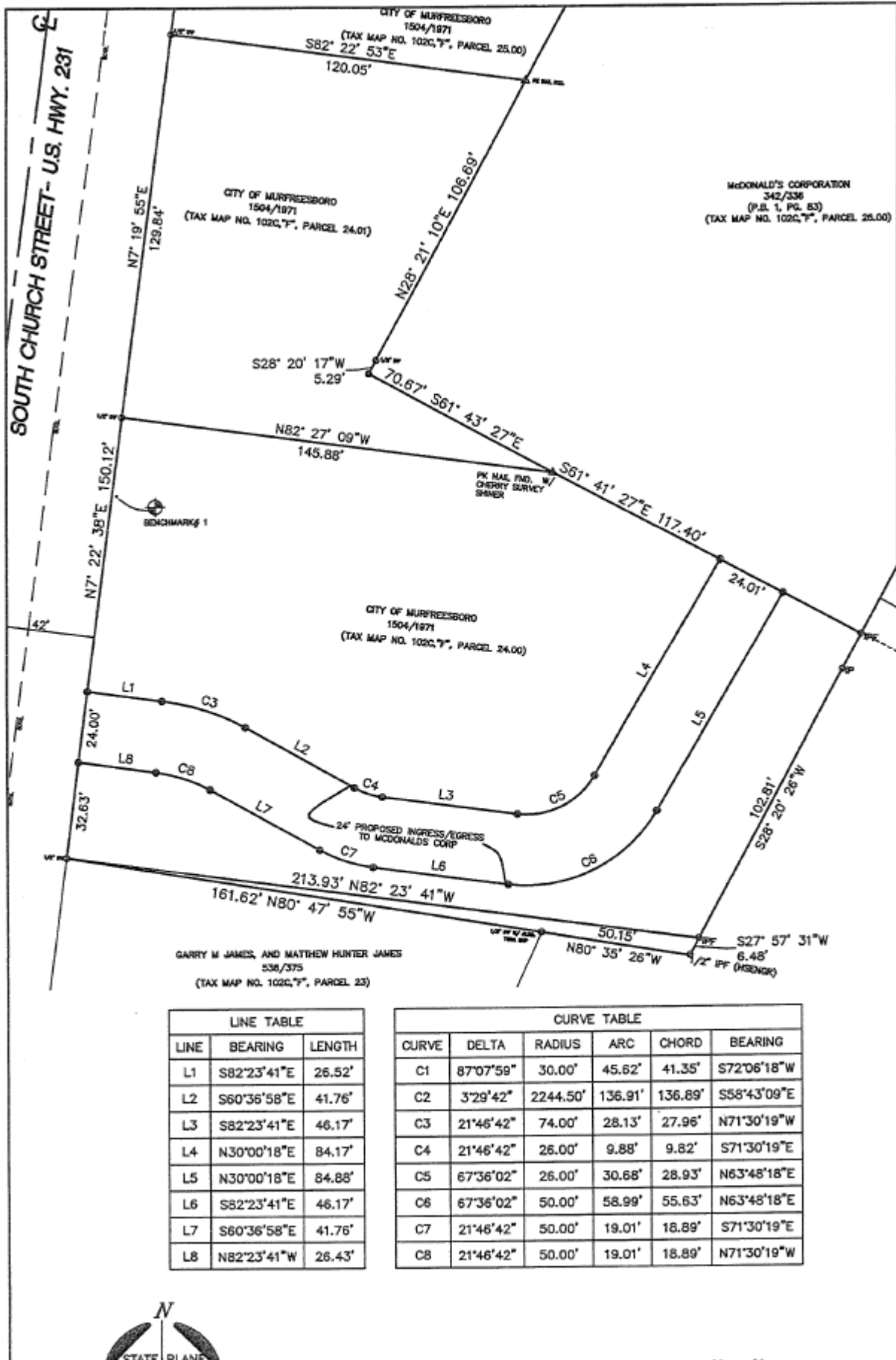


Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

Easement H:

New Ingress-Egress or Access Easement (Parcel 024.00):



Project

Town Creek PH 1

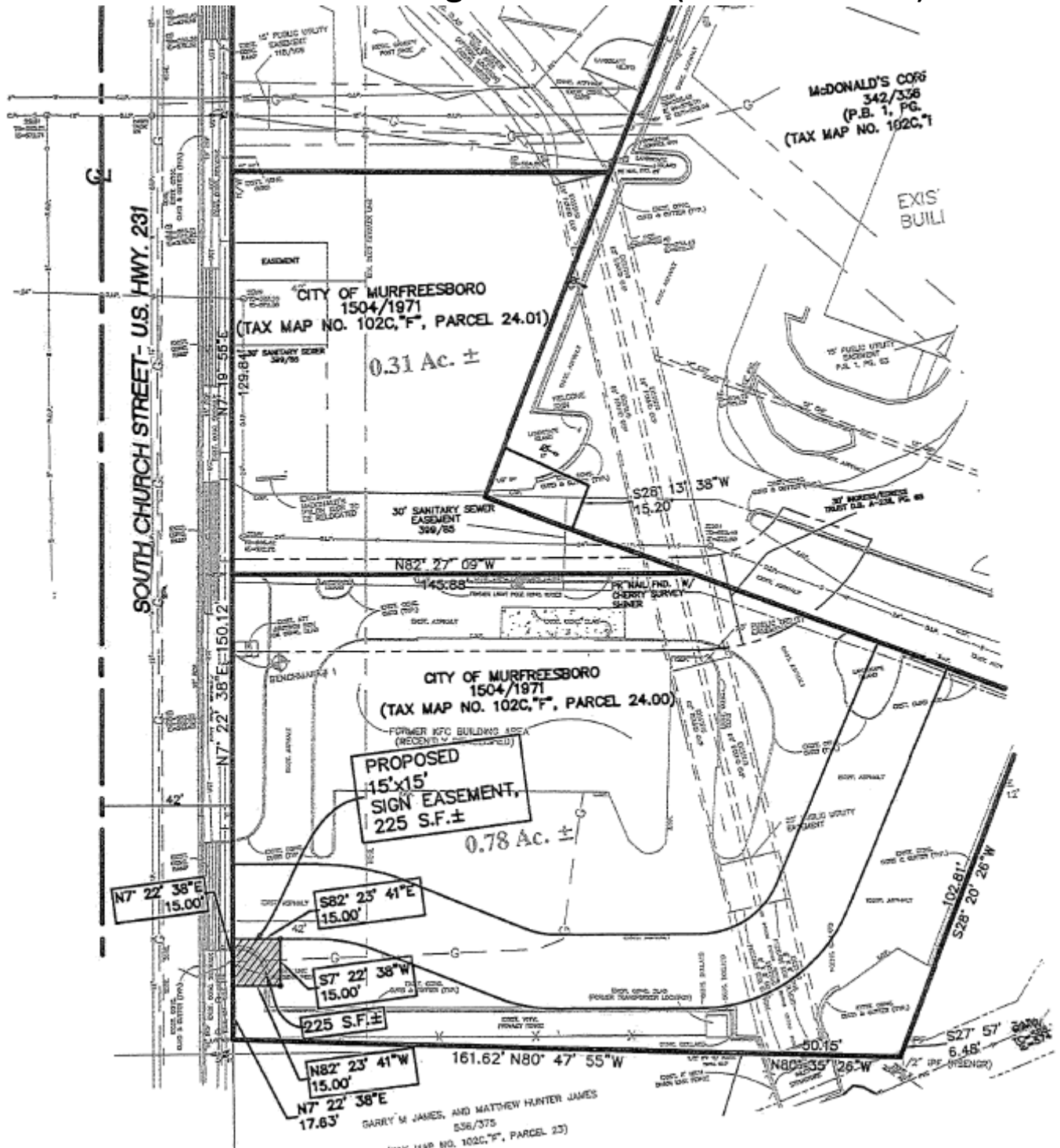
County:

Rutherford

Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

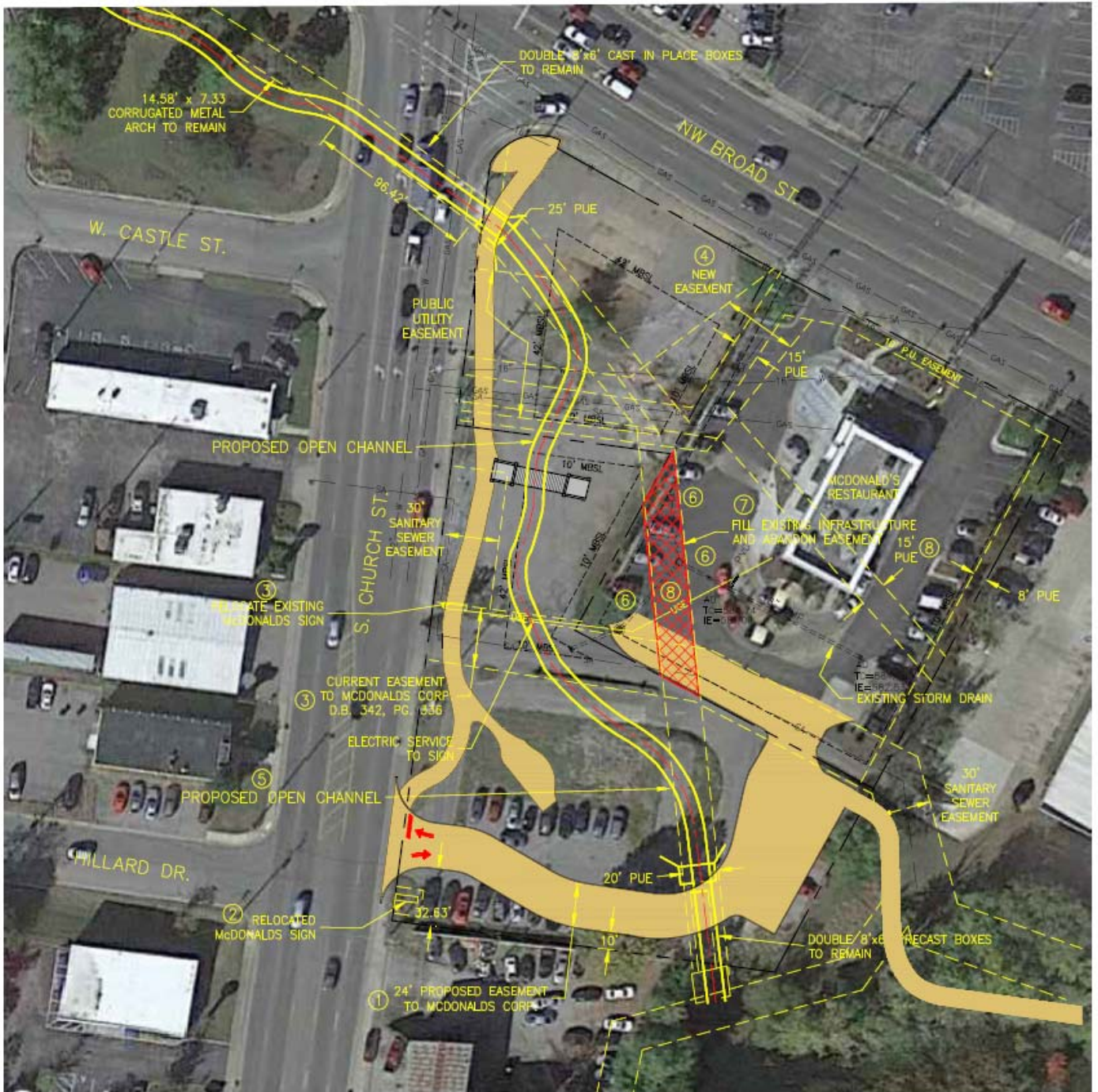
Easement I: New Sign Easement (Parcel 024.00):



Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

Aerial Overview of Project:

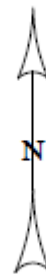


McDONALDS (MCD) PHASE I

- ① CONSTRUCT NEW ACCESS AND CREATE EASEMENT TO MCD.
- ② RELOCATE MCD SIGN AND SIGN ELECTRIC SERVICE.
- ③ ABANDON EXISTING ACCESS EASEMENT AND ELECTRIC EASMENT
- ④ REPLACE EXISTING WATER LINE AND EXISTING SEWER EASEMENTS WITH NEW EASEMENT

TOWN CREEK CONSTRUCTION/McDONALDS (MCD) PHASE II

- ⑤ CONSTRUCT TOWN CREEK CHANNEL. DIVERT WATER FROM CULVERTS TO NEW CHANNEL.
- ⑥ INSTALL CATCH BASINS AND NEW STORM SEWER PIPING IN MCD PARKING LOT. A STORMWATER TREATMENT DEVICE WILL BE INSTALLED AND MAINTAINED BY THE CITY.
- ⑦ FILL EXISTING CULVERTS UNDER MCD PARKING LOT AND ABANDON EASEMENT.
- ⑧ ABANDON 15' PUBLIC UTILITY EASEMENT (PUE) BENEATH MCD AND 20' PUE (CULVERT EASEMENT)



Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

COMPARABLE SALES DATA AND MAPS

Project Town Creek PH 1 County: Rutherford Tract: 106 SE Broad St

Appraiser: Robbi L. Kitchen, CG-2489

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**VACANT LAND
MARKET DATA
(Sales & Rentals)**

Address or General Location: 1009 New Salem Highway
Murfreesboro, TN

At the southeast corner of the intersection of New Salem Hwy and Middle TN Blvd.

Directions to Property: Location of new "Circle K" gas station/convenience store.

Tax Map/Parcel No. 102-007.06 Deed Reference 2333/1570 Property Rights Conveyed: Fee Simple
Grantor: Newton F Molloy III, etals Grantee: Mac's Convenience Stores LLC
Date of Sale: 03/23/2023 Verified Consideration: \$1,654,740 How Verified Deed/Affidavit/Agent: John Harney 615-896-4045

Financing: Type: Cash Rate: _____ Terms: _____
Motivation/Condition of sale Purchased for commercial development/ Arms Length Transfer

Physical Characteristics			
Land Area	<u>82,737 sqft (1.9 AC)</u>	Dimensions:	Front <u>207.32'/317.14'</u> Depth <u>234.16'/299.58'</u>
Shape:	<u>Generally rectangular</u>	Site/View:	<u>Commercial/Industrial</u>
Topography	<u>Generally level</u>	Access:	<u>Paved, public 3 lanes</u>
On-Site Improvements:	<u>None of value at sale</u>		
Encumbrances: (Easements, etc.)	<u>Utility & drainage easements, setbacks – See Note Regarding Access Easements**</u>		

Off Site Improvements:	<input checked="" type="checkbox"/> Paved Street	<input type="checkbox"/> Gravel Road	<input checked="" type="checkbox"/> Sidewalk	<input checked="" type="checkbox"/> Curb	<input checked="" type="checkbox"/> Gutters
Utilities Available:	<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Telephone	<input checked="" type="checkbox"/> Gas	<input type="checkbox"/> Sewers <input type="checkbox"/> Septic

Zoning: L-1 Light Industrial District Highest and Best Use: Commercial or Light Industrial

COMMENTS:

Prior Sales History: 05/29/2020; \$0 quitclaim; RB 1909/1146 – not a market transfer. No other prior sales of this comp in 12 months.

** This property does not have direct access from the subject (driveways) to either adjoining roadway, but are accessed via 2 adjoining, yet off-site ingress-egress easements. One leading from New Salem Hwy and the other from Middle TN Blvd. See Plat attached. The access is considered good.

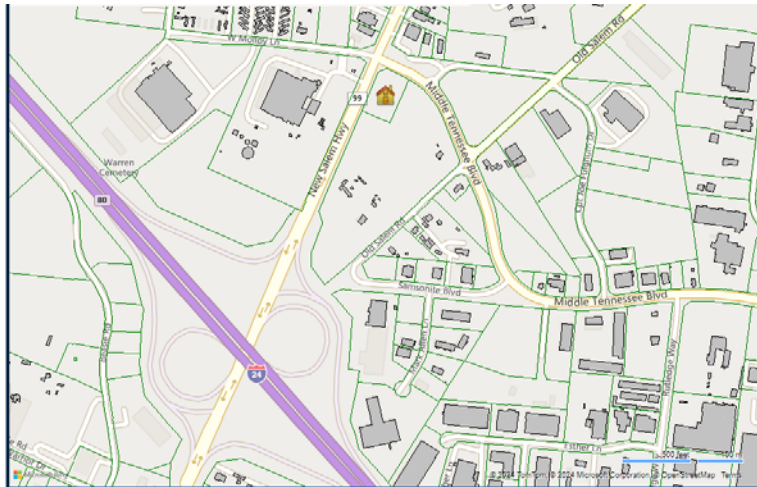
Per Murfreesboro Zoning Ordinance: "L-1, LIGHT INDUSTRIAL DISTRICT. This industrial district is intended to provide areas in which the principal uses permitted are warehousing, wholesaling and light assembly plants which have little impact on the surrounding neighborhood other than truck traffic, and which are accessible to major transportation routes. The regulations of this district are designed to minimize the adverse impact such uses may have on nearby districts. Heavy industrial uses, such as steel mill and manufacturing facilities, likely to create noise, odor, vibration or smoke that can affect surrounding areas will not be permitted in the light industrial district. The uses permitted in this district, the special uses that may be allowed in this district, and the uses for which site plan review and approval are required are listed in Chart 1 unless otherwise regulated in this article."

Verified Sale Price	<u>\$1,654,740</u>
(1) Adjustment for Property Rights Conveyed	\$ _____ = \$-0-
(2) Adjustment for Financing Terms	\$ _____ = \$-0-
(3) Adjustment for Conditions of Sale	\$ _____ = \$-0-
Cash Equivalent Sale Price of Comparable Sale	<u>\$1,654,740</u>

Unit Value of land:	<u>\$20.00</u> S.F.	<u>\$</u> F.F.	<u>\$870,916</u> Acre	<u>\$1,654,740</u> Lot
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Project Town Creek PH 1 County: Rutherford Sale/Rental No. VC-1
Appraiser: Robbi L. Kitchen, CG 2489
Date: 03/2024
Page 46 of 61

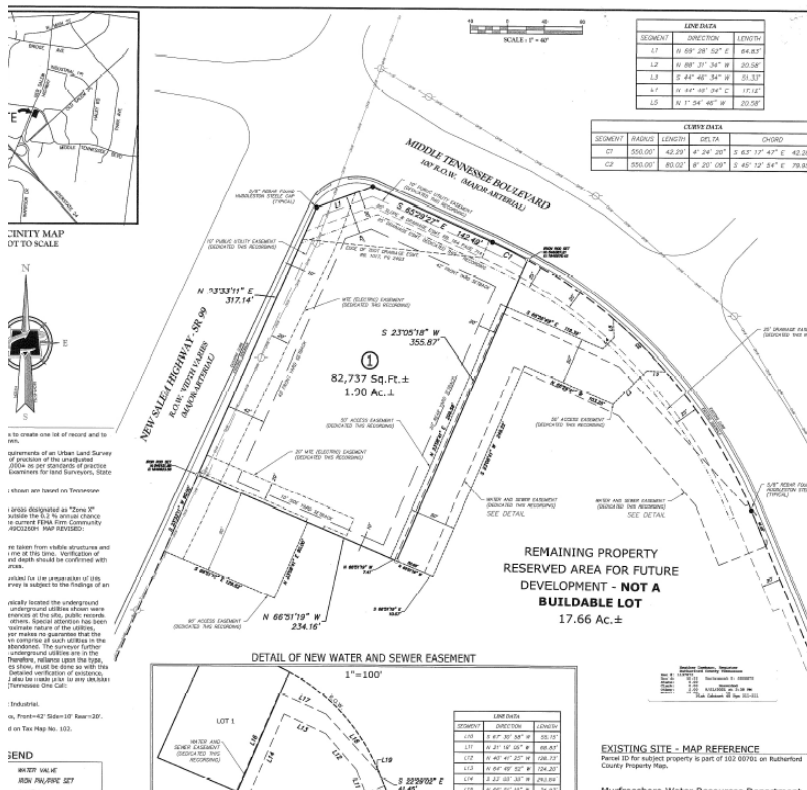
LOCATION MAP



Map For Parcel Address: 1009 New Salem Hwy Murfreesboro, TN, Parcel ID: 102 007.05



Plat Map – lot 1



Photograph – Front View



Project

Town Creek PH 1

County:

Rutherford

Sale/Rental No.

VC-1

Appraiser:

Robbi L. Kitchen, CG 2489

Date:

03/2024

**VACANT LAND
MARKET DATA
(Sales & Rentals)**

Address or General Location: 5205 Veterans Parkway
Murfreesboro, TN

Directions to Property: NW Corner of Shores Rd & Veterans Parkway (Location of new McDonald's restaurant)

Tax Map/Parcel No. 093-001.36** Deed Reference 2331/3329 Property Rights Conveyed: Fee Simple
Grantor: MAB Murfreesboro, LLC Grantee: McDonald's Real Estate Company
Date of Sale: 03/21/2023 Verified Consideration: \$1,800,000 How Verified Deed/Affidavit/Agent: Brian Forrester 615-850-2700

Financing: Type: Cash Rate: _____ Terms: _____
Motivation/Condition of sale Purchased for commercial development/ Arms Length Transfer

Physical Characteristics			
Land Area	<u>1.61 ac/ 70,131 sqft</u>	Dimensions:	Front <u>278.13/254.01</u> Depth <u>268.64/253.14</u>
Shape:	<u>Generally rectangular</u>	Site/View:	<u>Commercial</u>
Topography	<u>Generally level</u>	Access:	<u>Paved, public 5 lane; Paved, public 3 lane</u>
On-Site Improvements:	<u>None of value at sale</u>		
Encumbrances: (Easements, etc.)	<u>Utility & drainage easements, setbacks</u>		

Off Site Improvements:	<input checked="" type="checkbox"/> Paved Street	<input type="checkbox"/> Gravel Road	<input checked="" type="checkbox"/> Sidewalk	<input checked="" type="checkbox"/> Curb	<input checked="" type="checkbox"/> Gutters
Utilities Available:	<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Telephone	<input checked="" type="checkbox"/> Gas	<input type="checkbox"/> Sewers <input type="checkbox"/> Septic

Zoning: PUD – planned development Highest and Best Use: Commercial

COMMENTS:

Prior Sales History: 07/08/2019; \$7,300,000 – 23.96 acres included; RB 1790/1691. No other prior sales of this comp in 12 months.

Located in Publix Shopping Center.

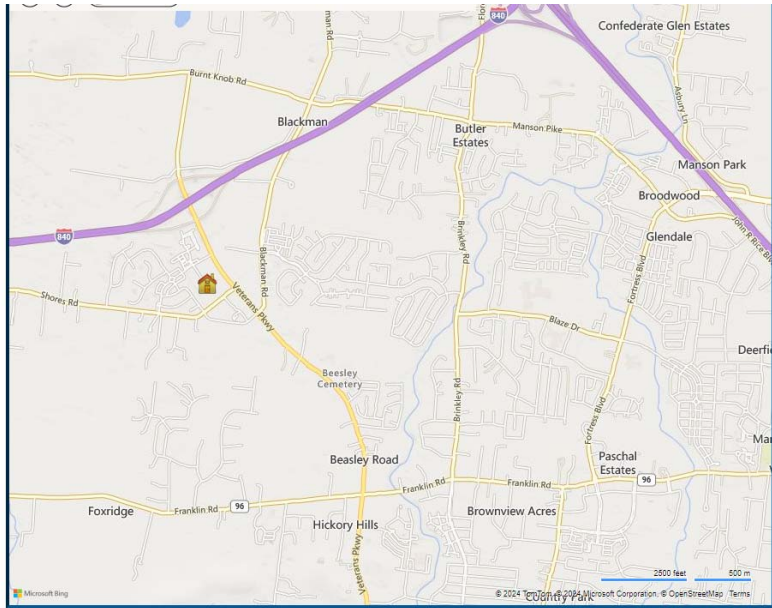
** split from parcel 093-001.06

Verified Sale Price	\$1,800,000
(1) Adjustment for Property Rights Conveyed	\$ _____ = \$-0-
(2) Adjustment for Financing Terms	\$ _____ = \$-0-
(3) Adjustment for Conditions of Sale	\$ _____ = \$-0-
Cash Equivalent Sale Price of Comparable Sale	\$1,800,000

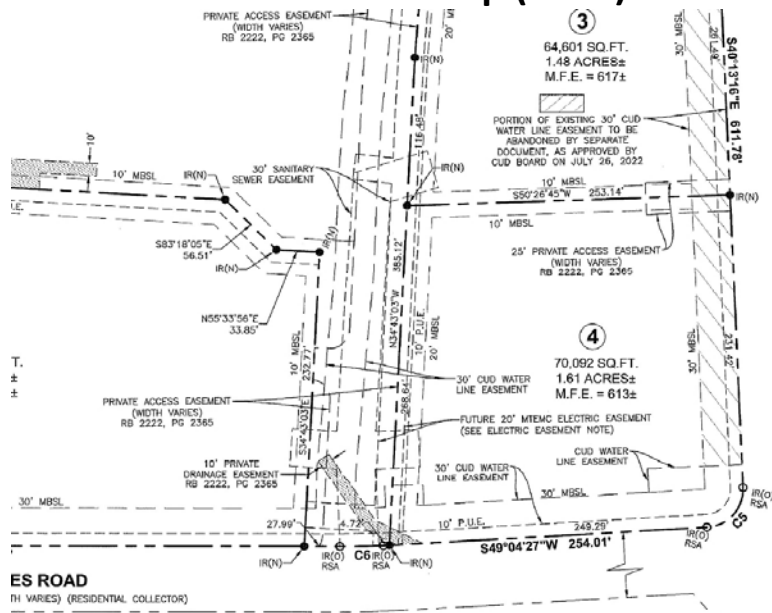
Unit Value of land:	<u>\$25.67</u> S.F.	<u>\$</u> F.F.	<u>\$1,118,012</u> Acre	<u>\$1,800,000</u> Lot
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Project Town Creek PH 1 County: Rutherford Sale/Rental No. VC-2
Appraiser: Robbi L. Kitchen, CG 2489
Date: 03/2024
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LOCATION MAP



Plat Map (Lot 4)



Photograph – Front View



Project	Town Creek PH 1	County:	Rutherford	Sale/Rental No.	VC-2
Appraiser:	Robbi L. Kitchen, CG 2489				
Date:	03/2024				

**VACANT LAND
MARKET DATA
(Sales & Rentals)**

Address or General Location: 5257 Veterans Parkway
Murfreesboro, TN

Directions to Property: SW side of Veterans Parkway (just south of 7 Eleven) – location of new Taco Bell

Tax Map/Parcel No. 093-001.34** Deed Reference 2317/1755 Property Rights Conveyed: Fee Simple
Grantor: MAB Murfreesboro, LLC Grantee: CVHC7, LLC
Date of Sale: 02/07/2023 Verified Consideration: \$900,000 How Verified _____ Deed/Affidavit/Agent: Brian Forrester 615-850-2700

Financing: Type: Cash Rate: _____ Terms: _____
Motivation/Condition of sale Purchased for commercial development/ Arms Length Transfer

Physical Characteristics			
Land Area	<u>51,676 sqft/ 1.19 ac</u>	Dimensions: Front	<u>233.46'</u> Depth <u>222.37'</u>
Shape:	<u>Slightly Irregular</u>	Site/View:	<u>Commercial</u>
Topography	<u>Generally level</u>	Access:	<u>Paved, public 5 lane</u>
On-Site Improvements:	<u>None of value at sale</u>		
Encumbrances: (Easements, etc.)	<u>Utility & drainage easements, setbacks</u>		

Off Site Improvements:	<input checked="" type="checkbox"/> Paved Street	<input type="checkbox"/> Gravel Road	<input checked="" type="checkbox"/> Sidewalk	<input checked="" type="checkbox"/> Curb	<input checked="" type="checkbox"/> Gutters
Utilities Available:	<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Telephone	<input checked="" type="checkbox"/> Gas	<input checked="" type="checkbox"/> Sewers <input type="checkbox"/> Septic

Zoning: PUD- planned development Highest and Best Use: Commercial

COMMENTS:

Prior Sales History: 07/08/2019; \$7,300,000 – 23.96 acres included; RB 1790/1691. No other prior sales of this comp in 12 months.

Located in Publix Shopping Center.

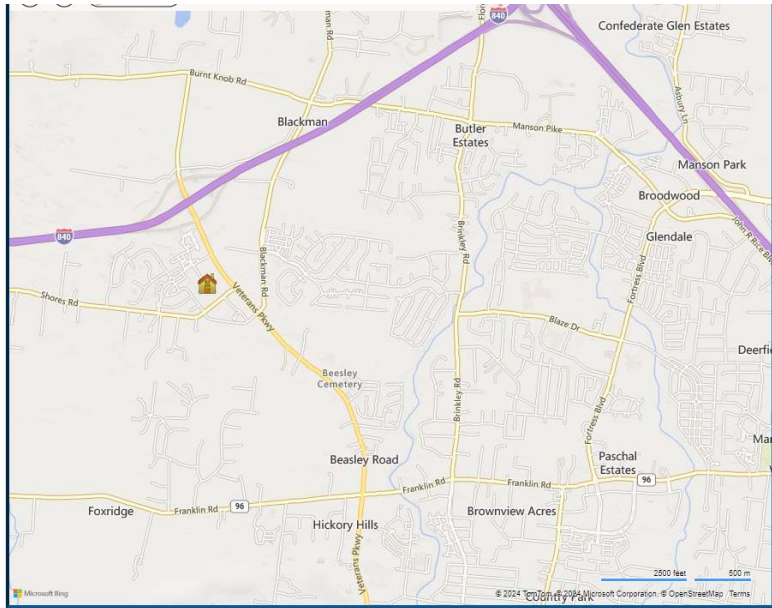
** split from parcel 093-001.06

Verified Sale Price	\$900,000
(1) Adjustment for Property Rights Conveyed	\$ _____ = \$-0-
(2) Adjustment for Financing Terms	\$ _____ = \$-0-
(3) Adjustment for Conditions of Sale	\$ _____ = \$-0-
Cash Equivalent Sale Price of Comparable Sale	\$900,000

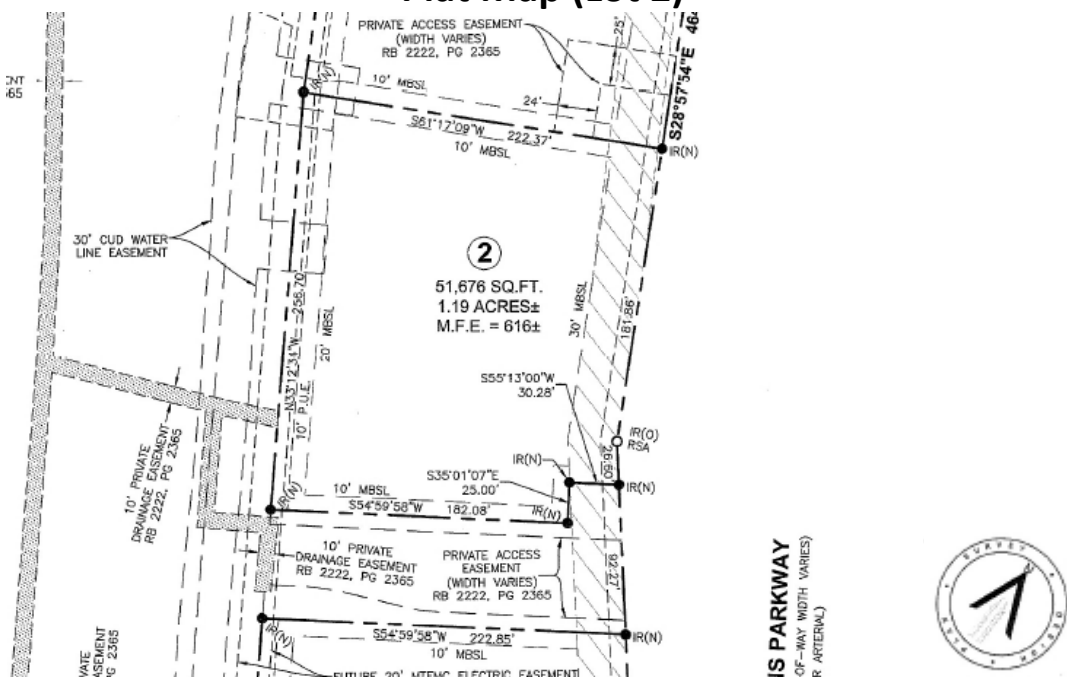
Unit Value of land:	<u>\$17.42</u> S.F.	<u>\$</u> F.F.	<u>\$756,303</u> Acre	<u>\$900,000</u> Lot
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Project Town Creek PH 1 County: Rutherford Sale/Rental No. VC-3
Appraiser: Robbi L. Kitchen, CG 2489
Date: 03/2024
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LOCATION MAP



Plat Map (Lot 2)



Photograph – Front View



COMMERCIAL MARKET DATA

Address or General Location 1629 New Salem Highway, Murfreesboro (Dunkin Donuts)

Tax Map/Parcel No. 102-054.06 Book 2359 Page 2739

Grantor Bluement Property LLC Grantee Tina Antonopoulos

Date of Sale 07/12/2023 Verified Consideration \$1,862,745

How Verified Deed/Affidavit/ Agent: John Glass Property Rights Conveyed Fee simple- Leasehold (15 years remaining on lease)

415-625-2114

Financing: Type Cash Interest Rate: _____ Terms _____

Motivation/Conditions of Sale Purchased for commercial use-speculation/ Arms Length Transfer

Land: Dimensions: 302.34'x229.50'IRR Area: 57,055 SqFt sf/Acres

Zoning: CH- Highway Commercial Highest and Best Use Commercial

Off Site Improvements:	<input checked="" type="checkbox"/> Paved Street	<input type="checkbox"/> Gravel Road	<input checked="" type="checkbox"/> Sidewalk	<input checked="" type="checkbox"/> Curb	<input checked="" type="checkbox"/> Gutters
Utilities Available:	<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Telephone	<input checked="" type="checkbox"/> Gas	<input checked="" type="checkbox"/> Sewers <input type="checkbox"/> Septic

Improvements: Function or Use: Commercial

Construction Frame/ Stucco Condition Average Stories 1 Age: Actual Blt 2020- 3 yrs Effective 3 yrs

Gross Area 1,798 sf Office 1,798 sf Warehouse - Garage - Other -

Rental Area 1,798 sqft SF 1 No Units 1 No Stores 0 Other _____

Price per Unit: \$1,036.01** Per SF \$1,862,745 Per Unit. \$1,862,745 Per Store - Other _____

Land/Bldg Ratio: 31.73:1 Onsite Parking: Asphalt Spaces/SF. Bldg. Area/ Parking Ratio: Marked Parking

Potential Gross Income: \$125,000 Vacancy/Coll. Loss: \$0* Effective Gross Income: \$125,000

Expenses: \$30,000 Net Income: \$95,000 Capitalization Rate: 5.1%

Narrative Description: (State any changes since date of sale. Develop and show any applicable units of comparison.)

Long-term 15 year Net Lease with 15 years remaining at sale*.

Prior Sales: 02/14/2019; \$636,967. No prior sales of this comp in 3 years.

**Includes lot value. Estimated lot value is \$1,084,000. This sale reflects long term lease agreement in place with Dunkin Donuts (lease start date 07/01/2023).

Verified Sale Price				\$1,862,745
(1) Adj. for Property Rights Conveyed	\$	=	\$	
(2) Adj. for Financing Terms	\$	=	\$	
(3) Adj. for Conditions of Sale	\$	=	\$	
Cash Equivalent: Sales Price of Comparable Sale				\$1,862,745

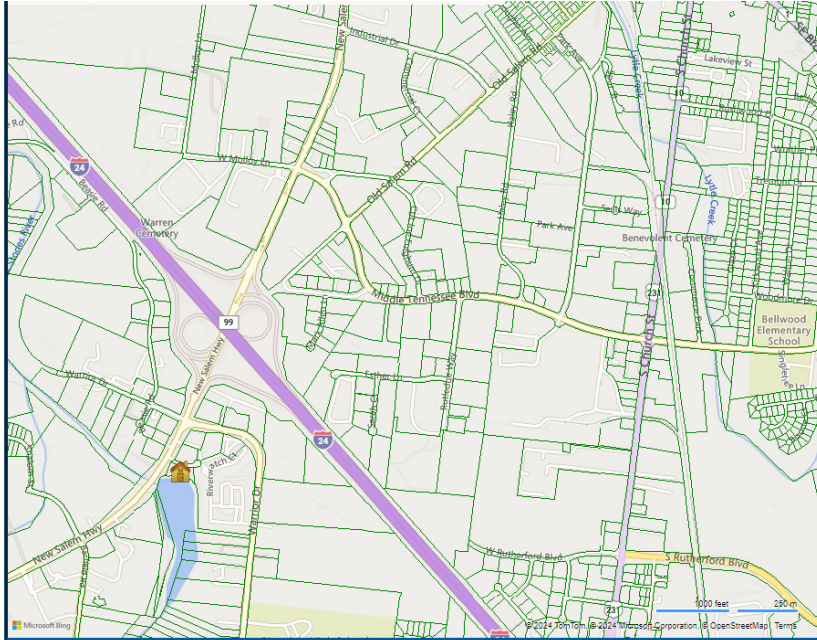
Project Town Creek PH 1 County: RUTHERFORD Sale/Rental No. IC-1

Appraiser: Robbi L. Kitchen, CG-2489

Date: 03/2024

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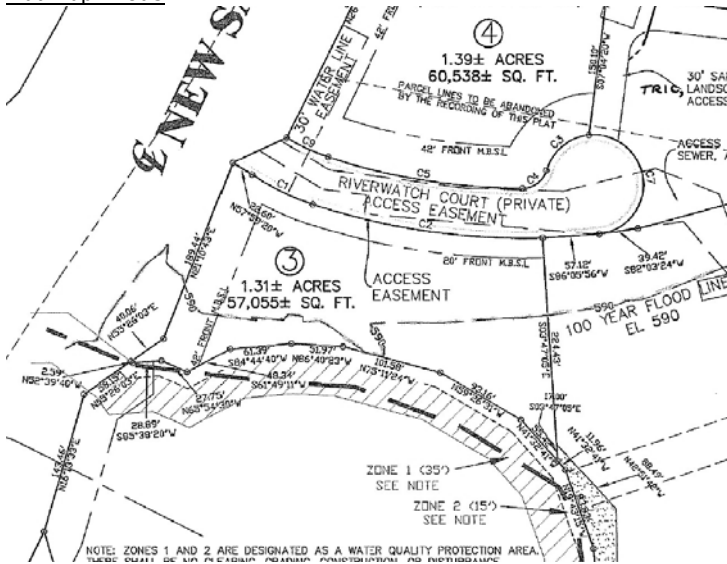
LOCATION MAP



Map For Parcel Address: 1639 New Salem Hwy Murfreesboro, TN 37128-5288, Parcel ID: 102 054 06



Plat Map – Lot 3



PHOTOGRAPH – FRONT VIEW



COMMERCIAL MARKET DATA

Address or General Location 1702 Memorial Blvd, Murfreesboro (Taco Bell)

Tax Map/Parcel No. 080M-B-027.00 Book 2377 Page 1114
 Grantor Taco Bell of America Inc Grantee CVHC12, LLC
 Date of Sale 09/05/2023 Verified Consideration \$2,355,083
 How Verified Deed/Affidavit/ Grantee: F. Ferdowski 615-377-5713 Property Rights Conveyed Fee simple- Leasehold (5 years remaining on lease)
 Financing: Type Bank Interest Rate: N/S Terms \$5,000,000; Sonata Bank; Mo Pmts

Motivation/Conditions of Sale Purchased for commercial use-speculation/ Arms Length Transfer

Land: Dimensions: 221.09x92.93 IRR Area: 30,243 SqFt sf/Acres

Zoning: CH- Highway Commercial Highest and Best Use Commercial

Off Site Improvements: Paved Street Gravel Road Sidewalk Curb Gutters
 Utilities Available: Water Electric Telephone Gas Sewers Septic

Improvements: Function or Use: Commercial

Construction Frame/ Stucco Condition Average Stories 1 Age: Actual Blt 1994- 29 yrs Effective 10 yrs
 Gross Area 2,253 sf Office 2,253 sf Warehouse - Garage - Other -
 Rental Area 2,253 sqft SF 1 No Units 1 No Stores 0 Other
 Price per Unit: \$1,045.31** Per SF \$2,355,083 Per Unit. \$2,355,083 Per Store - Other

Land/Bldg Ratio: 13.42:1 Onsite Parking: Asphalt Spaces/SF. Bldg. Area/ Parking Ratio: Marked Parking

Potential Gross Income: \$146,500 Vacancy/Coll. Loss: \$0* Effective Gross Income: \$146,500

Expenses: \$36,600 Net Income: \$109,900 Capitalization Rate: 4.7%

Narrative Description: (State any changes since date of sale. Develop and show any applicable units of comparison.)

Long-term 5 year Net Lease with 5 years remaining at sale* (Leased back to Taco Bell, lease review after 5 years with Taco Bell retaining first right of refusal at lease renewal or sale of property).

Prior Sales: 10/01/1997; \$362,761. No prior sales of this comp in 3 years.

**Includes lot value. Estimated lot value is \$786,000. This sale reflects long term lease agreement in place with Taco Bell (lease start date 09/05/2023).

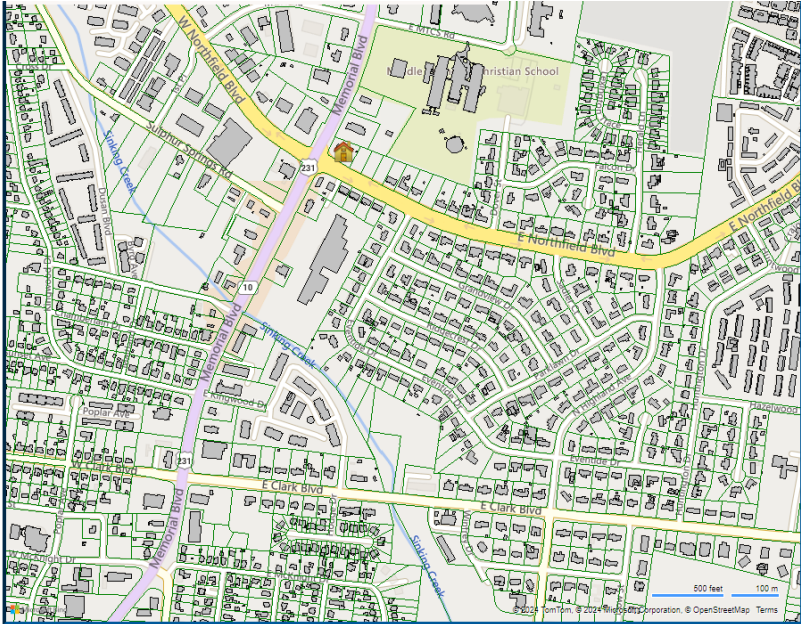
Verified Sale Price				\$2,355,083
(1) Adj. for Property Rights Conveyed	\$	=	\$	
(2) Adj. for Financing Terms	\$	=	\$	
(3) Adj. for Conditions of Sale	\$	=	\$	
Cash Equivalent: Sales Price of Comparable Sale				\$2,355,083

Project Town Creek PH 1 County: RUTHERFORD Sale/Rental No. IC-2

Appraiser: Robbi L. Kitchen, CG-2489

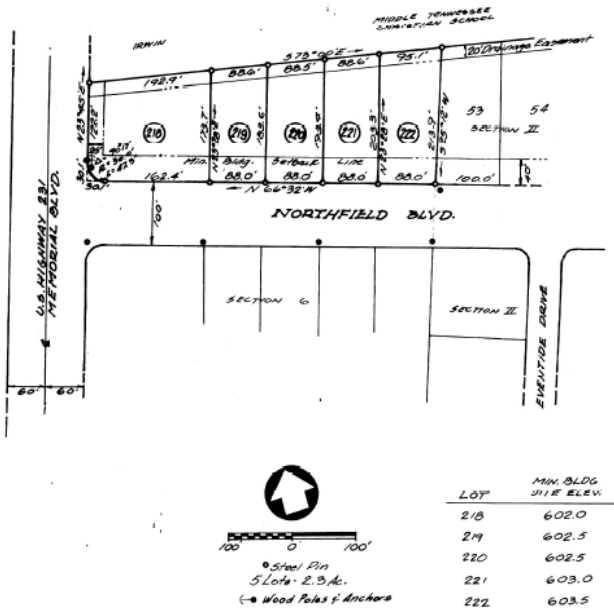
Date: 03/2024
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LOCATION MAP



Map For Parcel Address: 1702 Memorial Blvd Murfreesboro, TN 37129-1519, Parcel ID: 080M B 027.00

Plat Map – Lot 218



PHOTOGRAPH – FRONT VIEW



Project Town Creek PH 1 County: RUTHERFORD Sale/Rental No. IC-2

Appraiser: Robbi L. Kitchen, CG-2489

Date: 03/2024

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COMMERCIAL MARKET DATA

Address or General Location 1745 Old Fort Parkway, Murfreesboro (Red Lobster)

Tax Map/Parcel No. 091-017.00 Book 2399 Page 1746
 Grantor Broadstone RL Portfolio, LLC Grantee Wild Realty 1, LLC
 Date of Sale 12/12/2023 Verified Consideration \$3,755,166
 How Verified Deed/Affidavit/ Agent: J Powell Property Rights Conveyed Fee simple- Leasehold (19 years remaining on lease)
615-727-7438
 Financing: Type Cash Interest Rate: _____ Terms _____

Motivation/Conditions of Sale Purchased for commercial use-speculation/ Arms Length Transfer

Land: Dimensions: 254.3'x419.57'IRR Area: 139,967 sqft (3.21 AC) sf/Acres

Zoning: CH- Highway Commercial Highest and Best Use Commercial

Off Site Improvements: Paved Street Gravel Road Sidewalk Curb Gutters
 Utilities Available: Water Electric Telephone Gas Sewers Septic

Improvements: Function or Use: Commercial
 Construction Frame/Sid/Stucco Condition Average Stories 1 Age: Actual Blt 1987-36 yrs Effective 20 yrs
 Gross Area 10,782 sf Office 10,782 sf Warehouse - Garage - Other -
 Rental Area 10,782 SF 1 No Units 1 No Stores 0 Other _____
 Price per Unit: \$348.28** Per SF \$3,755,166 Per Unit. \$3,755,156 Per Store - Other _____

Land/Bldg Ratio: 12.98:1 Onsite Parking: Asphalt Spaces/SF. Bldg. Area/ Parking Ratio: _____ Marked Parking _____

Potential Gross Income: \$377,400 Vacancy/Coll. Loss: \$0* Effective Gross Income: \$377,400

Expenses: \$94,400 Net Income: \$283,000 Capitalization Rate: 7.5%

Narrative Description: (State any changes since date of sale. Develop and show any applicable units of comparison.)

Long-term 20 year Net Lease with 19 years remaining at sale* (Leased to Red Lobster, 19 years remaining on lease with 2% annual lease rate hikes, four 5 year tenant renewal options, NNN lease).

Prior Sales: 12/30/2015; \$3,062,604. No prior sales of this comp in 3 years.

**Includes lot value. Estimated lot value is \$2,660,000. This sale reflects long term lease agreement in place with Red Lobster (19 years remaining).

Verified Sale Price				\$3,755,156
(1) Adj. for Property Rights Conveyed	\$	=	\$	
(2) Adj. for Financing Terms	\$	=	\$	
(3) Adj. for Conditions of Sale	\$	=	\$	
Cash Equivalent: Sales Price of Comparable Sale				\$3,755,156

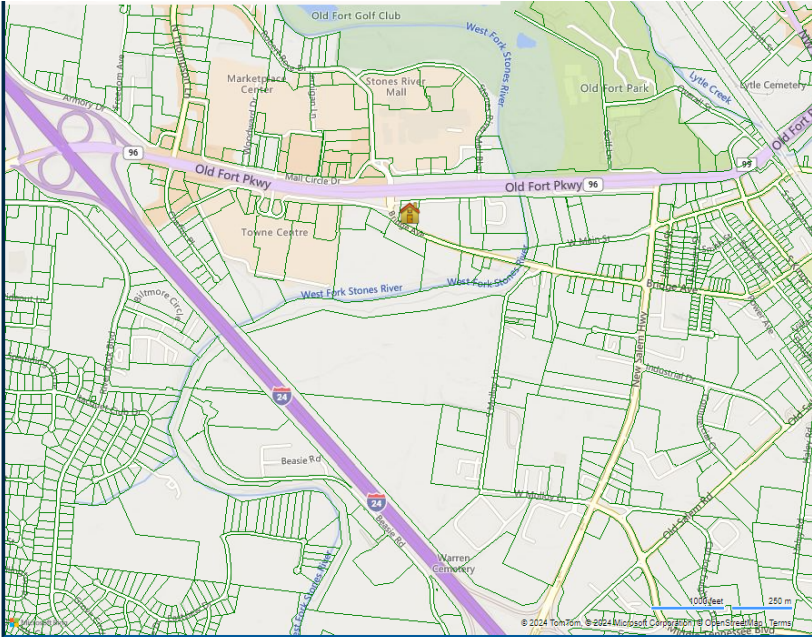
Project Town Creek PH 1 County: RUTHERFORD Sale/Rental No. IC-3

Appraiser: Robbi L. Kitchen, CG-2489

Date: 03/2024

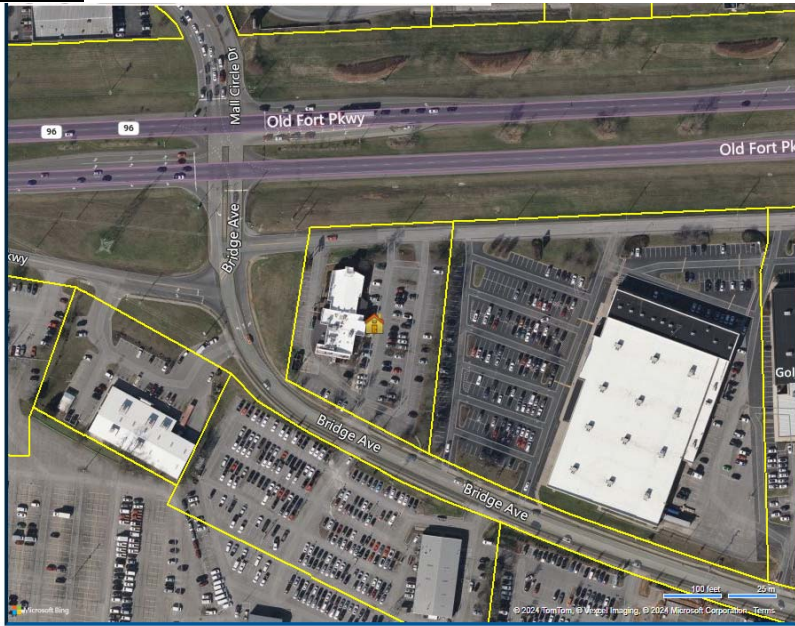
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LOCATION MAP



Map For Parcel Address: 1745 Old Fort Pkwy Murfreesboro, TN 37129-3338, Parcel ID: 091 017.00

TAX MAP



Map For Parcel Address: 1745 Old Fort Pkwy Murfreesboro, TN 37129-3338, Parcel ID: 091 017.00

PHOTOGRAPH – FRONT VIEW



Project Town Creek PH 1 County: RUTHERFORD Sale/Rental No. IC-3
Appraiser: Robbi L. Kitchen, CG-2489
Date: 03/2024
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COMMERCIAL MARKET DATA

Address or General Location 229 N Thompson Lane, Murfreesboro (Slim Chicken's)

Tax Map/Parcel No. 092 030.03 Book 2289 Page 1220
 Grantor Life Changing Results LLC Grantee Isle Apartments LLC
 Date of Sale 09/29/2022 Verified Consideration \$4,292,097
 How Verified Deed/Affidavit/Agent, Berkley Property Rights Conveyed Fee simple- Leasehold (14.5 years remaining on lease)
Capital 615.727.8818
 Financing: Type Other Interest Rate: N/S Terms \$3,500,000 PN; Gelt Financial Investors; Mo Pmts

Motivation/Conditions of Sale Purchased for commercial use-speculation/ Arms Length Transfer

Land: Dimensions: 124x 245 IRR Area: 40,075 sqft sf/Acres

Zoning: CH- Highway Commercial Highest and Best Use Commercial

Off Site Improvements: Paved Street Gravel Road Sidewalk Curb Gutters
 Utilities Available: Water Electric Telephone Gas Sewers Septic

Improvements: Function or Use: Commercial

Construction Frame/Brk/ Siding Condition Average Stories 1 Age: Actual 6 yrs Effective 5 yrs
 Gross Area 2,831 sf Office 2,831 sf Warehouse - Garage - Other -
 Rental Area 2,831 sqft SF 1 No Units 1 No Stores 0 Other

Price per Unit: \$1,516.11** Per SF \$4,292,097 Per Unit. \$4,292,097 Per Store - Other

Land/Bldg Ratio: 14.16:1 Onsite Parking: Asphalt Spaces/SF. Bldg. Area/ Parking Ratio: Asphalt Parking (44 marked spaces)

Potential Gross Income: \$154,300 Vacancy/Coll. Loss: 0* Effective Gross Income: \$154,300

Expenses: \$38,600 Net Income: \$115,700 Capitalization Rate: 2.7%

Narrative Description: (State any changes since date of sale. Develop and show any applicable units of comparison.)

Long-term 20 year Net Lease with 14.5 years remaining at sale.

Prior Sales: 01/10/2017; \$3,193,085. No prior sales of this comp in 12 months.

**Includes lot value. Estimated lot value is \$26.00 per sqft or \$1,042,000. This sale reflects long term lease agreement in place with Slim Chickens Restaurant (Houchens Food Group).

Verified Sale Price				\$4,292,097
(1) Adj. for Property Rights Conveyed	\$	=	\$	
(2) Adj. for Financing Terms	\$	=	\$	
(3) Adj. for Conditions of Sale	\$	=	\$	
Cash Equivalent: Sales Price of Comparable Sale				\$4,292,097

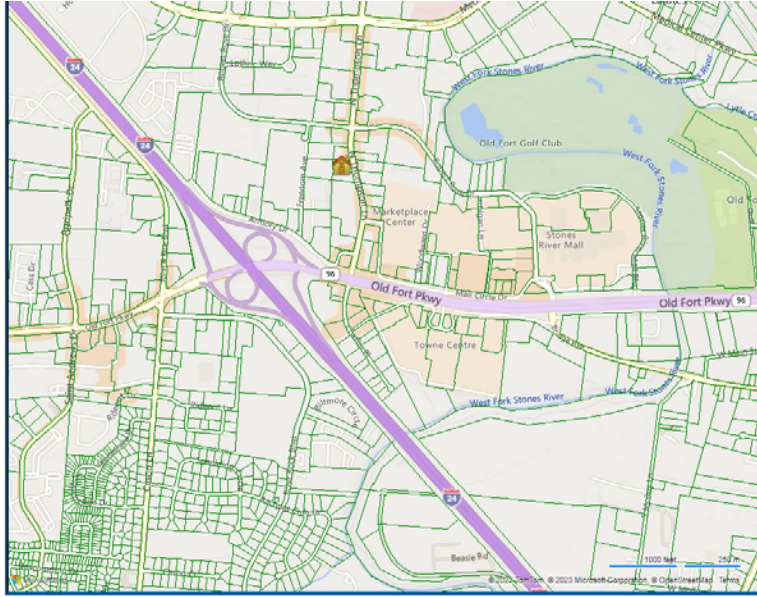
Project Town Creek PH 1 County: RUTHERFORD Sale/Rental No. Rental 4

Appraiser: Robbi L. Kitchen, CG-2489

Date: 03/2024

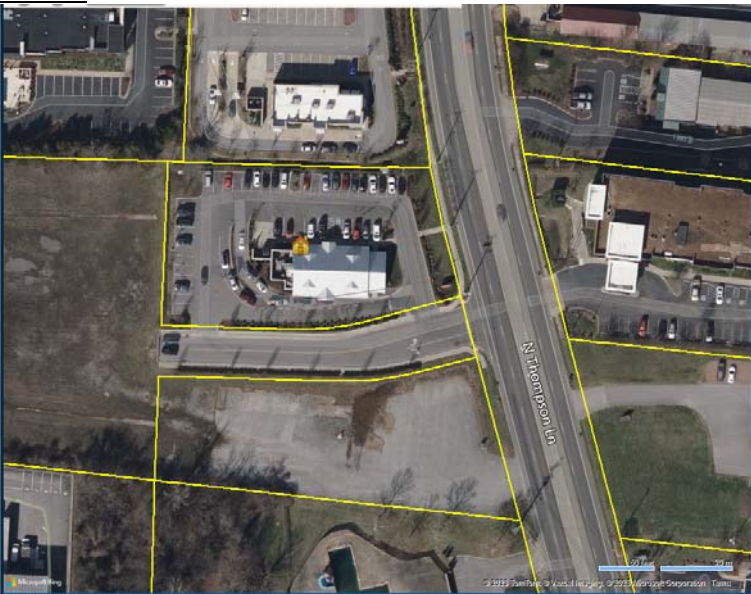
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LOCATION MAP



Map For Parcel Address: 229 N Thompson Ln Murfreesboro, TN 37129-4307, Parcel ID: 092 030.03

TAX MAP



Map For Parcel Address: 229 N Thompson Ln Murfreesboro, TN 37129-4307, Parcel ID: 092 030.03

PHOTOGRAPH – FRONT VIEW



COMMERCIAL MARKET DATA

Address or General Location 1829 Old Fort Parkway, Murfreesboro (Cheddar's Scratch Kitchen)

Tax Map/Parcel No. 092M A 006.01 Book 2357 Page 3569
 Grantor CH Murfreesboro TN Landlord LLC Grantee FCPT Holdings LLC
 Date of Sale 07/06/2023 Verified Consideration \$5,543,552
 How Verified Deed/Affidavit/Agent, Jody McKibben 415-625-2114 Property Rights Conveyed Fee simple- Leasehold (14 years remaining on lease)
 Financing: Type Cash Interest Rate: _____ Terms _____

Motivation/Conditions of Sale Purchased for commercial use-speculation/ Arms Length Transfer

Land: Dimensions: 285'x462'IRR Area: 3.21 AC/ 139,827 SqFt sf/Acres

Zoning: CH- Highway Commercial Highest and Best Use Commercial

Off Site Improvements: Paved Street Gravel Road Sidewalk Curb Gutters
 Utilities Available: Water Electric Telephone Gas Sewers Septic

Improvements: Function or Use: Commercial
 Construction Frame/Brk/Stone Condition Average Stories 1 Age: Actual Blt 2012-11 yrs Effective 10 yrs
 Gross Area 8,700 sf Office 8,700 sf Warehouse - Garage - Other -
 Rental Area 8,700 sqft SF 1 No Units 1 No Stores 0 Other _____
 Price per Unit: \$637.19** Per SF \$5,543,552 Per Unit. \$5,543,552 Per Store - Other _____

Land/Bldg Ratio: 16.07:1 Onsite Parking: Asphalt Spaces/SF. Bldg. Area/ Parking Ratio: _____ Asphalt Parking (173 marked spaces)

Potential Gross Income: \$338,700 Vacancy/Coll. Loss: \$16,900 Effective Gross Income: \$321,800

Expenses: \$64,400 Net Income: \$257,400 Capitalization Rate: 4.6%

Narrative Description: (State any changes since date of sale. Develop and show any applicable units of comparison.)

Long-term 20 year Net Lease with 14 years remaining at sale. List Price was \$5,890,243.

Prior Sales: 12/08/2020; \$4,768,739. No prior sales of this comp in 12 months.

**Includes lot value. Estimated lot value is \$22.00 per sqft or \$3,076,000. This sale reflects long term lease agreement in place with Cheddars Scratch Kitchen (Darden Restaurants Inc).

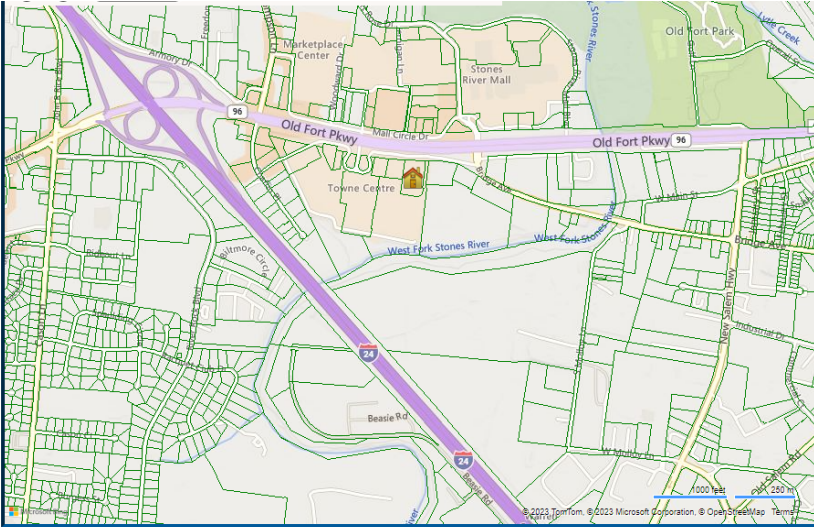
Verified Sale Price				\$5,543,552
(1) Adj. for Property Rights Conveyed	\$	=	\$	
(2) Adj. for Financing Terms	\$	=	\$	
(3) Adj. for Conditions of Sale	\$	=	\$	
Cash Equivalent: Sales Price of Comparable Sale				\$5,543,552

Project Town Creek PH 1 County: RUTHERFORD Sale/Rental No. Rental 5

Appraiser: Robbi L. Kitchen, CG-2489

Date: 03/2024
 Page 60 of 61

LOCATION MAP



Map For Parcel Address: 1829 Old Fort Pkwy Murfreesboro, TN 37129-3364, Parcel ID: 092M A 006.01

TAX MAP



Map For Parcel Address: 1829 Old Fort Pkwy Murfreesboro, TN 37129-3364, Parcel ID: 092M A 006.01

PHOTOGRAPH – FRONT/SIDE VIEW



COUNCIL COMMUNICATION

Meeting Date: 7/25/2024

Item Title: Town Creek Task Order 14
Department: Development Services
Presented by: Gabriel Moore, Project Engineer

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

Task Order 14 provides for 100% Construction Documents and Bidding Phase Services for the Town Creek Phase 1 and 2 daylighting project.

Staff Recommendation

Approve Task Order 14 with Griggs and Maloney for the Town Creek Phase 1 and 2 daylighting project.

Background Information

Griggs and Maloney has provided Task Order 14 proposal for Town Creek under the current ARPA Master Services Agreement (MSA). Task Order 14 provides for 100% Construction Documents and Bidding Phase Services within the Phase 1 and 2 corridor and will be funded from ARPA funds designated for Town Creek Daylighting for \$367,500.

Council Priorities Served

Responsible budgeting

Utilization of federal stimulus funds for the stormwater elements of this project offset City funds to be applied toward local expenditures.

Improve economic development

Town Creek Project and the related public improvements enhance the entrance to downtown area and encourage redevelopment in the Historic Bottoms.

Fiscal Impact

The expense for Task Order 14, \$367,500, will be funded by ARPA funds.

Attachments

1. Task Order 10 – 100% Construction Documents Development Phase and Bidding Phase Services

**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

**TASK ORDER NUMBER 14 –
100% CONSTRUCTION DOCUMENTS DEVELOPMENT PHASE
AND BIDDING PHASE SERVICES**

For

TOWN CREEK PHASE I AND PHASE II



Prepared by

GRIGGS & MALONEY
I N C O R P O R A T E D

Engineering & Environmental Consulting

745 South Church St., Suite 205

P.O. Box 2968 (37133-2968)

Murfreesboro, Tennessee 37130

(615) 895-8221 • (615) 895-0632 FAX

TASK ORDER NO. 14

This is Task Order No. **14**,
consisting of 5 pages.

In accordance with Paragraph 1.01, Main Agreement, of the Agreement Between Owner and Engineer for Professional Services—Task Order Edition dated **March 22, 2023**, Owner and Engineer agree as follows:

1. TASK ORDER DATA

a.	Effective Date of Task Order:	
b.	Owner:	City of Murfreesboro, Tennessee
c.	Engineer:	Griggs & Maloney, Inc.
d.	Specific Project (title)	Town Creek Phase I and II
e.	Specific Project (description):	Task Order #14 progresses the creek daylighting construction documents, hardscape and greenway connections from 50% to 100% design completion. The stream channel, civil site and landscape architectural design will include creek alignment and cross sections, site layout, structural elements including pedestrian bridges, bridge abutments and retaining walls, utility services, grading details, and planting and irrigation design. Bidding Phase Services are also included.
f.	Related Task Orders Supplemented by this Task Order: Superseded by this Task Order:	01 – Building Characterization Task 02 – Site Survey 03 – Geotechnical Exploration & Environmental Drilling 04 – Master Planning & Due Diligence 06 - Hydraulic Modeling and Flood Plain Study 07- Tract 8 (223 NW Broad Street) ALTA Survey & Geotechnical Exploration 08 – Tract 8 Building Characterization 09 – Permitting 10 – 50% Construction DDP 11- Asbestos Abatement 121/111 NW Broad St 12- Reality Capture Drone Services 13-204,301,323,& 333 NW Broad ESAs

Task Order.

2. BASELINE INFORMATION

Baseline Information. Owner has furnished the following Specific Project information to Engineer as of the Effective Date of the Task Order.

2022 Town Creek Opportunities and Constraints Study – Ragan-Smith

Engineer's scope of services has been developed based on this information. As the Specific Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

Specific Project Title:	Town Creek Phase I and II 100% CONSTRUCTION DOCUMENTS DEVELOPMENT PHASE
Type and Size of Site:	Linear, Murfree Spring Outlet to Front Street Culvert Outlet
Description of Improvements:	Task Order #14 progresses the creek daylighting construction documents, hardscape and greenway connections from 50% to 100% design completion. The stream channel, civil site and landscape architectural design will include creek alignment and cross sections, site layout, structural elements including pedestrian bridges, bridge abutments and retaining walls, utility services, grading details, and planting and irrigation design. Bidding Phase Services are also included in this Task.
Expected Construction Start:	January 2025
Prior Studies, Reports, Plans:	Town Creek Masterplan, 2022 Town Creek Opportunities & Constraints Study
Site Location(s):	Murfree Spring Outlet to Front Street Culvert Outlet
Current Specific Project Budget:	\$25,000,000.00
Funding Sources:	City General Funds, ARPA Funding, Stormwater Funds
Known Design Standards:	City of Murfreesboro Standards, , ADA/PRO-WAG, OSHA, TDEC-APC, 40 CFR Part 82 F
Known Specific Project Limitations:	Right of Entry Timing to gain additional topographic and geotechnical information on Tract 8
Specific Project Assumptions:	Presence of contaminated soils will not require a design that isolates the phreatic zone, i.e. groundwater/surface water interface boundary

Task Order.

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Other Pertinent Information:

3. SERVICES OF ENGINEER (“SCOPE”)

- A. The specific Basic Services to be provided or furnished by Engineer under this Task Order are: Exhibit A to Task Order, “Engineer’s Services for Task Order,” as attached to this specific Task Order.
- B. The scope of this task includes Design Services described in Exhibit A for purposes of Engineer’s compensation under this Task Order.
- C. Additional Services: Services not expressly set forth as Basic Services in Paragraph 3.A above, and necessary services listed as not requiring Owner’s written authorization, or requiring additional effort in an immediate, expeditious, or accelerated manner as a result of unanticipated construction events or Specific Project conditions, are Additional Services, and will be compensated by the method indicated for Additional Services in this Task Order. All other Additional Services require mutual agreement and may be authorized by amending the Task Order as set forth in Paragraph 8.05.B.2 of the Main Agreement, with compensation for such other Additional Services as set forth in the amending instrument.

4. DELIVERABLES SCHEDULE

See Exhibits to Task Order #14 for deliverables schedule.

5. ADDITIONS TO OWNER’S RESPONSIBILITIES

- A. Owner shall have those responsibilities set forth in Article 2 of the Main Agreement, and the following supplemental responsibilities that are specific to this Task Order:

6. TASK ORDER SCHEDULE

It is anticipated that the design, approval, funding, and construction phase of this project will take thirty-six (36) months. The task order schedule is within Exhibit B, attached.

7. ENGINEER’S COMPENSATION

- A. The terms of payment are set forth in Article 4 of the Main Agreement.
- B. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
a) 100% Construction Documents and Masterplan revisions.	\$347,500	Lump Sum
b) Pre-Bid & Bidding Phase Services	\$20,000	Lump Sum

Task Order.

Description of Service	Amount	Basis of Compensation
TOTAL COMPENSATION	\$367,500	Lump Sum

- C. Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Subconsultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

8. ENGINEER'S PRIMARY SUBCONSULTANTS FOR TASK ORDER, AS OF THE EFFECTIVE DATE OF THE TASK ORDER:

Name	Address
Ragan Smith	315 Woodland St. Nashville, TN 37206
OLG	301 Industrial Blvd. Tullahoma, TN 37388
EMC Structural	601 Grassmere Park, Suite 1B Nashville, TN 37211

* Griggs and Maloney may substitute listed subconsultants at its discretion.

9. EXHIBITS AND ATTACHMENTS:

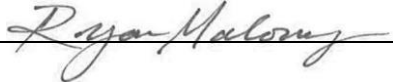
A. Exhibits to Task Order

Execution of this Task Order by Owner and Engineer makes it subject to the terms and conditions of the Main Agreement and its exhibits and appendices, which Main Agreement, exhibits, and appendices are incorporated by this reference.

OWNER:

ENGINEER:

By: _____

By: 

Print Name: _____

Print Name: Ryan W. Maloney, P.E.

Title: _____

Title: Principal

Engineer's License or Firm's
Certificate No. (if required): 110401
State of: Tennessee

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: Ryan W. Maloney, P.E.

Title: _____

Title: Principal

Address: _____

Address: 745 S. Church St., Ste. 205
Murfreesboro, TN 37130

E-Mail Address: _____

E-Mail Address: rmaloney@griggsmaloney.com

Phone: _____

Phone: (615) 895-8221

Date: _____

Date: July 16, 2024

Task Order.

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**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

**EXHIBITS TO TASK ORDER NUMBER 14 –
100% CONSTRUCTION DOCUMENTS DEVELOPMENT PHASE
AND BIDDING PHASE SERVICES**

For

TOWN CREEK PHASE I AND PHASE II



Prepared by

GRIGGS & MALONEY
I N C O R P O R A T E D

Engineering & Environmental Consulting

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

EXHIBITS TO TASK ORDER

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EXHIBIT A—ENGINEER’S SERVICES UNDER TASK ORDER

EXHIBIT B—TASK ORDER DELIVERABLES SCHEDULE

EXHIBIT A—ENGINEER’S SERVICES UNDER TASK ORDER

Exhibit A Table of Contents

Article 1— BASIC SERVICES1
 1.01 Management of Engineering Services1
 1.02 100% Construction Document Development (CDD)1
 1.03 Pre-Bid & Bidding Phase Services3
Article 2— ADDITIONAL SERVICES4
 2.01 Additional Services Not Requiring Owner’s Written Authorization4

Article 1 of the Main Agreement, Services of Engineer, is supplemented to include the following provisions:

1. Background Data

- a. Effective Date of Task Order: _____
- b. Owner: City of Murfreesboro
- c. Engineer: Griggs & Maloney, Inc.
- d. Specific Project (title): Town Creek Phase I and Phase II
- e. Specific Project (description): Task Order #14 progresses the creek daylighting construction documents, hardscape and greenway connections from 50% to 100% design completion. The stream channel, civil site and landscape architectural design will include creek alignment and cross sections, site layout, structural elements including pedestrian bridges, bridge abutments and retaining walls, utility services, grading details, and planting and irrigation design. Bidding Phase Services are also included.

Engineer shall provide Basic and Additional Services as set forth below.

ARTICLE 1—BASIC SERVICES

- 1.01 Management of Engineering Services
 - A. See Main Agreement, Paragraph 1.03.
- 1.02 100% Construction Document Development (CDD)
 - The Scope of Services for the CDD phase to 100%:
 - A. Utility Coordination Services

1. Abandon or integrate existing water, sewer, gas, and stormwater utilities in the project area and design or modify utility corridors to serve the current pedestrian path and future activated spaces. G&M will continue coordination with utility providers.
 2. Stormwater and Groundwater Connections. Evaluate discernable existing hydraulic connections to the Town Creek culvert system and design for the quality and quantity of the stormwater or groundwater flow into the daylighted channel.
- B. Stream Channel Design: The channel design will be governed by the flood modeling results generated from Task 6. With the 30% design hydrology and hydraulic modeling confirmed, the design team is applying scour protection, analyzing geomorphological considerations to create design solutions that mimic natural processes and the reference reach (established as the portion of Town Creek from the Front Street culvert outlet to Lytle Creek) and to promote a stable and self-sustaining creek channel.
- C. Site Design & Landscape Architecture Design
1. Site Layout – Provide layout and design of the stream channel and general site improvements including the greenway, open space considering future plaza areas, trails and public open space surrounding the new location of Town Creek. Coordinate geometry and layout sufficient for construction control and for use by the contractor in the field for coordination of site construction.
 2. Improvements Detailing – The team will provide civil site and landscape architecture design for the preparation of construction plans, details, general notes, and specifications (in plan set) for the construction of the site improvements for this development, including structural elements, hardscape materials, color and finish, seat walls, site lighting pole locations, rock placement and trail materials.
 3. Planting Design – The design team will provide planting design services which include the design and preparation of planting plans that will include placement, species, size, and specifications required for the installation of plant materials. Specifications will be provided via notes and details on the landscape plans (written specifications will not be provided). Also considered will be the re-stabilization of disturbed areas. We will provide riparian stream planting for channel and stream bank planting areas in collaboration with the Owner to achieve the desired ecological and visual objectives for the stream edge and stream bank areas.
 4. Grading Details – We will collaborate with the Owner to provide detailed elevations and finished spot grades for the multi-use path, future plaza, sidewalk, and trail access areas to achieve positive drainage and desired slopes. The Owner will provide the information including but not limited to base grading and contours for other consultant's work (Pedestrian

Bridge) to be integrated. The multi-use trail, sidewalks and parking area, will be designed in accordance with current ADA and PROWAG standards.

5. Irrigation Plan –The design team will coordinate with a 3rd party consultant to provide irrigation design, layout, and preparation of construction plans for irrigation systems to support the proposed landscaping. Design will include placement of all sprinklers, layout and sizing of water lines, controllers, water meters and backflow preventers including specific detailing. The plan will utilize the latest design techniques and applicable products to provide the most appropriate system for this specific project. A sustainable approach will be utilized to reflect a drip irrigation/low flow design for the majority of the site. Trees will be irrigated with “Root Zone Watering” devices within the tree planting area when applicable. The irrigation system will be controlled via a two-wire controller with either soil moisture management or climate sensor management.
6. Electrical Site Design & Photometrics- The design team will provide electrical site design including lighting and power along the multi-use trail, pedestrian bridges, east plaza culvert, and other locations identified by the Owner and Design team. G&M will coordinate with the City staff and their low voltage/security integrator as required.
7. Structural Design – The design team will provide structural design services or require the structural drawings be signed and sealed by the Contractor’s designated structural engineer for the pedestrian bridge, bridge abutments, culverts, and retaining walls.
8. Front Street Design Coordination & Culvert Replacement – G&M will coordinate the culvert replacement and vertical alignment drainage needs with the planned improvements along Front Street to be made by the Keystone Project Development Agreement.

1.03 Pre-Bid and Bidding Phase Services

Griggs & Maloney will assist the design and ownership team with drafting a bid-letting advertisement, responding to RFI’s and questions throughout the bid process, and issuing statements of clarification or bid addenda as the need arises. Griggs & Maloney will attend one pre-bid meeting and one bid opening meeting and will assist in evaluating the compliance of the bids with the bidding documents. Griggs & Maloney will assist Owner with the project bid review and the selection of a proposed contractor for the project based on accepted project bids. Fees assume one bid cycle. If additional bid cycles are needed, additional fees will be requested.

Pre-bidding activities are anticipated to include a project notification to potential bidders prior to bid advertisement, coordination of ARPA requirements into the contractor,

ARTICLE 2—ADDITIONAL SERVICES

Additional Services Not Requiring Owner’s Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, the Engineer need not request or obtain specific advance written authorization from the Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner. These services are not included as part of Basic Services and will be paid for by the Owner as indicated in Paragraph 7 of the governing Task Order.
1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
 2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
 - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or equal” items;
 - b. services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Specific Project;
 - c. evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract; and
 - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Implement coordination of Engineer’s services with other parts of the Specific Project that are not planned or designed by Engineer or its Subconsultants, unless Owner furnished to Engineer substantive information about such other parts of the Specific

Project prior to the parties' entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer's services will be part of Basic Services.

6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Specific Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
11. To the extent the Specific Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.

EXHIBIT B—TASK ORDER DELIVERABLES SCHEDULE

Paragraphs 2.04.E, 3.02.A, and Exhibit A of the Main Agreement are supplemented by the following paragraph and table.

Under the governing Task Order the Engineer shall furnish Documents to Owner as required in Column 2 of the following table (and as further described in Exhibit A), according to the schedule in Column 4. Owner shall comment or take other identified actions with respect to the Documents as indicated in Column 2 (and as further described in Exhibit A), according to the schedule in Column 4.

TASK 14 – 100% CONSTRUCTION DOCUMENTS DEVELOPMENT and BIDDING PHASE

Party	Action	Schedule
Owner	Authorize Engineer to Proceed (ATP)	0 days
Engineer	Civil and LA Design	Continued Design Progression
Engineer	60 % Design Review	August 15, 2024
Owner	Supply 60% Review Comments	Within 5 days of meeting
Engineer	Respond to comments/90% Design Review.	September 12, 2024
Owner	Supply 90% Review Comments	Within 5 days of meeting
Engineer	Provide 100% Construction Documents	September 30, 2024
Owner	Release for Bid	October 3, 2024
Engineer/Owner	Bidding	5 weeks

CITY COUNCIL COMMUNICATION

Meeting Date: 07/25/2024

Item Title: Taxiway A and Apron Pavement Rehabilitation Change Orders

Department: Airport

Presented by: Chad L. Gehrke, Airport Director

Requested Council Action:

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

Summary

Barge Design Services Change Order 2 and Cleary Construction Change Orders 2 and 3 for the Taxiway A and Apron Pavement Rehabilitation project.

Staff Recommendation

Approve Barge Design Solutions Change Order 2 and Cleary Construction Change Orders 2 and 3 for a total cost of \$94,199.97 to complete the Taxiway A and Apron Pavement Rehabilitation project.

Background Information

The pavement on Runway 18-36, Taxiway A, and the majority of the apron space at the Airport required maintenance and rehabilitation. The City contracted with Barge Design Solutions and Cleary Construction to complete this rehabilitation and maintenance project. The three Change Orders address the cost associated with repairing a culvert that was damaged during construction and later collapsed.

Council Priorities Served

Improve economic development

Maintaining City Facilities in a safe and effective manner while ensuring Economic Growth and Development are priorities and protect the City's investments.

Fiscal Impact

95% of this Change Order is covered with the Grant Amendment approved on 11-30-2023 and the local portion is funded by the 2022 CIP.

Attachments

Barge Change Order 2

Cleary Construction Change Orders 2 and 3

BARGE DESIGN SOLUTIONS, INC. ENGINEERS • ARCHITECTS • PLANNERS

**Work Authorization 23-01 (Revision 2)
June 15, 2024**

This amendment to Work Authorization No. 23-01, dated June 7, 2023, between the City of Murfreesboro (**Client**) and Barge Design Solutions, Inc. (**Barge**) is for a revision in services described as follows:

Project: Additional Design, CA, and RPR

Project Scope:

- A. An existing pipe beneath Taxiway Alpha has failed resulting in a collapse of the subgrade of the taxiway and a hole on the paved surface. The taxiway has been closed until this pipe can be replaced and the taxiway repaired. Barge will perform design services to provide drawings and specifications necessary to replace the collapsed pipe, restore the subgrade and base, and repave the affected area of Taxiway Alpha. This work will be completed as part of the existing construction contract which remains open under TAD Project Number 75-555-0173-23.
- B. Barge will provide Construction Administration and Resident Project Representative Services for installation of the new pipe and repair of the pavement. The fee presented represents 10 calendar days of work or a total of 100 Resident Project Representative Hours. Additional RPR services will require a contract amendment. Construction Administration and RPR services shall be performed in accordance with the requirements set forth in the original agreement.

II. COMPENSATION: The adjusted compensation to be paid to **Barge** shall be as shown below in accordance with the original contract:

Phase	Description	Current Contract Amount	Revision 2 Adjustment	Revision 2 Contract Amount
9100	Pipe Investigation/Coordination	0.00	8,850.00	8,850.00
7100	Construction Administration	75,331.00	9,491.00	84,822.00
3900	Site Surveying Services	6,500.00	0.00	6,500.00
7130	Resident Project Representative	80,633.00	13,833.00	94,466.00
7150	Construction Testing	10,000.00	0.00	10,000.00
9000	AGIS Survey	23,667.00	0.00	23,667.00
	Contract Amount	\$ 196,131.00	\$ 32,174.00	\$ 228,305.00

III. TERMS AND CONDITIONS: Services performed under this addendum are subject to the same terms and conditions described in the Owner-Engineer Agreement dated January 1, 2021.

City of Murfreesboro

Barge Design Solutions, Inc.

By: _____

By: Michael J. Cole

Title: _____

Title: Vice-President

Date: _____

Date: July 1, 2024

City Attorney

Name: _____

Date: _____

CHANGE ORDER #2 (Contract Change 2)

TAD PROJECT NO.: 75-555-0173-23 DATE PREPARED: 20-Jun-24
 OWNER: The City of Murfreesboro, Tennessee CONTRACTOR: Cleary Construction, Inc.
 ADDRESS: 111 West Vine Street 2006 Edmonton Road
Murfreesboro, TN 37130 Tompkinsville, KY 42167
 NAME AND LOCATION OF AIRPORT: Murfreesboro Municipal Airport
 DESCRIPTION OF WORK INCLUDED IN CONTRACT: Airfield Pavement Rehabilitation and Threshold Relocation

CHANGE ORDER ITEMS:	
A. Additional Work to to Repair Storm Pipe	\$60,627.37
REASON FOR CHANGE ORDER:	
A. This change order is for the purpose of:	
A. Replacing a failed storm pipe under Taxiway Alpha	
B. Lowering the storm pipe elevation to achieve more cover	
C. patching the asphalt and applying a seal coat and striping	
ORIGINAL CONTRACT AMOUNT:	\$ 1,827,219.50
AMOUNT THIS CHANGE ORDER	\$ 60,627.37
REVISED CONTRACT AMOUNT THRU THIS CHANGE ORDER	\$ 1,887,846.87

SUBJECT TO THE CONDITIONS SET FORTH BELOW, AN EQUITABLE ADJUSTMENT IS ESTABLISHED AS FOLLOWS:

<u>CONTRACT PRICE</u>	<u>CONTRACT TIME</u>
_____ NOT CHANGED	_____ NOT CHANGED
<input checked="" type="checkbox"/> INCREASED BY \$ <u>60,627.37</u>	<input checked="" type="checkbox"/> INCREASED BY <u>10</u> DAYS
_____ DECREASED BY _____	_____ DECREASED BY _____ DAYS

THE FOREGOING IS IN ACCORDANCE WITH YOUR ORIGINAL CONTRACT UNIT PRICES IN YOUR CONTRACT SIGNED May 10, 2023 AND LISTED BELOW:

A. THE AFOREMENTIONED CHANGE AND WORK AFFECTED THEREBY ARE SUBJECT TO ALL CONTRACTS STIPULATIONS AND COVENANTS;

B. THE RIGHTS OF THE OWNER ARE NOT PREJUDICED; AND

C. ALL THE CLAIMS AGAINST THE OWNER WHICH ARE INCIDENTAL TO OR AS A CONSEQUENCE OF THE AFOREMENTIONED CHANGE ARE SATISFIED.

CONTRACTOR:	OWNER:
<u><i>Call Cleary</i></u> <u>06/28/2024</u>	_____
Cleary Construction, Inc. Date	City of Murfreesboro, TN Date
APPROVED BY:	PREPARED BY:
_____	<u><i>Jeffrey A. Redmill</i></u> <u>6/20/2024</u>
Joe Clement, TDOT Aeronautics Division Date	Jeffrey A. Redmill, Barge Project Manager Date

CHANGE ORDER #2 LINE ITEM QUANTITIES

Site: Murfreesboro Municipal Airport
 Project: Airfield Pavement Rehabilitation and Threshold Relocation
 TAD Project No.: 75-555-0173-23
 Contractor: Cleary Construction, Inc.

Item No.	Items Description	Unit	Plans Quantities	Adjusted Quantities	Quantities Difference	Unit Price	Price Difference
1	AIRFIELD BARRICADES	LS	0.00	0.00	0.00	\$12,000.00	\$ -
2	TEMPORARY RUNWAY CLOSURE	LS	0.00	0.00	0.00	\$8,800.00	\$ -
3	CONTRACTOR QUALITY CONTROL PROGRAM	LS	1.00	1.00	0.00	\$250,000.00	\$ -
4	EROSION CONTROL - CONSTRUCTION ENTRANCE (INSTALLATION AND REMOVAL)	EA	0.60	0.60	0.00	\$50,000.00	\$ -
5	MOBILIZATION	LS	1.00	1.00	0.00	\$190,000.00	\$ -
6	COLD MILLING	SY	14,069.33	14,069.33	0.00	\$7.65	\$ -
7	UNCLASSIFIED EXCAVATION	CY	100.00	100.00	0.00	\$200.00	\$ -
8	BITUMINOUS ASPHALT SURFACE COURSE - RUNWAY (GRADATION 2)	TONS	2,000.00	2,000.00	0.00	\$285.00	\$ -
9	EMULSIFIED ASPHALT TACK COAT	GAL	1,380.00	1,380.00	0.00	\$7.10	\$ -
10	CRACK REPAIR	LF	24,100.00	24,100.00	0.00	\$0.70	\$ -
11	ASPHALT SURFACE TREATMENT	SY	52,800.00	52,800.00	0.00	\$3.70	\$ -
12	EMULSIFIED ASPHALT SEAL COAT	SY	113,600.00	113,600.00	0.00	\$1.65	\$ -
13	PAVEMENT MARKING REMOVAL	SF	68,821.00	68,821.00	0.00	\$0.60	\$ -
14	TEMPORARY PAVEMENT MARKING, WHITE	SF	35,160.00	35,160.00	0.00	\$0.50	\$ -
15	TEMPORARY PAVEMENT MARKING, YELLOW	SF	5,700.00	5,700.00	0.00	\$1.00	\$ -
16	PERMANENT PAVEMENT MARKING, REFLECTIVE WHITE	SF	35,160.00	35,160.00	0.00	\$0.50	\$ -
17	PERMANENT PAVEMENT MARKING, REFLECTIVE YELLOW	SF	8,000.00	8,000.00	0.00	\$1.00	\$ -
18	PERMANENT PAVEMENT MARKING, BLACK	SF	2,000.00	2,000.00	0.00	\$1.20	\$ -
19	SODDING	SY	1,000.00	1,000.00	0.00	\$11.50	\$ -
20	TOPSOIL (OBTAINED ON SITE)	CY	250.00	250.00	0.00	\$24.00	\$ -
21	NO. 8 AWG, 5KV, L-824. TYPE C, INSTALLED IN TRENCH, DUCT BANK OR CONDUIT	LF	600.00	600.00	0.00	\$1.85	\$ -
22	NO. 4 AWG, 600 V, THHN/THWN-2 CABLE, INSTALLED IN TRENCH, DUCT BANK OR CONDUIT	LF	2,000.00	2,000.00	0.00	\$4.00	\$ -
23	NO. 6 AWG, SOLID, BARE COPPER COUNTERPOISE WIRE, INSTALLED ABOVE THE DUCT BANK OR CONDUIT, INCLUDING CONNECTIONS/TERMINATIONS AND GROUND RODS	LF	100.00	100.00	0.00	\$2.25	\$ -
24	NO. 6 AWG, INSULATED, STRANDED EQUIPMENT GROUND, INSTALLED IN DUCT BANK OR CONDUIT	LF	1,000.00	1,000.00	0.00	\$2.00	\$ -
25	NON-ENCASED, ELECTRICAL CONDUIT, 1-WAY, 2-INCH PVC	LF	170.00	170.00	0.00	\$15.00	\$ -
26	NON-ENCASED ELECTRICAL CONDUIT, DIRECTIONAL BORE, 1-WAY, 2-INCH HDPE	LF	130.00	130.00	0.00	\$48.00	\$ -
27	NON-ENCASED ELECTRICAL CONDUIT, DIRECTIONAL BORE, 1-WAY, 1-INCH HDPE	LF	130.00	130.00	0.00	\$36.00	\$ -
28	RUNWAY THRESHOLD LIGHT, L-861E(L), BASE MOUNTED, MEDIUM INTENSITY (LED), COMPLETE IN PLACE	EA	8.00	8.00	0.00	\$1,900.00	\$ -
29	RUNWAY THRESHOLD LIGHT, L-861E(L), BASE MOUNTED, MEDIUM INTENSITY (LED), NEW FIXTURE INSTALLED ON EXISTING STAKE OR BASE CAN	EA	8.00	8.00	0.00	\$1,700.00	\$ -
30	RELOCATE EXISTING PRECISION APPROACH PATH INDICATOR, L-881(L)	EA	1.00	1.00	0.00	\$12,000.00	\$ -
31	RELOCATE EXISTING RUNWAY END IDENTIFICATION LIGHTS , L-849(L), INSTALLED ON NEW CONCRETE PAD	EA	1.00	1.00	0.00	\$8,000.00	\$ -
32	REPLACE EXISTING RUNWAY EDGE LIGHT LENS WITH NEW LENDS AS NOTED ON THE PLANS	EA	0.00	0.00	0.00	\$1,150.00	\$ -
33	EROSION CONTROL SILT FENCE (INSTALLATION AND REMOVAL)	LF	510.00	510.00	0.00	\$12.00	\$ -
34	HYDROSEEDING	AC	0.25	0.25	0.00	\$8,400.00	\$ -
35	ADDITIONAL MOBILIZATION	LS	1.00	1.00	0.00	\$33,205.00	\$ -
36	ENGINEERING AND LAYOUT	LS	1.00	1.00	0.00	\$7,165.00	\$ -
37	CEMENT TREATED SOIL BASE COURSE	SY	4,482.00	4,482.00	0.00	\$30.85	\$ -
38	EMULSIFIED ASPHALT PRIME COAT	SY	4,482.00	4,482.00	0.00	\$7.10	\$ -
39	BITUMINOUS ASPHALT BINDER COURSE - RUNWAY (GRADATION 1, 2.0" COMPACTED THICKNESS)	TON	493.00	493.00	0.00	\$244.00	\$ -
40	FINE GRADING/TOPSOILING	CY	88.00	88.00	0.00	\$54.00	\$ -
41	PIPE REPAIR MOBILIZATION/LAYOUT	LS	0.00	1.00	1.00	\$7,500.00	\$ 7,500.00
42	PIPE DEMOLITION	LF	0.00	115.00	115.00	\$27.40	\$ 3,151.00
43	STORM DRAIN INSTALLATION (18" RCP - CLASS IV)	LF	0.00	115.00	115.00	\$120.89	\$ 13,902.35
44	HEADWALLS	EA	0.00	2.00	2.00	\$850.00	\$ 1,700.00
45	ASPHALT PATCHING	LS	0.00	1.00	1.00	\$26,233.02	\$ 26,233.02
46	SEAL COAT AND STRIPING	LS	0.00	1.00	1.00	\$4,641.00	\$ 4,641.00
47	STABILIZATION	LS	0.00	1.00	1.00	\$3,500.00	\$ 3,500.00

CHANGE ORDER #2 PROJECT LINE ITEM TOTAL

\$60,627.37



5.30.24

C.O. # 23049-002

Jeff Redmill
Senior Project Manager Aviation Services
Barge Design
200 Clinton Avenue, Suite 800
Huntsville, Alabama

RE: Additional Storm Drain Repair

Mr. Redmill

Cleary Construction is providing this pricing for the additional remedial work, that has been requested, for the RCP culvert replacement at approximately Sta 33+50 of the MMA Taxiway.

DESCRIPTION	Qty.	Unit	Unit Price	Amount
Mobilization / Layout	1	LS	\$7,500.00	\$7,500.00
Demo	115	LF	\$27.40	\$3,151.00
Storm Line Installation	115	LF	\$120.89	\$13,902.35
Endwall Installation	2	Each	\$850.00	\$1,700.00
Asphalt Patching	1	LS	\$26,233.02	\$26,233.02
Seal Coat & Striping	1	LS	\$4,641.00	\$4,641.00
Stabilization	1	LS	\$3,500.00	\$3,500.00

Sincerely,

Cleary Construction, Inc.
Project Manager



Jeff Redmill
Senior Project Manager Aviation Services
Barge Design

RE: MMA Additional Storm Repair

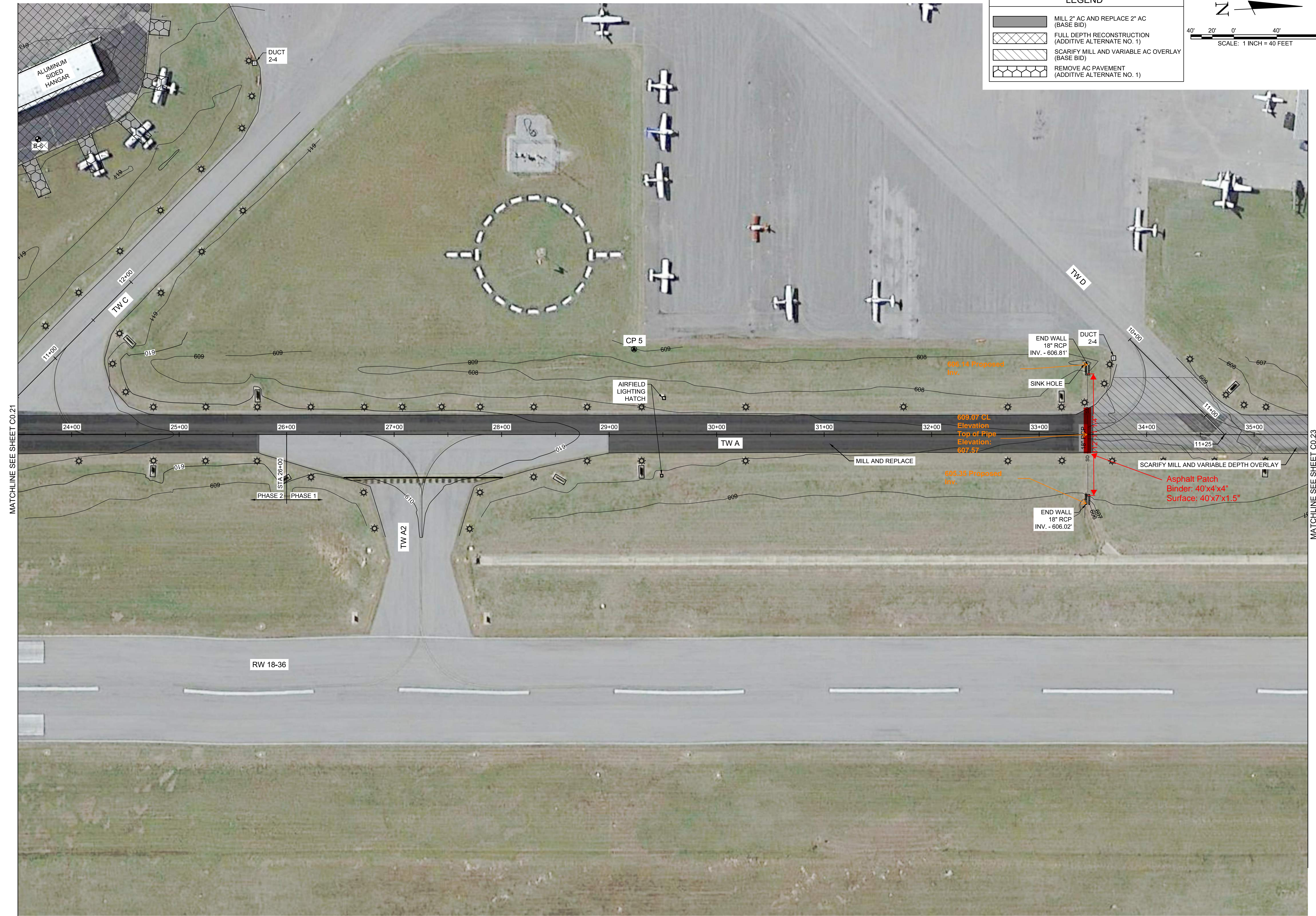
Jeff,

The work consists of but is not limited to the below items.

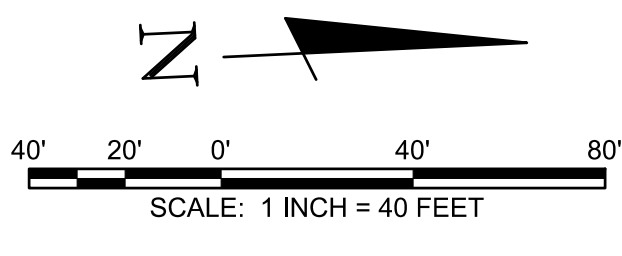
- Mobilization and Layout – This cost covers the necessary funds to mobilize crews, equipment, and subcontractors to the project. It also covers a little cost for the needed survey work as well.
- Demo – This covers the existing pipe removal, asphalt removal, and haul off / disposal of material.
- Storm installation - This covers the excavation and rock removal necessary to install the new RCP storm line. It also includes the material cost for the (Type IV) RCP pipe as well as the crushed aggregate backfill. The crushed aggregate base will be brought up to the bottom of the binder layer.
- Endwall installation – Cleary will remove and reinstall the existing end treatments.
- Asphalt Patching – This cost includes the binder patch in the trench area, it also includes the cost to mill the surface layer to accommodate the proper overlap for the new asphalt surface treatment, and the material and placement of the asphalt surface as well.
- Seal Coat & Striping – This includes the installation of two coats of seal coat and the necessary striping work.
- Stabilization – This item includes the cost to finem grade and stabilize the disturbed areas associated with the storm drain remedial work.

Thank you,

Caleb Unland
Project Manager
Cleary Construction



LEGEND	
[Solid Gray Box]	MILL 2" AC AND REPLACE 2" AC (BASE BID)
[Cross-hatched Box]	FULL DEPTH RECONSTRUCTION (ADDITIVE ALTERNATE NO. 1)
[Diagonal Lines Box]	SCARIFY MILL AND VARIABLE AC OVERLAY (BASE BID)
[Hexagonal Pattern Box]	REMOVE AC PAVEMENT (ADDITIVE ALTERNATE NO. 1)



EXISTING CONDITIONS & SITE DEMOLITION PLAN
 AIRFIELD PAVEMENT REHABILITATION AND THRESHOLD RELOCATION
 AT THE
MURFREESBORO MUNICIPAL AIRPORT
 MURFREESBORO, TENNESSEE

REVISION INFORMATION			
REV.	BY	DATE	DESCRIPTION
1	BCD	02-24-2023	ISSUED FOR BID

C0.22
 FILE NO. 3741900

PROPOSAL



P.O. Box 292 · 6013 Highway 64 E
Wartrace, TN 37183
(931) 389-9671

Organization: Cleary Proposal Submitted: Caleb Unland Phone: 615-207-5243 Date: 5/28/24
Street: _____ Job Name: Murfreesboro Airport Patch & Mill
City, State and Zip Code: _____ Job Location: Murfreesboro
Estimator: Nolen Spencer Date of Plans: _____ TDOT
BBMI \$628.64

We agree to furnish all Labor, Equipment and Materials to complete the following work:

ASPHALT PAVEMENT

Standard Duty Pavement:

- Install Prime Coat
- Lay an average of 4" of asphalt binder (TDOT MIX) and compact (18 sq yds)

Asphalt Overlay:

- Mill 7ft wide (1.5 ft on both sides of trench) and haul off spoils
- Clean existing asphalt
- Apply SS1H tack coat
- Lay an average of 1 1/2" of asphalt topping (TDOT MIX) and compact (32 sq yds)

■ Cost ----- \$24,983.83

NOTE:

- No grade staking or blue topping included in price
- No prep of existing rock is included in this quote.
- No base stone is included in this quote.
- If there is an overrun of materials due to circumstances beyond Hawkins Asphalt Paving, LLC control unit prices will be added for any amount of overrun used (Improper grades, additional areas, build areas up, etc.)
- No clean up from another contractor's work is included in quote(s)
- Hawkins Asphalt is not liable for damages due to construction traffic
- No excavation included in quote
- No signs included in quote(s)

- Asphalt to be placed and compacted with temperatures being 45°F and rising
- Due to the flat grades on this project, small water pockets may be visible
- Hawkins Asphalt Paving, LLC is not responsible for damages to new asphalt pavement which may result from settlement of poor sub grade conditions due to sub grade being prepared by another contractor (or if utility trenches under asphalt pavement are not backfilled and compacted properly)
- Price(s) includes one (1) mobilization paving crew; any additional mobilizations required, for reasons beyond Hawkins Asphalt Paving, LLC control, shall be at a rate of \$4,000.00/each
- Hawkins Asphalt Paving, LLC will make every effort to perform work in a timely manner, but is not responsible for loss of business
- Areas where asphalt must be worked by hand versus mechanical equipment may have a different textured surface
- Hawkins Asphalt Paving, LLC is not responsible for any form of the following: asphalt cracking, water pockets, erosion control, or drainage problems
- Hawkins Asphalt Paving, LLC is not responsible for any form of asphalt settlement, underground utility damage, or vegetation growth
- Quote does not include any work that is not specifically stated in this proposal
- The above prices are based upon monthly TDOT BBMI prices. If the bituminous material index increases or decreases 5% more or less Hawkins asphalt will adjust accordingly, we also reserve the right to review and amend the base bid to recover any fuel or materials product increases over 10% from original base bid

If accepted, please sign and return the original copy for scheduling

Payment is due upon job completion. Failure to pay **promptly** will result in interest charges accrued at the rate of 1.5% for each thirty days or portion thereof that bill remains unpaid beginning no later than ten days following completion of job.

All material is guaranteed to be as specified for a period of one (1) year from the original date of completion. All work to be completed in a work-man like manner according to standard practices. Any alteration or deviation from above specifications involving extra cost (mass rock excavation, consequential damages resulting from underground utilities, excavation of unsuitable sub-grade material, underground aquifers, etc) 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 the Workmen’s Compensation Insurance.

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payment will be made as outlined above. In the event that default is made in payment of the amount due to Hawkins Asphalt Paving, LLC pursuant to this agreement, I agree to pay all costs of collections, including attorney’s fees reasonably incurred, which in no event shall be less than 35% of the amount due. Any action, suit, or proceeding at law or in equity shall not be had or maintained under this contract unless same be commenced within one year from date of substantial completion of this job.

Date of Acceptance: _____ Signature: _____

Caleb Unland

From: Daniel Morrow <dmorrow@metrocsllc.net>
Sent: Tuesday, May 28, 2024 6:04 PM
To: Caleb Unland
Subject: Murfreesboro Airport Taxiway Sealcoat 2024 Repair

Caleb,

Our quote to seal coat (2 coats) approx. 280 sy is \$2,800.00. For the striping back of the yellow t/w centerline our quote is \$800.00 for temp & \$820 for perm.

Feel free to contact us should you have any questions and / or concerns.

Danny Morrow
(615)578-9192

Metro Construction Services, LLC
PO Box 471
Goodlettsville, TN 37070

CHANGE ORDER #3 LINE ITEM QUANTITIES

Site: Murfreesboro Municipal Airport
 Project: Airfield Pavement Rehabilitation and Threshold Relocation
 TAD Project No.: 75-555-0173-23
 Contractor: Cleary Construction, Inc.

Item No.	Items Description	Unit	Plans Quantities	Adjusted Quantities	Quantities Difference	Unit Price	Price Difference
1	AIRFIELD BARRICADES	LS	0.00	0.00	0.00	\$12,000.00	\$ -
2	TEMPORARY RUNWAY CLOSURE	LS	0.00	0.00	0.00	\$8,800.00	\$ -
3	CONTRACTOR QUALITY CONTROL PROGRAM	LS	1.00	1.00	0.00	\$250,000.00	\$ -
4	EROSION CONTROL - CONSTRUCTION ENTRANCE (INSTALLATION AND REMOVAL)	EA	0.60	0.60	0.00	\$50,000.00	\$ -
5	MOBILIZATION	LS	1.00	1.00	0.00	\$190,000.00	\$ -
6	COLD MILLING	SY	14,069.33	14,069.33	0.00	\$7.65	\$ -
7	UNCLASSIFIED EXCAVATION	CY	100.00	100.00	0.00	\$200.00	\$ -
8	BITUMINOUS ASPHALT SURFACE COURSE - RUNWAY (GRADATION 2)	TONS	2,000.00	2,000.00	0.00	\$285.00	\$ -
9	EMULSIFIED ASPHALT TACK COAT	GAL	1,380.00	1,380.00	0.00	\$7.10	\$ -
10	CRACK REPAIR	LF	24,100.00	24,100.00	0.00	\$0.70	\$ -
11	ASPHALT SURFACE TREATMENT	SY	52,800.00	52,800.00	0.00	\$3.70	\$ -
12	EMULSIFIED ASPHALT SEAL COAT	SY	113,600.00	113,600.00	0.00	\$1.65	\$ -
13	PAVEMENT MARKING REMOVAL	SF	68,821.00	68,821.00	0.00	\$0.60	\$ -
14	TEMPORARY PAVEMENT MARKING, WHITE	SF	35,160.00	35,160.00	0.00	\$0.50	\$ -
15	TEMPORARY PAVEMENT MARKING, YELLOW	SF	5,700.00	5,700.00	0.00	\$1.00	\$ -
16	PERMANENT PAVEMENT MARKING, REFLECTIVE WHITE	SF	35,160.00	35,160.00	0.00	\$0.50	\$ -
17	PERMANENT PAVEMENT MARKING, REFLECTIVE YELLOW	SF	8,000.00	8,000.00	0.00	\$1.00	\$ -
18	PERMANENT PAVEMENT MARKING, BLACK	SF	2,000.00	2,000.00	0.00	\$1.20	\$ -
19	SODDING	SY	1,000.00	1,000.00	0.00	\$11.50	\$ -
20	TOPSOIL (OBTAINED ON SITE)	CY	250.00	250.00	0.00	\$24.00	\$ -
21	NO. 8 AWG, 5KV, L-824. TYPE C, INSTALLED IN TRENCH, DUCT BANK OR CONDUIT	LF	600.00	600.00	0.00	\$1.85	\$ -
22	NO. 4 AWG, 600 V, THHN/THWN-2 CABLE, INSTALLED IN TRENCH, DUCT BANK OR CONDUIT	LF	2,000.00	2,000.00	0.00	\$4.00	\$ -
23	NO. 6 AWG, SOLID, BARE COPPER COUNTERPOISE WIRE, INSTALLED ABOVE THE DUCT BANK OR CONDUIT, INCLUDING CONNECTIONS/TERMINATIONS AND GROUND RODS	LF	100.00	100.00	0.00	\$2.25	\$ -
24	NO. 6 AWG, INSULATED, STRANDED EQUIPMENT GROUND, INSTALLED IN DUCT BANK OR CONDUIT	LF	1,000.00	1,000.00	0.00	\$2.00	\$ -
25	NON-ENCASED, ELECTRICAL CONDUIT, 1-WAY, 2-INCH PVC	LF	170.00	170.00	0.00	\$15.00	\$ -
26	NON-ENCASED ELECTRICAL CONDUIT, DIRECTIONAL BORE, 1-WAY, 2-INCH HDPE	LF	130.00	130.00	0.00	\$48.00	\$ -
27	NON-ENCASED ELECTRICAL CONDUIT, DIRECTIONAL BORE, 1-WAY, 1-INCH HDPE	LF	130.00	130.00	0.00	\$36.00	\$ -
28	RUNWAY THRESHOLD LIGHT, L-861E(L), BASE MOUNTED, MEDIUM INTENSITY (LED), COMPLETE IN PLACE	EA	8.00	8.00	0.00	\$1,900.00	\$ -
29	RUNWAY THRESHOLD LIGHT, L-861E(L), BASE MOUNTED, MEDIUM INTENSITY (LED), NEW FIXTURE INSTALLED ON EXISTING STAKE OR BASE CAN	EA	8.00	8.00	0.00	\$1,700.00	\$ -
30	RELOCATE EXISTING PRECISION APPROACH PATH INDICATOR, L-881(L)	EA	1.00	1.00	0.00	\$12,000.00	\$ -
31	RELOCATE EXISTING RUNWAY END IDENTIFICATION LIGHTS , L-849(L), INSTALLED ON NEW CONCRETE PAD	EA	1.00	1.00	0.00	\$8,000.00	\$ -
32	REPLACE EXISTING RUNWAY EDGE LIGHT LENS WITH NEW LENDS AS NOTED ON THE PLANS	EA	0.00	0.00	0.00	\$1,150.00	\$ -
33	EROSION CONTROL SILT FENCE (INSTALLATION AND REMOVAL)	LF	510.00	510.00	0.00	\$12.00	\$ -
34	HYDROSEEDING	AC	0.25	0.25	0.00	\$8,400.00	\$ -
35	ADDITIONAL MOBILIZATION	LS	1.00	1.00	0.00	\$33,205.00	\$ -
36	ENGINEERING AND LAYOUT	LS	1.00	1.00	0.00	\$7,165.00	\$ -
37	CEMENT TREATED SOIL BASE COURSE	SY	4,482.00	4,482.00	0.00	\$30.85	\$ -
38	EMULSIFIED ASPHALT PRIME COAT	SY	4,482.00	4,482.00	0.00	\$7.10	\$ -
39	BITUMINOUS ASPHALT BINDER COURSE - RUNWAY (GRADATION 1, 2.0" COMPACTED THICKNESS)	TON	493.00	493.00	0.00	\$244.00	\$ -
40	FINE GRADING/TOPSOILING	CY	88.00	88.00	0.00	\$54.00	\$ -
41	PIPE REPAIR MOBILIZATION/LAYOUT	LS	1.00	1.00	0.00	\$7,500.00	\$ -
42	PIPE DEMOLITION	LF	115.00	115.00	0.00	\$27.40	\$ -
43	STORM DRAIN INSTALLATION (18" RCP - CLASS IV)	LF	115.00	115.00	0.00	\$120.89	\$ -
44	HEADWALLS	EA	2.00	2.00	0.00	\$850.00	\$ -
45	ASPHALT PATCHING	LS	1.00	1.00	0.00	\$26,233.02	\$ -
46	SEAL COAT AND STRIPING	LS	1.00	1.00	0.00	\$4,641.00	\$ -
47	STABILIZATION	LS	1.00	1.00	0.00	\$3,500.00	\$ -
48	ELECTRICAL MOBILIZATION	LS	0.00	1.00	1.00	\$6,000.00	\$ 6,000.00
49	ELECTRICAL RELOCATION	LS	0.00	1.00	1.00	\$7,984.00	\$ 7,984.00

CHANGE ORDER #3 PROJECT LINE ITEM TOTAL

\$13,984.00



6.14.24

C.O. # 23049-003

Jeff Redmill
Senior Project Manager Aviation Services
Barge Design
200 Clinton Avenue, Suite 800
Huntsville, Alabama

RE: Additional Storm Drain Repair

Mr. Redmill

Cleary Construction is providing this pricing for the additional relocation work for the taxiway electrical system. The existing electrical system needs to be relocated to accomidate the revised strom drain elevations associated with CO #2.

DESCRIPTION	Qty.	Unit	Unit Price	Amount
Mobilization / Layout	1	LS	\$6,000.00	\$6,000.00
Electrical Relocation	1	LS	\$7,984.00	\$7,984.00

Sincerely,


Cleary Construction, Inc.
Project Manager



Jeff Redmill
Senior Project Manager Aviation Services
Barge Design

RE: MMA Additional Electrical Relocation

Jeff,

The work consists of but is not limited to the below items.

- Mobilization and Layout – This cost covers the additional equipment and subcontractor mobilization.
- Electrical Relocation – This cost covers all the Labor, Equipment, and Material needed to install a jumper system while the storm line is lowered. As well as the final installation of conduit and wiring to accommodate the revised storm drain elevations.

Thank you,

A handwritten signature in blue ink that reads "Caleb Unland".

Caleb Unland
Project Manager
Cleary Construction

CITY COUNCIL COMMUNICATION

Meeting Date: 07/25/2024

Item Title: New Airport Lease Agreements

Department: Airport

Presented by: Chad L. Gehrke, Airport Director

Requested Council Action:

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

Summary

New Airport Lease Agreements for Hangars, aircraft Tie-Downs, and Storage Areas.

Staff Recommendation

Approve new Airport Hangar, aircraft Tie-Down, and Storage Area Lease Agreements.

Background Information

Through the years the Airport Commission reviews and updates the various Lease Agreements for customers renting T-hangar units, individual aircraft Tie-downs, and End Room Storage areas. The updates to these documents are done to reflect changes in Federal Aviation Administration (FAA) polices or changes in the industry. The changes in these updated Lease Agreements reflect issues in the industry as it relates to the amount of time it takes aircraft owners and mechanics to secure parts, complete maintenance, and even locate and successfully purchase aircraft. These Lease Agreements provide a line of communication and process that the Airport and Tenant can follow through each of these scenarios and maintain compliance with the Lease Agreement. At the same time the Lease Agreement recognizes that there is a tremendous shortage of hangar space and tie-downs in Middle Tennessee. The Lease Agreements require the Tenants to demonstrate that they are maintaining an active, airworthy aircraft by providing the Airport proof that annual aircraft maintenance inspections per the FAA are being completed and that they are maintaining aircraft insurance. The key to the success of these Lease Agreements is the ability for the Airport and Tenant to communicate efficiently and effectively. The Airport through the assistance of our IT, Legal, and Purchasing Departments has purchased a lease management program called Aerosimple which will provide an ability to record and track these various documents the Tenants are required to provide as well as remind them when inspections and insurance renewals are coming due. The new Lease Agreements will ensure that high demand aircraft storage and parking facilities are maximized and used for their intended purposes for active, airworthy aircraft.

Council Priorities Served

Improve economic development

Reviewing and updating Lease Agreements helps ensure that customers of the Airport are being well served and that the Airport can maximize its ability to serve its role in our community's economic development.

Fiscal Impact

The new Lease Agreements provide for the Airport Commission to review and adjust the rental rates annually. Recently the Airport Commission has adjusted the annual rental rates 3% to 5%.

Attachments

- Hangar Lease Agreement
- Tie-Down Lease Agreement
- Storage Area Lease Agreement

HANGAR LEASE AGREEMENT

This Hangar Lease Agreement ("**Agreement**") is made this ___ day of _____, 20____ ("**Execution Date**") by and between the City of Murfreesboro, Tennessee ("**City**") and _____, a [the state of formation], [partnership, corporation, limited liability corporation, etc.] ("**Tenant**").

Tenant authorized representative: _____

Contact Information:

Address: _____

Phone: _____

Email: _____

Additional Tenants may be added as a party with joint and several liability under this Agreement upon receipt by the Airport Director of a written request stating the reason for the addition and the provision of any requested documentation. Additional Tenants shall be listed on the addendum attached hereto as Exhibit "A" and incorporated herein by reference (the "**Addendum**").

Tenant Aircraft information (the "**Aircraft**):

N-Number: _____

Make and Model: _____

Additional Aircraft may be added with the approval of the Airport Director and shall include without limitation proof of insurance as required under Section 9. If approved, Additional Aircraft shall be listed on the Addendum, attached hereto as Exhibit "A" and incorporated herein by reference. Only one Aircraft at a time may be stored on the Premises, as defined herein.

1. Premises

The City hereby leases to Tenant and Tenant hereby leases from the City for the Term and upon all the conditions set forth herein, hangar space at the Murfreesboro Municipal Airport ("**Airport**"), which space is designated as _____ ("**Premises**"). Tenant has had an opportunity to inspect the Premises and accepts it in its current condition, "as is."

2. Term

The term of this Agreement commences on the __ day of _____, 20____ ("**Effective Date**") and ends on the following June 30th (the "**Initial Term**"). Unless otherwise terminated as set

forth herein, this Agreement shall automatically renew annually on July 1st to run through the following June 30th (the “**Subsequent Term(s)**”) (the Initial Term and any Subsequent Term(s) are collectively the “**Term**”).

3. Rent

- 3.1 Tenant shall pay to the City, as rent for the Premises, monthly payments of \$ _____ in advance, due on the first day of each and every month of the Term. Rent must be paid to the "City of Murfreesboro" and mailed to the City at the address provided in Section 12 of this Agreement or hand delivered to the Airport Director or Airport Manager during business hours. A late charge equal to five (5) percent of the monthly rental amount shall be due and payable for each monthly rental payment not received by the 5th day of the month or, if the 5th day of the month falls on a weekend or federal, state or municipal holiday, then by the following business day.
- 3.2 The City and the Airport Commission reserve the right to conduct an annual rent review and adjustment at the beginning of each fiscal year. In the event that the rental amount increases, the Airport Director or their designee shall notify the Tenant in writing no less than sixty (60) days prior to the rent increase taking effect. Upon notice of an increase in the rental amount, Tenant shall have the right to terminate the Agreement with advance written notice no later than fourteen (14) days after the notification of the rent increase. Such termination shall become effective on the date of the proposed increase.
- 3.3 Rental payment for the first month of the Initial Term hereof shall be prorated on a daily basis if the Initial Term hereof does not begin on the first day of the month.
- 3.4 Tenant will deposit with the City an amount equal to one full month's rent on the Execution Date. Such deposit shall be returned to the Tenant upon termination of this Agreement, provided: (a) Tenant is not in breach of this Agreement; (b) all rent and other assessments due have been paid in full; and (c) the Premises is returned in substantially the same condition as when received, reasonable wear and tear excepted, as determined by the Airport Director. Otherwise, the City reserves the right to retain any or all of the deposit for the cleaning, repair, or advertisement of the Premises or to offset any other amounts owed by Tenant under this Agreement.
- 3.5 In the event any payments due under this Agreement become past due, the Tenant shall be prohibited from using the Airport and its facilities, including without limitation the Premises, until the amounts due are paid in full.

4. Use of Premises

- 4.1 Only the Aircraft identified on page one (1) of this Agreement or on the attached Addendum may use

the Premises without prior written approval from the Airport Director, subject to all other terms and conditions herein. Any alternative or additional Aircraft that receives approval from the Airport Director to use the Premises shall likewise be subject to all terms and conditions applicable herein as though such aircraft were the Aircraft identified on page one (1) of this Agreement or any attached Addendum.

4.2 Airworthy Aircraft.

- a. Premises may only be used for the storage of Airworthy Aircraft except as provided in Section 4.3 (Aircraft Construction, Restoration and Refurbishment), Section 4.4 (Aircraft Maintenance and Repair), Section 4.5 (Purchase or Lease of an Aircraft), or Section 4.9 (Medical Procedures and Emergencies). For purposes of this Agreement, the term "**Airworthy Aircraft**" is defined as a machine intended for and capable of manned aerial flight which is Actively Used and currently meets all the requirements for regular flight as established by the Federal Aviation Administration. "**Actively Used**" is defined as performing two (2) operations out of the Murfreesboro Airport every 90 days of the Term. The operations shall be documented via ADS-B or pilot flights logs, and available for review by the City upon request. Tenant may also coordinate a visual verification of activity with the Airport Director or their designee. The requirements of this subsection 4.2(a) shall collectively be known as the "**Use Provisions**".
- b. Tenant must provide the Airport Director proof of the Aircraft's current annual inspection report by the Effective Date and, subsequent thereto, provide proof of the Aircraft's annual inspection report no later than ten (10) days after any annual renewal of the inspection report. Jet and turbine aircraft may provide proof of latest required maintenance inspection no later than ten (10) days after the required maintenance inspection. If Tenant does not own or lease an Airworthy Aircraft as of the Effective Date, then proof of such annual or otherwise required inspection report shall be provided as prescribed herein prior to any use of the Premises by the Airworthy Aircraft. Any proof supplied by Tenant may redact specific Aircraft maintenance issues but shall include the date the inspection was conducted and the party conducting the inspection.
- c. Tenant must provide written notice to the Airport Director within thirty (30) days if the Aircraft fails to meet the criteria of an Airworthy Aircraft, except where a shorter timeframe is provided herein. Such written notice shall include any actions to be taken to bring the Aircraft into compliance with this Agreement, including but not limited to any waiver request(s) under Section 4.3 (Aircraft Construction, Restoration and Refurbishment), Section 4.4 (Aircraft Maintenance and Repair), Section 4.5 (Purchase or Lease of an Aircraft), or Section 4.9 (Medical Procedures

and Emergencies).

- d. At the Airport Director's discretion, Tenant may be required to demonstrate the Aircraft is an Airworthy Aircraft.
- e. Violation of the Use Provisions shall constitute a breach of this Agreement. Tenant may cure the breach by bringing the Aircraft into compliance with the Use Provisions or by obtaining a waiver of the Use Provisions as provided herein.

4.3 Aircraft Construction, Restoration and Refurbishment.

- a. The Airport Director may grant a waiver of the Use Provisions for a period of up to twenty-four (24) months to allow the Premises to be used to build a kit-aircraft, an experimental aircraft or to restore and refurbish an approved Aircraft. Any extension beyond twenty-four (24) months shall require the approval of the Airport Commission. The Commission may consider without limitation such factors as circumstances beyond the reasonable control of the Tenant, extent of work completed, history of diligent work, Tenant communication, and compliance with the terms of this Agreement and other applicable laws.
- b. If Tenant desires to use the Premises under this subsection 4.3, Tenant will submit in writing to the Airport Director for approval details of the project and a reasonable timeline to complete the project, including a schedule of periodic progress reports to be delivered no less than every ninety (90) days (collectively, the "**Project Schedule**") to ensure the project is progressing in a timely manner, to be determined in the sole discretion of the Airport Director taking into account external factors beyond the reasonable control of Tenant. Failure of Tenant to timely file with the Airport Director a Project Schedule or any required progress reports thereunder shall constitute a breach of this Agreement.
- c. If the Airport Director determines the work is not substantially progressing pursuant to the Project Schedule, the Airport Director may declare Tenant to be in breach of this Agreement.
- d. Tenant may not sublet the Premises during a waiver issued pursuant to this subsection.

4.4 Aircraft Maintenance and Repair

- a. Aircraft maintenance and repair within the Premises is limited to those actions listed under 14 CFR Part 43, Appendix A, Subpart C or otherwise allowed under Chapter 3 of the Murfreesboro Code of Ordinances ("**City Code**"), except where expressly prohibited herein.

- b. Independent operators or “third party maintenance providers” must be approved by the Airport Director as established in Section 3-44 of the City Code.
- c. Painting and fuel system maintenance is not allowed inside the Premises. Fuel system maintenance may be conducted on the wash rack with prior written permission of the Airport Director.
- d. The Airport Director may grant one (1) waiver of the Use Provisions for the repair or maintenance of the Aircraft for a period of up to ninety (90) days. Tenant shall inform the Airport Director within thirty (30) days of Aircraft going down for maintenance or repair if and when the Aircraft will vacate the Premises for maintenance or repair, and when the maintenance or repair will be completed. Tenant shall keep the Airport Director informed as to any delays in the repair or maintenance or deviations from any other information provided hereunder. Upon written request, the Airport Director may grant an extension of the waiver period of up to an additional one hundred fifty (150) days for extraordinary or unexpected delays outside the reasonable control of the Tenant. Any extension of the waiver of the Use Provisions beyond two hundred forty (240) days shall require the approval of the Airport Commission. The Commission may consider without limitation such factors as circumstances beyond the reasonable control of the Tenant, extent of work completed, history of diligent work, Tenant communication, and compliance with the terms of this Agreement and other applicable laws.
- e. Tenant may sublease the Premises subject to Section 7 of this Agreement during the waiver period prescribed herein for a term no longer than the length of the approved waiver.
- f. During any waiver or sublease under this Section 4.4 Tenant shall remain liable for all obligations under this Agreement, including without limitation the payment of Rent.

4.5 Purchase or Lease of an Aircraft.

- a. If on the Effective Date the Tenant does not have an ownership or leasehold interest in an aircraft, Tenant shall have nine (9) months to purchase or lease and store on-Premises an aircraft which meets all the requirements herein.
- b. If at any time after the Effective Date Tenant no longer has an ownership or leasehold interest in an Aircraft, then Tenant may petition the Airport Director for a waiver from the Use Provision requirements under Section 4 of up to nine (9) months to purchase or lease a replacement Aircraft. During this time, at the request

of the Airport Director, Tenant may be required to provide documentation demonstrating Tenant's efforts to purchase or lease a replacement Aircraft

- c. Tenant may sublease the Premises subject to Section 7 of this Agreement during the waiver period prescribed herein for a term no longer than the length the approved waiver, but in any case no more than nine (9) months.
- d. During any waiver or sublease under this Section 4.5 Tenant shall remain liable for all obligations under this Agreement, including without limitation the payment of Rent.
- e. Failure of Tenant to purchase or lease an aircraft during the waiver period prescribed herein shall result in the termination of this Agreement and any subleases at the expiration of the waiver period.

4.7 Ultralight Vehicles as Tenant Aircraft.

- a. Upon request of the Tenant, a special exception for an ultralight vehicle to be stored on the Premises may be granted and considered a Tenant Aircraft.
- b. Aircraft identified as an ultralight vehicle are subject to all requirements stated in Section 4.2 unless expressly exempted under the Code of Federal Regulations, Title 14 FAR, Part 103 - Ultralight Vehicles.

4.8 Commercial Activity. Premises are intended for the housing of Aircraft for Tenant's personal use-business, recreation, and pleasure. Tenant may not use the Premises or any aircraft housed therein for commercial activity, as defined by the City Code without the prior written approval of such use and recognition of Tenant as a commercial operator by the Airport Commission.

4.9 Medical Procedures and Emergencies. If Tenant cannot ensure Active Use of the Aircraft due to a medical procedure or medical emergency that renders Tenant incapable of operating the Aircraft for a period of at least ninety (90) days, then Tenant may request a waiver of the Use Provisions prior to the medical procedure or as soon as practicable after a medical emergency so long as it's prior to Tenant falling into breach of the Use Provisions. Such waiver may be granted in the discretion of the Airport Director on a case-by-case basis. During any waiver under this Section 4.9, Tenant shall remain liable for all other obligations under this Agreement, including without limitation the payment of Rent. Additional documentation may be required to substantiate any request for waiver under this Section 4.9. Tenant may not sublet the Premises during a waiver issued pursuant to this subsection.

4.10 Military Leave. In the event the Tenant is, or hereafter becomes, a member of the United States Armed Forces (the "**Military**") on extended active duty, and:

- a. the Tenant receives orders for a permanent change of station to depart from the vicinity of the Premises, is relieved from active duty, retires or separates from the Military, is ordered into Military housing, or receives orders to deploy for more than ninety (90) days, then Tenant may terminate this Agreement upon providing the City with a minimum thirty (30) days written notice. In such event, Tenant shall pay prorated rent for any days beyond the first day of the month following notice if such days are included in the notice period. The Tenant's deposit will be returned to the Tenant at the termination of the Agreement, provided there are no damages to the Premises or other payments due and outstanding; or
- b. the Tenant receives orders to deploy for more than ninety (90) days, then Tenant may apply for a waiver from the Use Provisions for a period of time not to exceed the time of deployment so ordered and evidenced. During this waiver period, Tenant shall still be responsible for the timely payment of rent under this Agreement.

If Tenant chooses to exercise the provisions of subsections a. or b. above, Tenant must also deliver to the City a copy of the Tenant's official orders or a letter signed by the Tenant's commanding officer. These documents must reflect the changes that warrant termination or waiver. This Section 4.11 shall only apply if Tenant is an individual and there are no Additional Tenants under the Agreement.

- 4.11 Tenant must cooperate with the City's efforts to improve airport facilities. Tenant's rent will not be reduced for disruption of use due to City's improvement efforts.

5. Securing the Premises.

- 5.1 Tenant acknowledges that the City has the right to and may access the Premises at any and all times for the purpose of inspection, repair, alteration, improvement, or to supply necessary or agreed services, and Tenant waives any and all rights with respect to entry or inspection by the City of the Premises and personal property therein or thereupon.
- 5.2 Tenant is responsible for securing the Premises and must provide the Airport Director with the means to access the Premises, including any codes for security systems approved by the Airport Director prior to installation. If the City provides a lock to the Premises, Tenant may not replace or add additional locks to the Premises. It is a breach of this Agreement should the City be unable to enter the Premises at any time due to any act or omission of the Tenant or its officers, employees, agents, sublessees, or invitees.
- 5.3 The City is not liable to the Tenant for theft, vandalism, or damage to Tenant's property except as may otherwise be provided by law, and in no case as a result of Tenant's failure to secure

the Premises.

6. Maintenance of Premises.

- 6.1 Tenant must maintain the interior and exterior of the Premises in a good, clean, safe, and orderly condition, except for ordinary wear and tear. Tenant is solely responsible for the cost of repairing or replacing any portion of the Premises damaged by Tenant or its officers, employees, agents, sublessees or invitees.
- 6.2 Personal items not related to the aircraft, e.g., furniture, refrigerators, may be placed within the Premises for use provided the items do not impede ingress and egress of the Aircraft or restrict the inspection, maintenance, or work on or around the Premises.
- 6.3 Tenant may not alter the Premises without the prior written approval of the Airport Director. At the end of the Term, approved alterations may be required to remain at the Tenant's expense or be returned to their original condition as determined by the Airport Director.
- 6.4 Tenant may not post signs at the Airport or on the Premises without the prior written approval of the Airport Director.
- 6.5 Tenant may not drill, cut, or penetrate the surfaces, siding, doors, or walls of the Premises.
- 6.6 Tenant may not modify automatic hangar door controls or override established safety systems.
- 6.7 Tenant may not modify any electrical systems including without limitation lights, sockets, or switches without prior written approval of the Airport Director.
- 6.8 Automobiles used to travel to and from the Airport may be stored in the Premises while the Aircraft is being flown provided such automobile is compliant with the insurance provisions of Section 9. No other storage of automobiles or trailers is permitted inside the Premises without the prior written approval of the Airport Director.
- 6.9 No open flame or ignition sources are permitted within the Premises, including without limitation torches or welders, space heaters, or smoking.
- 6.10 Tenant shall be liable for any act or omission of Tenant's officers, employees, agents, sublessees, or invitees on or about the Premises which gives rise to any obligation, duty, penalty, or other applicable provision under this Agreement.

7. Sublease or Assignment.

- 7.1 Tenant may not assign or transfer this Agreement to another party.
- 7.2 Tenant cannot sublease, loan, or rent any portion of the Premises without the prior written approval of the Airport Director. Any sublease of the Premises must use the approved Hangar

Sublease Agreement (the “**Sublease Agreement**”), attached hereto as Exhibit “B” and incorporated herein by reference.

- 7.3 A Sublease Agreement must be approved by the Airport Director. The Tenant remains responsible for maintaining compliance with the Agreement upon execution of the Sublease Agreement with the City.
- 7.4 Any sublease must be for a period of no less than thirty (30) days.
- 7.5 All sublessees shall adhere to all terms and conditions of this Agreement, including without limitation all provisions relating to insurance coverage contained in Section 9 herein.
- 7.6 If at any time during the Term Tenant is not using the Premises due to a) repair of an Aircraft, or b) efforts to purchase or lease a replacement Aircraft, then Tenant may sublet the Premises with the written approval of the Airport Director. Any term for the sublease of the Premises shall be limited to the time granted to Tenant for non-use either through the terms of this Agreement or through waiver by the Airport Director as prescribed herein. Sublessees use of the Premises shall not count toward the Tenant’s use of the Premises for purposes of compliance with this Agreement.
- 7.7 The Premises shall not be sublet during any waiver period granted for a medical procedure or emergency or for the purpose of constructing, restoring, or refurbishing an aircraft.
- 7.8 Any rental payments related to the sublease of the Premises shall be at the same amount as set forth in this Agreement or as may be revised pursuant to Section 3.2 herein. In the event any additional consideration is paid for the sublease, that consideration becomes additional rent under the Agreement and due and payable to the City and the Agreement will terminate immediately.

8. Appeal of Airport Director Decisions.

- 8.1 Tenant may appeal a decision or action of the Airport Director relative to this Agreement to the Murfreesboro Airport Commission by making a written request to the Chair of the Commission within thirty (30) days of receiving the final decision or action of the Airport Director. The request must be accompanied by any relevant correspondence or documentation. The Chair of the Commission may refuse the appeal if it is not a decision directly related to this Agreement or otherwise rendered non-discretionary by the terms of this Agreement or other applicable law.
- 8.2 If the Chair of the Commission agrees to hear the appeal, the written appeal will be presented to the Commission at its next scheduled meeting, provided that the Commission may defer the decision to the following meeting if it determines that additional information is required. Consideration will be upon the written appeal and relevant documents; provided, however,

the Chair may request that the Tenant or City answer questions related to the matters at issue if such answers will expedite consideration of the appeal and if allowing such answers is consistent with general principles of fairness.

- 8.3 The Commission may dismiss the appeal as addressing a matter laying outside this Agreement or consider the appeal and make a recommendation to the Airport Director. The Airport Director retains full authority to manage the Airport and accept or reject the Commission's recommendation.

9. Insurance

9.1 Aircraft Liability Insurance:

- a. Tenant must maintain and keep in force during the term of this Agreement, for the mutual benefit of City and Tenant, at Tenant's sole cost and expense, **Aircraft Liability Insurance** written on an "occurrence" basis with a limit of not less than **\$1,000,000 per occurrence, limited to \$100,000 each passenger**, including **Airport Premises Liability** to include property damage, with a limit of not less than **\$1,000,000 per occurrence**.
- b. Tenant must maintain the minimum insurance requirement for each Aircraft that is stored on the Premises or otherwise makes use of the Airport.
- c. Prior to the Effective Date, for each Aircraft covered by this Agreement, Tenant must provide the Airport Director with:
 - (1) **a certificate of insurance evidencing the required Aircraft Liability Insurance, which shall include the following:**
 - **Additional Insured:**
"City of Murfreesboro, Murfreesboro Municipal Airport, and its officials, employees, and agents."

1930 Memorial Boulevard

Murfreesboro, Tennessee 37133
 - Aircraft Liability Limits no less than:

\$1,000,000 Each Occurrence limited to \$100,000 Each Passenger
 - Airport Premises Liability No Less than:

1,000,000 Each Occurrence
 - (2) an endorsement to the required policies naming the "City of Murfreesboro,

Murfreesboro Municipal Airport, and its officials, employees, and agents" as additional insureds; and

- (3) an endorsement that the policy cannot be cancelled unless the City is given at least thirty (30) days prior written notice.

The certificate of insurance and endorsements listing the "City of Murfreesboro, Murfreesboro Municipal Airport, and its officials, employees, and agents" as additional insured may be mailed to the following address:

Murfreesboro Municipal Airport

1930 Memorial Blvd.

Murfreesboro, TN 37129

Or emailed to:

mbtadmin@murfreesborotn.gov

- d. If Tenant does not own or lease an aircraft on the Effective Date, or adds Additional Aircraft after the Effective Date, then Tenant will provide proof of Aircraft Liability Insurance before such Aircraft or Additional Aircraft is stored within or otherwise makes use of the Premises.
- e. Proof of renewal coverage and the endorsements must be provided to the Airport Director at least five business days prior to such renewal.

9.2 **Auto Liability Insurance:**

- a. Tenant must maintain and keep in force during the term of this Agreement, for the mutual benefit of City and Tenant, at Tenant's sole cost and expense, Auto Liability Insurance with minimum combined single limit of \$300,000 per occurrence.
- b. Tenant must maintain the minimum insurance requirement for each automobile that operates within the Aircraft Operating Area, including ramps and/or aprons ("AOA") prior to its operation within the AOA.
- c. Upon request of the Airport Director, Tenant shall provide proof of the required insurance coverage for any automobile operating or intending to operate within the AOA.

10. **Indemnification.**

- 10.1 Tenant will indemnify and hold harmless the City, its officers, agents, and employees from:
 - (a) any claims, damages, costs and attorney fees for injuries or damages arising, in part or in

whole, from the negligent or intentional acts or omissions of Tenant, its officers, employees, agents, sublessees, or invitees; and (b) any claims damages, penalties, costs and attorney fees arising from any failure of Tenant, its officers, employees, agents, sublessees, or invitees to observe applicable laws including, but not limited to, environmental laws, labor laws and minimum wage laws.

11. Termination.

11.1 For Cause.

- a. Either party may terminate this Agreement for cause by providing written notice to the other party of a breach of the Agreement detailing the breach and permitting the other party a thirty (30) day period within which to cure the breach, except where a shorter termination period is prescribed herein.
- b. In the event the City does not cure a breach within thirty (30) days, Tenant may vacate the Premises, leaving it in in substantially the same condition as when received, reasonable wear and tear excepted.
- c. In the event Tenant fails to cure a breach within thirty (30) days, except where a shorter period is provided herein, this Agreement will terminate, and Tenant must immediately vacate the Premises, leaving it in substantially the same condition as when received, reasonable wear and tear excepted. In such event, Tenant shall be responsible for the payment of rent for the remainder of the then current term until and unless the Premises is leased by the City to another tenant.
 - (1) In the event Tenant does not vacate within the period set forth above, the City may re-enter and take possession of the Premises and remove all persons and property without liability at the cost of the Tenant.
 - (2) For causes with specific termination period set forth herein, the specific termination period is applicable.

11.2 For Convenience. Either party may terminate this Agreement for convenience upon advance written notice no less than thirty (30) days before the end of the Initial Term or the end of any Subsequent Term. In such event, this Agreement shall terminate at the end of the then current Initial Term or Subsequent Term and the Tenant shall surrender and return the Premises in substantially the same condition as when received, reasonable wear and tear excepted.

11.3 Non-use of Premises.

- a. Tenant's failure to use the Premises for the storage of an Airworthy Aircraft for ninety (90) consecutive days or one hundred twenty (120) total days within a twelve (12) month period, including any portion thereof incorporated in any renewal of this

Agreement, will subject this Agreement to termination, regardless of Tenant's continued payment of Rent.

- b. Tenant may request a waiver of the non-use provision in writing to the Airport Director advising of the non-use of the Premises and the reasons for the non-use. A waiver may be granted pursuant to Section 4.3 (Aircraft Construction, Restoration and Refurbishment), Section 4.4 (Aircraft Maintenance and Repair), Section 4.5 (Purchase or Lease of an Aircraft), or Section 4.9 (Medical Procedures and Emergencies).

11.4 Change of Ownership or Leasehold Interest

- a. Upon the death or legal dissolution of Tenant this Agreement shall terminate on the last day of the month following such death or legal dissolution. Upon termination of this Agreement the Premises shall be surrendered and returned in substantially the same condition as when received, reasonable wear and tear excepted. Additional time to wrap up Tenant's affairs may be granted by the Airport Director provided rental payments are timely made.
- b. If Tenant no longer holds an ownership or leasehold interest in an Aircraft stored on the Premises, then Tenant shall immediately notify the Airport Director in writing no later than forty-eight (48) hours after such ownership or leasehold interest is extinguished. If Tenant elects not to apply for a waiver of the Use Provisions under Subsection 4.5 herein or is otherwise denied, then this Agreement will terminate immediately for cause and Tenant will be required to surrender and return the Premises to the City in substantially the same condition as when received, reasonable wear and tear excepted, no later than thirty (30) days following Tenant's notice of the loss of ownership or leasehold interest.

11.5 Bankruptcy or Insolvency. In the event bankruptcy or state-law insolvency or receivership proceedings are initiated by or against Tenant, the City may declare this Agreement immediately terminated. In such case, the Tenant shall forfeit any deposits made under Section 3.4 and shall surrender and return the Premises within thirty (30) days in substantially the same condition as when received, reasonable wear and tear excepted. No right or interests in the Premises may accrue to a receiver, trustee, or other officer on behalf of the Tenant or the bankruptcy estate. The City reserves all claims against the bankruptcy estate's assets for any amount due.

11.6 This Agreement shall be subject to termination by Tenant in the event any one or more of the following occur.

- a. The issuance of 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 Tenant's use of Premises, provided only the issuance

of such injunction is not based on or arise from any act or omission of Tenant; 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 Tenant's use of the Premises if such restriction be continued for a period of sixty (60) days.

12. Notice.

All notices required or beneficial under this Agreement must be mailed first class or hand delivered to the address and individual specified below. Delivery by mail will be considered perfected upon receipt or after five (5) days when delivered to the United States Postal Service. The parties are required to provide current mailing addresses and pending receipt of any change of address the following will be used for notices:

For Tenant: ___ (Same as provided on page one)___

For the City: Murfreesboro Municipal Airport
 Attn: Airport Director
 1930 Memorial Blvd.
 Murfreesboro, TN 37129

13. Miscellaneous

- 13.1 In addition to the terms and conditions contained herein, Tenant must comply with all federal, state, and local laws and regulations applicable to its use of the Premises or operations at the Airport, to include codes, rules, and standards adopted by the Airport Commission or City Council, including without limitation Chapter 3 of the City Code as shall be amended from time to time and is incorporated herein by reference. Violations of any applicable law, rule, or standard constitute a breach under this Agreement, may be reported to the Federal Aviation Administration or other applicable governing authority, and may result in additional penalties up to and including termination of this Agreement. Capitalized terms not otherwise defined herein shall have the same meaning ascribed by the City Code.
- 13.2 Tenant acknowledges the City is a governmental entity under the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.* that has governmental immunity for certain acts and the statutory limit on financial liability which are applicable to its operation of the Airport.
- 13.3 In the event of litigation, the City will be entitled to recover, in addition to other recovery,

attorney fees, including the value of in-house attorneys' time, and costs incurred, including court costs, expert witness fees, deposition and other discovery costs (including travel and court reporter costs).

- 13.4 This Agreement is governed by the laws of the State of Tennessee. Pursuant to the Constitution and Laws of the State of Tennessee, the City is a sovereign entity subject only to those courts with jurisdiction over the City. Any dispute, claim or cause of action relating to this Agreement must be resolved in accordance with the laws of the State of Tennessee and in the courts of Rutherford County, Tennessee or in the U.S. District Court for the Middle District of Tennessee, and the parties hereby expressly waive any objections and thereby consent of the jurisdiction and venue of said courts. The parties waive their right to a jury trial. Service of process on the 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.
- 13.5 Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, that provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 13.6 Confidentiality. This 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 Open 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 this 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 Tenant or provide Tenant 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 it is authorized to release the records. This section 13.6 serves to meet such burden and authorization of disclosure.
- 13.7 General Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. Further, no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- 13.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof.

SIGNATURES ON THE FOLLOWING PAGE

CITY OF MURFREESBORO

TENANT

Chad Gehrke
Airport Director

Name _____

Title _____

Approved as to form
Murfreesboro Legal Department

Email _____

Telephone _____

Adam F. Tucker, City Attorney

Date: _____

Status on date of execution:

- Tenant's Aircraft not subject to waiver
- Tenant's Aircraft is currently in maintenance
- Tenant is in the process of assembling a kit/build or refurbishing an aircraft
- Tenant is in the process of purchasing an Aircraft
- Tenant is initiating a sublease upon execution of the lease (must also select one other option)
- Tenant is actively resolving medical/life Issues

EXHIBIT "A"

Hangar Lease Agreement Addendum

Additional Tenants

Primary Tenant: _____
Lease Term: _____

Additional Tenant Contact Information

Individuals

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____

Telephone: _____

Partnerships or Corporations

Entity Name: _____
Contact: _____
Title _____
Address: _____

Entity Name: _____
Contact: _____
Title _____
Address: _____

Email: _____

Email: _____
Telephone: _____

Entity Name: _____
Contact: _____
Title _____
Address: _____

Entity Name: _____
Contact: _____
Title _____
Address: _____

Email: _____
Telephone: _____

Email: _____
Telephone: _____

Tenant Additional Aircraft information (each
Additional Aircraft is also defined herein as
the "**Aircraft**):

N-Number: _____
Make and Model: _____

N-Number: _____
Make and Model: _____

N-Number: _____
Make and Model: _____

N-Number: _____
Make and Model: _____

EXHIBIT "B"

HANGAR LEASE AGREEMENT SUBLEASE

This Hangar Sublease Agreement ("**Sublease**") is made this ___ day of _____, 20____ ("**Sublease Execution Date**") by and between _____, a [the state of formation], [partnership, corporation, limited liability corporation, etc.] ("**Tenant**") and _____, a [the state of formation], [partnership, corporation, limited liability corporation, etc.] ("**Sublessee**").

RECITALS

WHEREAS, on _____ the City of Murfreesboro, Tennessee ("**City**") entered into a Hangar Lease Agreement ("**Agreement**") with the Tenant to lease hangar space at the Airport, which space is designated as _____ (the "**Premises**"); and

WHEREAS, pursuant to the Agreement, Tenant may sublet the Premises during certain extended periods of non-use as defined in the Agreement, subject to the written approval of the City; and

WHEREAS, Tenant has received approval for an extended period of non-use of the Premises pursuant to the Agreement; and

WHEREAS, Tenant desires to sublease to Sublessee and Sublessee desires to sublease from the Tenant during Tenant's extended period of non-use and upon all conditions set forth herein, the Premises; and

WHEREAS, the City has agreed to permit the Tenant to sublease the Premises to Sublessee subject to the terms and conditions herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. General Terms and Conditions

- 1.1. All recitals herein are incorporated into the body of this Sublease as if reproduced in their entirety and shall be binding upon all parties hereto.
- 1.2. All capitalized terms herein shall have the same meaning as ascribed in the Agreement. Those capitalized terms not otherwise defined in the Agreement shall have the same meaning as ascribed in the City Code.

2. Sublease Term

- 2.1. The Sublease commences as of _____ and expires on _____ (the “**Sublease Term**”).
- 2.2. This Sublease is permitted exclusively during Tenant’s period of approved non-use of the Premises, which approval is scheduled to expire on _____. If Tenant does not need to utilize the entire period of non-use, then Tenant may terminate this Sublease for convenience pursuant to Section 5.1. If an extension of the Tenant’s non-use period is approved pursuant to the Agreement, then upon approval of the Airport Director, Sublease may likewise be extended to expire upon the expiration of the approved extension. Otherwise, this Sublease shall terminate on _____. This Sublease shall not be renewed or extended beyond Tenant’s approved non-use period or any approved extensions of same.
- 2.3. This Sublease does not alter the date of the term of the Agreement.

3. Tenant Obligations.

- 3.1. Tenant retains joint and several liability with Sublessee under the terms and conditions of the Agreement.
- 3.2. Tenant shall remain responsible for the full payment of rent to the City pursuant to the Agreement.

4. Sublessee Obligations

- 4.1. Sublessee shall be joint and severally liable for all duties and obligations of the Tenant pursuant to that certain Hangar Lease Agreement between the Tenant and the City, dated _____, attached hereto as Exhibit “A-1” and incorporated herein by reference as though reproduced in its entirety and binding on all parties hereto. Sublessee shall adhere to all rules and regulations pursuant to the Agreement.
- 4.2. Sublessee shall pay all rental payments due under this Sublease and the Hangar Lease Agreement directly to the Tenant as same is defined in the Hangar Lease Agreement. The rental amount on the Sublease Execution Date is _____ per month. If the City raises the rental amount during the Sublease Term, City will notify the Tenant subject to the terms of the Agreement. In such event, Tenant shall have the option of increasing the rental amount paid by Sublessee so that Sublessee’s rent matches the amount charged to Tenant. If Tenant elects to increase Sublessee’s rent pursuant to this subsection, Tenant shall provide notice to Sublessee prior to the rent increase and Sublessee shall have the option to accept the increase or terminate the Sublease for convenience as provided herein without obligation to pay the increased rental amount.
- 4.3. All required certificates of insurance and endorsements for Sublessee under Section 9 of the Agreement must be provided to the City prior to Sublessee’s use of the Premises. Failure to provide and maintain the required insurance documentation prior to use of the Premises shall be considered a material breach of this Sublease and shall subject this Sublease to immediate termination.

5. Termination.

- 5.1. Either party may terminate this Sublease Agreement for convenience by providing advance written notice to the other party and to the City thirty (30) days prior to such termination.
 - 5.2. Tenant, Sublessee or the City may terminate this Sublease for cause pursuant to the provisions of Section 11.1 of the Agreement.
 - 5.3. If this Sublease is terminated for any reason, Tenant shall remain liable for all duties and obligations during the remainder of the Agreement's Term.
 - 5.4. In the event the Agreement is terminated during the Sublease Term for any reason, this Sublease shall terminate simultaneously with the Agreement. Tenant shall be responsible for providing Sublessee with any notices related to a breach, cure period, or termination owed to Tenant under the Agreement. City shall not be liable for providing Sublessee with any notifications related to a breach, cure period, or termination of the Agreement.
6. **Indemnification.** Sublessee will indemnify and hold harmless the City, its officers, agents, and employees from: (a) any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Sublessee, its officers, employees, agents, or invitees; and (b) any claims damages, penalties, costs and attorney fees arising from any failure of Sublessee, its officers, employees, agents, or invitees to observe applicable laws including, but not limited to, environmental laws, labor laws and minimum wage laws.
7. **Additional Terms and Conditions**
- 7.1. Tenant and Sublessee warrant that no additional rent or other consideration will be paid for this sublease arrangement. In the event any additional consideration is paid for the sublease, that consideration becomes additional rent under the Agreement and due and payable to the City and the Agreement will terminate immediately.
 - 7.2. Entire Agreement. This Sublease and the Hangar Lease Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof.
 - 7.3. This Agreement may not be altered, modified, or amended unless such amendment or subsequent document is in writing signed by the non-moving party and the City.

SIGNATURES ON THE FOLLOWING PAGE

CITY OF MURFREESBORO

TENANT

Chad Gehrke
Airport Director

Approved as to form
Murfreeseboro Legal Department

Adam F. Tucker, City Attorney
Date: _____

Name _____
Title _____

Email: _____

Telephone: _____

SUBLESSEE

Name _____
Title _____

Email: _____

Telephone: _____

TIE DOWN RENTAL AGREEMENT

This Tie Down Rental Agreement ("**Agreement**") is made this ___ day of _____, 20____ (the "**Execution Date**") by and between the City of Murfreesboro, Tennessee ("**City**") and _____, a [the state of formation], [partnership, corporation, limited liability corporation, etc.] ("**Lessee**").

Primary Lessee authorized representative: _____

Contact Information:

Address: _____

Phone: _____

Email: _____

Additional Lessees may be added as a party with joint and several liability under this Agreement upon receipt by the Airport Director of a written request stating the reason for the addition and the provision of any requested documentation. Additional Lessees shall be listed on the addendum attached hereto as Exhibit "A" and incorporated herein by reference (the "**Addendum**").

Lessee Aircraft information (the "**Aircraft**"):

N-Number: _____

Make and Model: _____

Additional Aircraft may be added with the approval of the Airport Director and shall include without limitation proof of insurance as required under Section 9. If approved, Additional Aircraft shall be listed on the Addendum, attached hereto as Exhibit "A" and incorporated herein by reference. Only one Aircraft at a time may be stored on the Premises, as defined herein.

1. **Premises**

The City hereby leases to Lessee and Lessee hereby leases from the City for the Term and upon all the conditions set forth herein, a tie down space at the Murfreesboro Municipal Airport ("**Airport**"), which space is designated as _____ ("**Premises**"). It is the City's intent that Lessee use only the designated tie down area. Lessee has had an opportunity to inspect the Premises and accepts it in its current condition, "as is." Lessee may use other tie down locations only if directed to do so by the Airport Director or their representative. Lessee's designated tie down location may be changed by City without Lessee's consent.

2. **Term**

This Agreement commences on the ___ day of _____, 20____ ("**Effective Date**") and ends on the last day of the month in which it commences (the "**Initial Term**"). Unless otherwise terminated as set forth herein, this Agreement shall automatically renew monthly thereafter on the first day of the month (the "**Subsequent Term(s)**") (the Initial Term and any Subsequent Term(s) are collectively the "**Term**").

3. **Rent**

- 3.1 Lessee shall pay to the City, as rent for the Premises, monthly payments of \$ _____ in advance, due on the first day of each and every month of the Term. Rent must be paid to the "City of Murfreesboro" and mailed to the City at the address provided in Section 12 of this Agreement or hand delivered to the Airport Director or Airport Manager at the Airport during business hours. A late charge equal to five (5) percent of the monthly rental amount shall be due and payable for each monthly rental payment not received by the 5th day of the month or, if the 5th day of the month falls on a weekend or federal, state or municipal holiday, then the following business day.
- 3.2 The City and the Airport Commission reserve the right to conduct an annual rent review and adjustment at the beginning of each fiscal year. In the event the rental amount increases, the Airport Director shall notify the Lessee in writing no less than sixty (60) days prior to the rent increase taking effect. Upon notice of an increase in the rental amount, Lessee shall have the right to terminate the Agreement with advance written notice no later than fourteen (14) days after the notification of the rent increase. Such termination shall become effective on the date of the proposed increase. Nothing in this subsection is intended to replace or modify any rights of the parties under Section 11.2 herein.
- 3.3 Rental payment for the Initial Term hereof shall be prorated on a daily basis if the Initial Term hereof does not begin on the first day of the month.
- 3.4 Lessee will deposit with the City an amount equal to one full month's rent on the Execution Date. Such deposit shall be returned to the Lessee upon termination of this Agreement, provided: (a) Lessee is not in breach of this Agreement; (b) all rent and other assessments due have been paid in full; and (c) the Premises is returned in substantially the same condition as when received, reasonable wear and tear excepted, as determined by the Airport Director. Otherwise, the City reserves the right to retain any or all of the deposit for the cleaning, repair, or advertisement of the Premises or to offset any other amounts owed by Lessee under this Agreement.
- 3.5 In the event any payments due under this Agreement become past due, the Lessee shall be prohibited from using the Airport and its facilities, including without limitation the Premises, until the amounts due are paid in full.

4. **Use of Premises**

- 4.1 Only the Aircraft identified on page one (1) of this Agreement or any attached Addendum may use the Premises without prior written approval from the Airport Director, subject to all other terms and conditions herein. Any additional or alternative Aircraft that receives approval from the Airport Director to use the Premises shall likewise be subject to all terms and conditions applicable herein as though such aircraft were the Aircraft identified on page one (1) of this Agreement or any attached Addendum.
- 4.2 Airworthy Aircraft.
- a. Premises may only be used for the storage of Airworthy Aircraft except as provided in Section 4.3 (Aircraft Maintenance and Repair), Section 4.4 (Purchase or Lease of an Aircraft) or Section 4.5 (Medical Procedures and Emergencies). For purposes of this Agreement, the term "**Airworthy Aircraft**" is defined as a machine intended for and

capable of manned aerial flight which is Actively Used and currently meets all the requirements for regular flight as established by the Federal Aviation Administration. “**Actively Used**” is defined as performing two (2) operations out of the Murfreesboro Airport every 90 days of the Term. The operations shall be documented via ADS-B or pilot flights logs, and available for review by the City upon request. Tenant may also coordinate a visual verification of activity with the Airport Director or their designee. The requirements of this subsection 4.2(a) shall collectively be known as the “**Use Provisions**”.

- b. Lessee must provide the Airport Director proof of the Aircraft's current annual inspection report by the Effective Date and, subsequent thereto, provide proof of the Aircraft's annual inspection report no later than ten (10) days after any annual renewal of the inspection report. Jet and turbine aircraft may provide proof of latest required maintenance inspection no later than ten (10) days after the required maintenance inspection. If Lessee does not own or lease an Airworthy Aircraft as of the Effective Date, then proof of such annual or otherwise required inspection report shall be provided as prescribed herein prior to any use of the Premises by the Airworthy Aircraft. Any proof supplied by Tenant may redact specific Aircraft maintenance issues but shall include the date the inspection was conducted and the party conducting the inspection.
- c. Lessee must provide written notice to the Airport Director within thirty (30) days if the Aircraft fails to meet the criteria of an Airworthy Aircraft, except where a shorter timeframe is provided herein. Such written notice shall include any actions to be taken to bring the Aircraft into compliance with this Agreement, including but not limited to any waiver request(s) under Section 4.3 (Aircraft Maintenance and Repair) or Section 4.4 (Purchase or Lease of an Aircraft)..
- d. At the Airport Director's discretion, Lessee may be required to demonstrate the Aircraft is an Airworthy Aircraft.
- e. Violation of the Use Provisions shall constitute a breach of this Agreement. Lessee may cure the breach by bringing the Aircraft into compliance with the Use Provisions or by obtaining a waiver of the Use Provisions as provided herein.

4.3 Aircraft Maintenance and Repair.

- a. Lessee will not use the Premises for aircraft maintenance, repair, construction, radio and instrument services, aviation maintenance technical training, or aircraft washing, cleaning, painting, or refurbishment.
- b. The Airport Director may grant one (1) waiver of the Use Provisions for the repair or maintenance of the Aircraft for a period of up to ninety (90) days. Lessee shall inform the Airport Director within thirty (30) days of Aircraft going down for maintenance or repair if and when the Aircraft will vacate the Premises for maintenance or repair, and when the maintenance or repair will be completed. Lessee shall keep the Airport Director

informed as to any delays in the repair or maintenance or deviations from any other information provided hereunder. Upon written request, the Airport Director may grant an extension of the waiver period of up to an additional one hundred fifty (150) days for extraordinary or unexpected delays outside the reasonable control of the Lessee. Any extension of the waiver of the Use Provisions beyond two hundred forty (240) days shall require the approval of the Airport Commission. The Commission may consider without limitation such factors as circumstances beyond the reasonable control of the Lessee, extent of work completed, history of diligent work, Lessee communication, and compliance with the terms of this Agreement and other applicable laws.

- c. During any waiver under this Section 4.3 Lessee shall remain liable for all obligations under this Agreement, including without limitation the payment of Rent.

4.4 Securing Replacement Aircraft.

- a. If on the Effective Date the Lessee does not have an ownership or leasehold interest in an aircraft, Lessee shall have nine (9) months to secure and store on-Premises an aircraft which meets all the requirements herein.
- b. If at any time after the Effective Date Lessee no longer has an ownership or leasehold interest in an Aircraft, Lessee may petition the Airport Director for a waiver from the Use Provisions under Section 4 of up to nine (9) months to purchase or lease a replacement Aircraft. During this time, at the request of the Airport Director, Lessee may be required to provide documentation demonstrating Lessee's efforts to secure a replacement Aircraft
- c. During any waiver period under this Section 4.4 Lessee shall remain liable for all obligations under this Agreement, including without limitation the payment of Rent.
- d. Failure of Lessee to purchase or lease an aircraft during the waiver period prescribed herein shall result in the termination of this Agreement at the expiration of the waiver period.

4.5 Medical Procedures and Emergencies. If Lessee cannot ensure Active Use of the Aircraft due to a medical procedure or medical emergency that renders Lessee incapable of operating the Aircraft for a period of at least ninety (90) days, then Lessee may request a waiver of the Use Provisions prior to the medical procedure or as soon as practicable after a medical emergency so long as it's prior to Lessee falling into breach of the Use Provisions. Such waiver may be granted in the discretion of the Airport Director on a case-by-case basis. During any waiver under this Section 4.5, Lessee shall remain liable for all other obligations under this Agreement, including without limitation the payment of Rent. Additional documentation may be required to substantiate any request for waiver under this Section 4.5.

4.6 Military Leave. In the event the Tenant is, or hereafter becomes, a member of the United States Armed Forces (the "**Military**") on extended active duty, and:

- a. the Tenant receives orders for a permanent change of station to depart from the vicinity of the Premises, is relieved from active duty, retires or separates from the Military, is ordered into Military housing, or receives orders to deploy for more than ninety (90) days, then Tenant may terminate this Agreement upon providing the City with a minimum thirty (30) days written notice. In such event, Tenant shall pay prorated rent for any days beyond the first day of the month following notice if such days are included in the notice period. The Tenant's deposit will be returned to the Tenant at the termination of the Agreement, provided there are no damages to the Premises or other payments due and outstanding; or
- b. the Tenant receives orders to deploy for more than ninety (90) days, then Tenant may apply for a waiver from the Use Provisions for a period of time not to exceed the time of deployment so ordered and evidenced. During this waiver period, Tenant shall still be responsible for the timely payment of rent under this Agreement.

If Tenant chooses to exercise the provisions of subsections a. or b. above, Tenant must also deliver to the City a copy of the Tenant's official orders or a letter signed by the Tenant's commanding officer. These documents must reflect the changes that warrant termination or waiver. This Section 4.6 shall only apply if Tenant is an individual and there are no Additional Tenants under the Agreement.

- 4.7 Commercial Activity. Premises are intended for the securing of Aircraft for Lessee's personal business use and/or pleasure. Lessee may not use the Premises or any aircraft stored thereon for commercial activity, as defined by the City of Murfreesboro Code of Ordinances, as same may be amended from time to time ("**City Code**"), without the prior written approval of such use by the Airport Director and recognition of Lessee as a commercial operator by the Murfreesboro Airport Commission.
- 4.8 Any automobile that operates within the Aircraft Operating Area, including ramps and/or aprons ("**AOA**") must be compliant with the insurance provisions of Section 9. No parking or storage of automobiles or trailers is permitted on the Premises or the AOA without the prior written approval of the Airport Director.
- 4.9 Lessee must cooperate with the City's efforts to improve airport facilities. Lessee's rent will not be reduced for disruption of use due to City's improvement efforts.

5. **Security and Inspection.**

- 5.1 Lessee acknowledges that the City has the right to and may access the Premises at any and all times and Lessee waives any and all rights with respect to entry or inspection by the City of the Premises and personal property thereupon.
- 5.2 Lessee will supply a lock or a security device for the Aircraft of Lessee's own choosing. Lessee may, but is not required to, give the Airport Director or the Airport Manager a key or other means of access to the Aircraft for use in the event of an emergency, fueling of said Aircraft, or a default

under this Agreement. The City shall not be responsible for the transfer of keys to another individual or entity.

- 5.3 If any rope used to secure the Aircraft is found to be cut, fraying, tattered, worn or otherwise unsuitable for the safe securement of the Aircraft, then the City shall have the right but not the obligation to replace the rope at Lessee's sole cost and expense.
- 5.4 Any ropes sold or otherwise supplied to Lessee by the City to secure the Aircraft shall be accepted by Lessee "as-is" and used for Lessee's benefit and convenience at Lessee's own risk. The City makes no warranties or representations regarding any ropes sold or otherwise provided to Lessee and shall not be responsible for the condition of such ropes.
- 5.5 The City is not liable to the Lessee for theft, vandalism, or damage to Lessee's property except as may otherwise be provided by law, and in no case as a result of Lessee's failure to secure the Aircraft.

6. **Maintenance of Premises.**

- 6.1 Lessee must maintain the Premises in a good, clean, safe, and orderly condition, except for ordinary wear and tear. Lessee is solely responsible for the cost of repairing or replacing any portion of the Premises damaged by Lessee or its officers, employees, agents, or invitees.
- 6.2 Lessee may not alter the Premises without the prior written approval of the Airport Director. At the end of the Term, approved alterations may be required to remain at the Lessee's expense or be returned to their original condition as determined by the Airport Director.
- 6.3 No flammable materials, open flame, or ignition sources are permitted on the Premises, including without limitation torches or welders, space heaters, or smoking.
- 6.4 Lessee may not post signs at the Airport, on the Premises, or on the designated Aircraft without the prior written approval of the Airport Director.
- 6.5 Lessee shall be liable for any act or omission of Lessee's officers, employees, agents, or invitees on or about the Premises which gives rise to any duty, penalty or other applicable provision under this Agreement.
- 6.6 Rags, papers, and trash must be disposed of immediately after use.
- 6.7 The Premises shall be kept free of oil. Oil may be changed in locations approved by the Airport Director provided that all spills are cleaned immediately and that the used oil is disposed of in the manner specified by the Airport Director or as required by law.
- 6.8 Lessee shall conduct its activities at the Airport in a safe, prudent, and cooperative manner. Lessee's activities shall not interfere with the lawful and reasonable uses of the Airport by others.

7. **No Subleasing or Assignment.** This Agreement is not transferable. Lessee cannot sublease, assign, loan or rent the Premises to anyone else.

8. **Appeal of Airport Director Decisions.**

- 8.1 Lessee may appeal a decision or action of the Airport Director relative to this Agreement to the Murfreesboro Airport Commission by making a written request to the Chair of the Commission within thirty (30) days of receiving the final decision or action of the Airport Director. The request must be accompanied by any relevant correspondence or documentation. The Chair of the Commission may refuse the appeal if it is not a decision directly related to this Agreement or otherwise rendered non-discretionary by the terms of this Agreement or other applicable law.
- 8.2 If the Chair of the Commission agrees to hear the appeal, the written appeal will be presented to the Commission at its next scheduled meeting, provided that the Commission may defer the decision to the next following meeting if it determines that additional information is required. Consideration will be upon the written appeal and relevant documents; provided, however, the Chair may request that the Lessee or City answer questions related to the matters at issue if such answers will expedite consideration of the appeal and if allowing such answers is consistent with general principles of fairness.
- 8.3 The Commission may dismiss the appeal as addressing a matter laying outside this Agreement or consider the appeal and make a recommendation to the Airport Director. The Airport Director retains full authority to manage the Airport and accept or reject the Commission's recommendation.

9. **Insurance**

9.1 **Aircraft Liability Insurance:**

- a. Tenant must maintain and keep in force during the term of this Agreement, for the mutual benefit of City and Tenant, at Tenant's sole cost and expense, **Aircraft Liability Insurance** written on an "occurrence" basis with a limit of not less than **\$1,000,000 per occurrence, limited to \$100,000 each passenger**, including **Airport Premises Liability** to include property damage, with a limit of not less than **\$1,000,000 per occurrence**.
- b. Tenant must maintain the minimum insurance requirement for each Aircraft that is stored on the Premises or otherwise makes use of the Airport.
- c. Prior to the Effective Date, for each Aircraft covered by this Agreement, Tenant must provide the Airport Director with:
- (1) **a certificate of insurance evidencing the required Aircraft Liability Insurance, which shall include the following:**
- **Additional Insured:**
“City of Murfreesboro, Murfreesboro Municipal Airport, and its officials, employees, and agents.”

1930 Memorial Boulevard

Murfreesboro, Tennessee 37133

- Aircraft Liability Limits no less than:
\$1,000,000 Each Occurrence limited to \$100,000 Each Passenger
 - Airport Premises Liability No Less than:
1,000,000 Each Occurrence
- (2) an endorsement to the required policies naming the "City of Murfreesboro, Murfreesboro Municipal Airport, and its officials, employees, and agents" as additional insureds; and
- (3) an endorsement that the policy cannot be cancelled unless the City is given at least thirty (30) days prior written notice.

The certificate of insurance and endorsements listing the "City of Murfreesboro, Murfreesboro Municipal Airport, and its officials, employees, and agents" as additional insured may be mailed to the following address:

Murfreesboro Municipal Airport

1930 Memorial Blvd.

Murfreesboro, TN 37129

Or emailed to:

mbtadmin@murfreesborotn.gov

- d. If Tenant does not own or lease an aircraft on the Effective Date, or adds Additional Aircraft after the Effective Date, then Tenant will provide proof of Aircraft Liability Insurance before such Aircraft or Additional Aircraft is stored within or otherwise makes use of the Premises.
- e. Proof of renewal coverage and the endorsements must be provided to the Airport Director at least five business days prior to such renewal.

9.2 **Auto Liability Insurance:**

- a. Lessee must maintain and keep in force during the term of this Agreement, for the mutual benefit of City and Lessee, at Lessee's sole cost and expense, Auto Liability Insurance with minimum combined single limit of \$300,000 per occurrence.
- b. Lessee must maintain the minimum insurance requirement for each automobile that operates within the Aircraft Operating Area, including ramps and/or aprons, prior to its operation within the AOA.
- c. Upon request of the Airport Director, Lessee shall provide proof of the required insurance coverage for any automobile operating or intending to operate within the AOA.

10. **Indemnification**

Lessee will indemnify and hold harmless the City, its officers, agents, and employees from: (a) any claims,

damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Lessee, its officers, employees, agents, or invitees; and (b) any claims damages, penalties, costs and attorney fees arising from any failure of Lessee, its officers, employees, agents, or invitees to observe applicable laws including, but not limited to, environmental laws, labor laws and minimum wage laws.

11. **Termination**

11.1 For Cause

- a. Either party may terminate this Agreement for cause by providing written notice to the other party of a breach of the Agreement and detailing the breach and permitting the other party a thirty (30) day period within which to cure the breach, except where a shorter termination period is prescribed herein.
- b. In the event the City does not cure a breach within thirty (30) days, Lessee may vacate the Premises, leaving it in in substantially the same condition as when received, reasonable wear and tear excepted.
- c. In the event Lessee fails to cure a breach within thirty (30) days, except where a shorter period is provided herein, this Agreement will terminate, and Lessee must immediately vacate the premises, leaving it in substantially the same condition as when received, reasonable wear and tear excepted. In such event, Lessee shall be responsible for the payment of rent for the remainder of the then current term until and unless the Premises is leased by the City to another lessee.
 - (1) In the event Lessee does not vacate within the period set forth above, the City may re-enter and take possession of the Premises and remove all persons and property without liability at the cost and expense of the Lessee and relet the Premises.
 - (2) For causes with specific termination period set forth herein, the specific termination period is applicable.

11.2 For Convenience. Either party may terminate this Agreement for convenience upon thirty (30) days advance written notice. In such event, Lessee shall surrender and return the Premises in substantially the same condition as when received, reasonable wear and tear excepted.

11.3 Non-use of Premises.

- a. Lessee's failure to use the Premises for the storage of an Airworthy Aircraft in accordance with this Agreement for ninety (90) consecutive days or one hundred twenty (120) total days within a twelve (12) month period, including any portion thereof incorporated in any renewal of this Agreement, will subject this Agreement to termination, regardless of Lessee's continued payment of Rent.
- b. Lessee may request a waiver of the non-use provision in writing to the Airport Director advising of the non-use of the Premises and the reasons for the non-use. A waiver may be granted pursuant to Section 4.3 (Aircraft Maintenance and Repair), Section 4.4

(Purchase or Lease of an Aircraft), or Section 4.5 (Medical Procedures and Emergencies).

11.4 Change of Ownership Interest

- a. Upon the death or legal dissolution of Lessee this Agreement shall terminate on the last day of the month following such death or legal dissolution. Upon termination of this Agreement the Premises shall be surrendered and returned in substantially the same condition as when received, reasonable wear and tear excepted. Additional time to wrap up Lessee's affairs may be granted by the Airport Director provided rental payments are timely made.
- b. If Lessee no longer holds an ownership or leasehold interest in an Aircraft stored on the Premises, then Lessee shall immediately notify the Airport Director in writing no later than forty-eight (48) hours after such ownership or leasehold interest is extinguished. If Lessee elects not to apply for a waiver from the Use Provisions under Subsection 4.5 herein or is otherwise denied, then this Agreement will terminate immediately for cause and Lessee will be required to surrender and return the Premises to the City in substantially the same condition as when received, reasonable wear and tear excepted, no later than thirty (30) days following Lessee's notice of the loss of ownership or leasehold interest.

11.5 Bankruptcy or Insolvency. In the event bankruptcy or state-law insolvency or receivership proceedings are initiated by or against Lessee, the City may declare this Agreement immediately terminated. In such case, the Lessee shall forfeit any deposits made under Section 3.4 and shall surrender and return the Premises within thirty (30) days in substantially the same condition as when received, reasonable wear and tear excepted. No right or interests in the Premises may accrue to a receiver, trustee, or other officer on behalf of the Lessee or the bankruptcy estate. The City reserves all claims against the bankruptcy estate's assets for any amount due.

11.6 This Agreement shall be subject to termination by Lessee in the event any one or more of the following occur.

- a. The issuance of 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 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 the Premises if such restriction be continued for a period of sixty (60) days.

12. **Notice.**

All notices required or beneficial under this Agreement must be mailed first class or hand delivered to the

address and individual specified below. Delivery by mail will be considered perfected upon receipt or after five (5) days when delivered to the United States Postal Service. The parties are required to provide current mailing addresses and pending receipt of any change of address the following will be used for notices:

For Lessee: ___ (Same as provided on page one)___

For the City: Murfreesboro Municipal Airport
 Attn: Airport Director
 1930 Memorial Blvd.
 Murfreesboro, TN 37129

13. **Miscellaneous.**

- 13.1 In addition to the terms and conditions contained herein, Lessee must comply with all federal, state, and local laws and regulations applicable to its use of the Premises or operations at the Airport, to include codes, rules, and standards adopted by the Airport Commission or City Council, including without limitation Chapter 3 of the City Code as shall be amended from time to time and is incorporated herein by reference. Violations of any applicable law, rule, or standard constitute a breach under this Agreement, may be reported to the Federal Aviation Administration or other applicable governing authority, and may result in additional penalties up to and including termination of this Agreement. Capitalized terms not otherwise defined herein shall have the same meaning ascribed by the City Code.
- 13.2 Lessee acknowledges the City is a governmental entity under the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.* that has governmental immunity for certain acts and the statutory limit on financial liability which are applicable to its operation of the Airport. Lessee agrees that the City is and would be entitled to such immunities and such statutory limits of liability for its operation of the Airport in the event of any claim by or on behalf of Lessee.
- 13.3 In the event of litigation, the City will be entitled to recover, in addition to other recovery, attorney fees, including the value of in-house attorneys' time, and costs incurred, including court costs, expert witness fees, deposition and other discovery costs (including travel and court reporter costs).
- 13.4 This Agreement is governed by the laws of the State of Tennessee. Pursuant to the Constitution and Laws of the State of Tennessee, the City is a sovereign entity subject only to those courts with jurisdiction over the City. Any dispute, claim or cause of action relating to this Agreement must be resolved in accordance with the laws of the State of Tennessee and in the courts of Rutherford County, Tennessee or in the U.S. District Court for the Middle District of Tennessee, and the parties hereby expressly waive any objections and thereby consent of the jurisdiction and venue of said courts. The parties waive their right to a jury trial. Service of process on the 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.

- 13.5 Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, that provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 13.6 Confidentiality. This 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 Open 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 this 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 Lessee or provide Lessee 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 it is authorized to release the records. This section 13.6 serves to meet such burden and authorization of disclosure.
- 13.7 General Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. Further, no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- 13.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof.

SIGNATURES ON THE FOLLOWING PAGE

CITY OF MURFREESBORO

TENANT

Chad Gehrke
Airport Director

Name _____

Title _____

Approved as to form
Murfreessboro Legal Department

Email _____

Telephone _____

Adam F. Tucker, City Attorney

Date: _____

Status on date of execution:

- Lessee's Aircraft not subject to waiver of Use Provisions
- Lessee's Aircraft is currently in maintenance
- Lessee is in the process of purchasing an Aircraft
- Lessee is actively resolving medical/life Issues

EXHIBIT "A"

Hangar Lease Agreement Addendum

Additional Lessees

Primary Lessee: _____
Lease Term: _____

Additional Lessee Contact Information

Individuals

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____
Telephone: _____

Name: _____
Address: _____
Email: _____

Telephone: _____

Partnerships or Corporations

Entity Name: _____
Contact: _____
Title _____
Address: _____

Entity Name: _____
Contact: _____
Title _____
Address: _____

Email: _____
Telephone: _____

Email: _____
Telephone: _____

Entity Name: _____
Contact: _____
Title _____
Address: _____

Entity Name: _____
Contact: _____
Title _____
Address: _____

Email: _____
Telephone: _____

Email: _____
Telephone: _____

Additional Aircraft information (each Additional Aircraft is also defined herein as “**Aircraft**”):

N-Number: _____

Make and Model: _____

N-Number: _____

Make and Model: _____

N-Number: _____

Make and Model: _____

N-Number: _____

Make and Model: _____

**MURFREESBORO MUNICIPAL AIRPORT
Murfreesboro, Tennessee
STORAGE AREA RENTAL AGREEMENT**

This Storage Area Rental Agreement ("**Agreement**") is made this _____ day of _____, 20____ ("**Execution Date**") by and between the City of Murfreesboro, Tennessee ("**City**") and _____, a [the state of formation], [partnership, corporation, limited liability corporation, etc.] ("**Lessee**").

Lessee authorized representative: _____

Contact Information:

Address: _____

Phone: _____

Email: _____

1. Premises. The City hereby leases to Lessee and Lessee hereby leases from City upon all the conditions set forth herein, storage area space designated as _____ (the "**Premises**") at the Murfreesboro Municipal Airport, Murfreesboro, Tennessee ("**Airport**"). Lessee has had an opportunity to inspect the Premises and accepts it in its current condition, "as is."

2. Rent.
 - a. Rent must be paid monthly, in advance, by the 5th day of the month in the amount of _____ Dollars (\$_____). Rental payments for the initial month of the Agreement, if less than a full month, shall be prorated. Rent is considered past due if not received by the 5th day of the month or, if the 5th day of the month falls on a weekend or federal, state or municipal holiday, then by the following business day. Payments should be made payable to "City of Murfreesboro" and delivered personally to the Airport Manager during normal Airport business hours, or mailed to:

Murfreesboro Municipal Airport
1930 Memorial Blvd.
Murfreesboro, TN 37129

 - b. Lessee will deposit with the City an amount equal to one full month's rent on the Execution Date. Such deposit shall be returned to the Lessee upon termination of this Agreement, provided: (a) Lessee is not in breach of this Agreement; (b) all rent and other assessments due have been paid in full; and (c) the Premises is returned in substantially the same condition as when received, reasonable wear and tear excepted, as determined by the Airport Director. Otherwise, the City reserves the right to retain any or all of the deposit for the cleaning, repair, or advertisement of the Premises or to offset any other amounts owed by Lessee under this Agreement.

 - c. Failure to pay. In the event any payments due under this Agreement become past due, the Lessee shall (1) be prohibited from using the Airport and its facilities, including the Premises, until the amounts due are paid in full; and (2) be required to pay a late charge equal to five (5) percent of the monthly rental amount.

3. Utilities. Lessee shall not store any continuously running electronics on the Premises. The City shall have the right, without amendment of this Agreement, to impose additional rental charges on Lessee for excessive use of electricity or other utilities.
4. Fees. Lessee shall honor the City's exclusive right to sell fuel at the Airport and shall not provide fuel to others at the Murfreesboro Municipal Airport or acquire it there from others. Nothing in this Agreement authorizes the Lessee to provide fuel to others at the Airport or to store fuel in the Premises.
5. Litigation. In the event litigation is necessary to collect rent or damages or to evict Lessee, City shall be entitled to the value of its reasonable attorneys' fees and all costs incurred.
6. Term. The term of this Agreement commences on the ___ day of _____, 20___ and ends on the final day of the month in which it commences. Unless and until otherwise terminated as set forth herein, this Agreement shall automatically renew monthly thereafter on the first day of the month.
7. Termination for Convenience. Either party may terminate this Agreement for convenience by giving the other party thirty (30) days advance written notice.
8. Termination for Cause.
 - a. Either party may terminate this Agreement for cause by providing written notice to the other party of a breach of the Agreement detailing the breach and permitting the other party a thirty (30) day period within which to cure the breach, except where a shorter termination for cause period is prescribed herein.
 - b. In the event the City does not cure a breach within thirty (30) days, Lessee may vacate the Premises, leaving it in substantially the same condition as when received, reasonable wear and tear excepted.
 - c. In the event Lessee fails to cure a breach within thirty (30) days, except where a shorter period is provided herein, this Agreement will terminate, and Lessee must immediately vacate the Premises, leaving it in substantially the same condition as when received, reasonable wear and tear excepted. In such event, Lessee shall be responsible for the payment of rent for the remainder of the then current term.
 - d. In the event Lessee does not vacate within the period set forth above, the City shall have the right, but not the obligation, in addition to and not to the exclusion of any other remedies provided herein or by law, to re-enter and take possession of the Premises and remove all personal property from the Premises without liability, at Lessee's risk and expense, to another location without additional notice to Lessee, and to relet the Premises.
9. No Subleasing or Assignment. This Agreement is not transferable. Lessee cannot sublease, assign, loan or rent this space to anyone else.
10. Notice. Notice shall be effective if deposited in the United States mail addressed to Lessee at the address shown above (unless Lessee has, in writing, submitted a change of address form to the Airport Manager) and to the City at:

Murfreesboro Municipal Airport
1930 Memorial Blvd.
Murfreesboro, TN 37129

11. Commercial Operations. The Premises is rented to be used for Lessee's aeronautical activities for personal business and/or pleasure. Lessee will not use the Premises for a commercial activity, as defined by city ordinance, without having sought and received approval as a commercial operator from the Murfreesboro Airport Commission. Even if approved as a commercial operator, Lessee will not use the Premises for aircraft maintenance and repair; radio and instrument services; aviation maintenance technical training; or, aircraft washing, cleaning, painting or refurbishment. Lessee will use the Premises for aviation-related purposes.
12. Maintenance.
 - a. Lessee shall maintain the Premises in a good, clean, safe, and orderly condition, ordinary wear and tear excepted. Lessee shall be liable to the City for the responsible cost of repairing or replacing portions of the Premises damaged by Lessee, its agents or its invitees.
 - b. Premises is not climate controlled. City shall not be responsible for the replacement, refurbishment or repair of any items stored within the Premises.
 - c. No food or other perishable items shall be stored within the Premises. Failure to comply may result in additional charges for pest control or related remediation.
 - d. No fuel or other flammable materials, open flame, or ignition sources are permitted within the Premises, including without limitation torches or welders, space heaters, or smoking.
 - e. Lessee shall not alter the Premises without the prior written approval of the Airport Manager.
 - f. Lessee shall cooperate fully, without any reduction in rent, with the City's efforts to improve airport facilities.
 - g. Rags, papers, and trash must be disposed of immediately after use.
 - h. The Premises shall be kept free of oil. Oil may be changed in locations approved by the Airport Manager provided that all spills are cleaned immediately and that the used oil is disposed of in the manner specified by the Airport Manager or as required by law.
 - i. Lessee shall conduct its activities at the Airport in a safe, prudent, and cooperative manner. Lessee's activities shall not interfere with lawful and reasonable uses of the Airport by others nor pose any unusual risk of fire or other harm to others.
13. Signs. Lessee shall have no right to post any signs at the Airport or at the Premises.
14. Security and Inspection. Lessee will supply a lock or a security device for the Premises of Lessee's own choosing. Lessee shall give the Airport Manager a key or other means of access to the Premises for the purpose of inspection, repair, alteration, improvement, to supply necessary or agreed services, or to use in the event of an emergency. City shall not be liable to Lessee for theft or vandalism to the extent allowed by law. It is a breach of this Agreement should the City be unable to enter the Premises at any time due to any act or omission of the Lessee or its officers, employees, agents, or invitees.
15. Limit of City's Liability. 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 is and would be entitled to such immunities and such statutory limits of liability for its operation of the Airport in the event of any claim by or on behalf of Lessee.
16. F.A.A. Regulations. The Lessee will follow Federal Aviation Administration (hereafter, "F.A.A.") regulations at all times while based at Murfreesboro Municipal Airport. The Lessee understands that any violations may be reported to the F.A.A. and may be the basis for immediate termination of this Agreement.

17. Duty to Comply with Laws and Rules. Lessee shall comply fully with federal, state, and local laws and regulations applicable to operations of Airport, specifically including without limitation those in Chapter 3 of the Murfreesboro City Code as same may be amended from time to time. Any breach of federal, state, or local laws or of these regulations may be the basis for termination of this Agreement.

18. Insurance.

- a. Lessee must maintain and keep in force during the term of this Agreement, for the mutual benefit of City and Lessee, at Lessee's sole cost and expense, **Auto Liability Insurance** with minimum combined single limit of \$300,000 per occurrence for each automobile that operates within the Aircraft Operating Area, including ramps and/or aprons (hereafter, "**AOA**"). This insurance must be obtained by Lessee for each automobile prior to its operation within the AOA. Upon request of the Airport Director, Lessee shall provide proof of the required insurance coverage for any automobile operating or intending to operate within the AOA.
- b. Required insurance coverages must remain in effect during the Term of this Agreement, and proof of renewal coverage and the endorsements must be provided to the Airport Director at least five business days prior to such renewal.

19. Rental of other Airport Facilities. The Premises is intended for use as an accessory to Lessee's aeronautical activities at the Airport as defined by the F.A.A. Lessee understands that if Lessee ceases its aeronautical activities at the Airport, then this Agreement shall be terminated for convenience and Lessee shall have thirty (30) days to surrender the Premises in a good, clean, safe, and orderly condition, except for ordinary wear and tear.

APPROVED AND AGREED TO BY:

LESSEE

Printed Name _____

Signature _____

Date _____

CITY OF MURFREESBORO

By _____

Title _____

Date _____

Approved as to form
Murfreesboro Legal Department

Adam F. Tucker, City Attorney

Date: _____

COUNCIL COMMUNICATION

Meeting Date: 7/25/2024

Item Title: Acceptance of Grant Award

Department: Fire Rescue

Presented by: Chief Mark McCluskey

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

Approval to accept Assistance to Firefighters Grant Award.

Staff Recommendation

Approve grant award.

Background Information

MFRD was awarded \$357,637 in Federal Funding through an Assistance to Firefighters Grant (AFG). This award will allow the department to develop a health and wellness program that will include nutrition education, fitness training, injury prevention and peer support counseling. Funding will also allow for exercise equipment to be purchased for 11 fire stations.

Council Priorities Served

Maintain public safety

Creating a health and wellness program for firefighters will enhance their physical and mental well-being so they can deliver optimal care to the citizens of Murfreesboro.

Fiscal Impact

The City will recognize grant revenues of \$357,637 and grant expenditures of \$393,400.

Attachments

1. AFG Award Letter

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 07/08/2024



Reisha Watson
MURFREESBORO, CITY OF
P.O. BOX 1139
MURFREESBORO, TN 37133

EMW-2023-FG-06834

Dear Reisha Watson,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2023 Assistance to Firefighters Grant (FG) Grant funding opportunity has been approved in the amount of \$357,636.89 in Federal funding. As a condition of this grant, you are required to contribute non-Federal funds equal to or greater than 10.0% of the Federal funds awarded, or \$35,763.69 for a total approved budget of \$393,400.58. Please see the FY 2023 FG Notice of Funding Opportunity for information on how to meet this cost share requirement.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2023 FG Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A handwritten signature in blue ink that reads "P.S. Williams". The signature is written in a cursive style.

PAMELA WILLIAMS
Assistant Administrator, Grant Programs

Summary Award Memo

Program: Fiscal Year 2023 Assistance to Firefighters Grant

Recipient: MURFREESBORO, CITY OF

UEI-EFT: CMF9NNK9Z7D6

DUNS number: 089553861

Award number: EMW-2023-FG-06834

Summary description of award

The purpose of the Assistance to Firefighters Grant program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Assistance to Firefighters Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for Fiscal Year (FY) 2023 Assistance to Firefighters Grant funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Amount awarded table

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the budgeted estimates for object classes for this award (including Federal share plus your cost share, if applicable):

Object Class	Total
Personnel	\$0.00
Fringe benefits	\$0.00
Travel	\$0.00
Equipment	\$267,649.58
Supplies	\$0.00
Contractual	\$125,751.00
Construction	\$0.00
Other	\$0.00
Indirect charges	\$0.00
Federal	\$357,636.89
Non-federal	\$35,763.69
Total	\$393,400.58
Program Income	\$0.00

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2023 FG NOFO.

Approved request details:

Wellness and fitness programs

Critical Incident Stress Debriefing Programs

DESCRIPTION

Peer Support Training through IAFF. We will host the in-person class taught by 2 instructors 2 weekdays in a row. This will complete our support group by sending at minimum eight of our personnel. The remaining seats will be filled with surrounding departments who need additional personnel certified to complete their support groups. This class hosted in Middle Tennessee also completes the TN Federation of Chaplains Associations' vision.

QUANTITY	UNIT PRICE	TOTAL
1	\$9,000.00	\$9,000.00

BUDGET CLASS

Contractual

Nutrition

DESCRIPTION

Nutrition Workshop \$3,600 Wellness platform Challenges with data: \$16,000 Nutrition Consultations \$5,400:

QUANTITY	UNIT PRICE	TOTAL
1	\$25,000.00	\$25,000.00

BUDGET CLASS

Contractual

CHANGE FROM APPLICATION

Description changed

Unit price from **\$27,700.00** to **\$25,000.00**

JUSTIFICATION

The award reflects a reduction from the amount requested in the application. This reduction removes ineligible costs for Meal Supplies requested in the application.

Exercise Equipment

DESCRIPTION

Standardized equipment per station (includes shipping): Multi purpose all-in one exercise rack with weights, pulleys and attachments: \$11,400 Medicine balls: \$395.30 Kettle bells: \$172.75 Weight vests: \$206.94 Exercise bike: \$845 Row machine: \$990 Tread mill: \$5700 Sand bag: \$125 Weight belts: \$156.75 Plyometric boxes: \$180.50 Power rope: \$125 Dumbbells: \$3,475 Floor mats: \$559.54

QUANTITY	UNIT PRICE	TOTAL
11	\$24,331.78	\$267,649.58

BUDGET CLASS

Equipment

CHANGE FROM APPLICATION

Description changed
Unit price from **\$25,749.76** to **\$24,331.78**

JUSTIFICATION

The award reflects a reduction from the amount requested in the application. Cost requested for treadmill and all-in one exercise rack exceeds the average price range calculated from market research and prior awards for the same item.

Physical Trainers

DESCRIPTION

In-person IAFF peer fitness training. Off-site class for 4 days. Seven MFRD members will attend to become certified fitness trainers.

QUANTITY	UNIT PRICE	TOTAL
1	\$6,993.00	\$6,993.00

BUDGET CLASS

Contractual

Rehab and Therapy

DESCRIPTION

Pre-employment/preassessment screening: \$4,858 Educational mobility/treatment workshops: \$9,900 One on one clinical visits (one 8-hour day per week for 50 weeks) for 400 total hours: \$70,000

QUANTITY	UNIT PRICE	TOTAL
1	\$84,758.00	\$84,758.00

BUDGET CLASS

Contractual

Agreement Articles

Program: Fiscal Year 2023 Assistance to Firefighters Grant

Recipient: MURFREESBORO, CITY OF

UEI-EFT: CMF9NNK9Z7D6

DUNS number: 089553861

Award number: EMW-2023-FG-06834

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Article 1 Assurances, Administrative Requirements, Cost Principles, Representations, and Certifications

I. Recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non- Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the federal awarding agency.

Article 2 General Acknowledgements and Assurances

Recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in effect as of the federal award date and located at 2 C.F.R. Part 200 and adopted by DHS at 2 C.F.R. § 3002.10. All recipients and subrecipients must acknowledge and agree to provide DHS access to records, accounts, documents, information, facilities, and staff pursuant to 2 C.F.R. § 200.337. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities and personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements required by law, federal regulation, Notice of Funding Opportunity, federal award specific terms and conditions, and/or federal awarding agency program guidance. V. Recipients must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receiving the Notice of Award for the first award under which this term applies. Recipients of multiple federal awards from DHS should only submit one completed tool for their organization, not per federal award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active federal award, not every time a federal award is made. Recipients must submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in these DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. DHS Civil Rights Evaluation Tool | Homeland Security. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension to the 30-day deadline if the recipient identifies steps and a timeline for completing the tool. Recipients must request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

<p>Article 3</p>	<p>Acknowledgement of Federal Funding from DHS Recipients must acknowledge their use of federal award funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal award funds.</p>
<p>Article 4</p>	<p>Activities Conducted Abroad Recipients must coordinate with appropriate government authorities when performing project activities outside the United States obtain all appropriate licenses, permits, or approvals.</p>
<p>Article 5</p>	<p>Age Discrimination Act of 1975 Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (codified as amended at 42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.</p>
<p>Article 6</p>	<p>Americans with Disabilities Act of 1990 Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.</p>
<p>Article 7</p>	<p>Best Practices for Collection and Use of Personally Identifiable Information Recipients who collect personally identifiable information (PII) as part of carrying out the scope of work under a federal award are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.</p>
<p>Article 8</p>	<p>Civil Rights Act of 1964 – Title VI Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA’s implementing regulations at 44 C.F.R. Part 7.</p>

Article 9**Civil Rights Act of 1968**

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284 (codified as amended at 42 U.S.C. § 3601 et seq.) which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units— i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators) —be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article 10**Copyright**

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 to any work first produced under federal awards and also include an acknowledgement that the work was produced under a federal award (including the federal award number and federal awarding agency). As detailed in 2 C.F.R. § 200.315, a federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize others to do so.

Article 11**Debarment and Suspension**

Recipients must comply with the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 set forth at 2 C.F.R. Part 180 as implemented by DHS at 2 C.F.R. Part 3000. These regulations prohibit recipients from entering into covered transactions (such as subawards and contracts) with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article 12**Drug-Free Workplace Regulations**

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

Article 13**Duplicative Costs**

Recipients are prohibited from charging any cost to this federal award that will be included as a cost or used to meet cost sharing or matching requirements of any other federal award in either the current or a prior budget period. (See 2 C.F.R. § 200.403(f)). However, recipients may shift costs that are allowable under two or more federal awards where otherwise permitted by federal statutes, regulations, or the federal financial assistance award terms and conditions.

<p>Article 14</p>	<p>Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA’s implementing regulations at 44 C.F.R. Part 19.</p>
<p>Article 15</p>	<p>E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety Recipient State, Tribal, local, or territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. Recipient State, Tribal, local, or territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.</p>
<p>Article 16</p>	<p>Energy Policy and Conservation Act Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.</p>
<p>Article 17</p>	<p>False Claims Act and Program Fraud Civil Remedies Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)</p>
<p>Article 18</p>	<p>Federal Debt Status All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)</p>
<p>Article 19</p>	<p>Federal Leadership on Reducing Text Messaging while Driving Recipients are encouraged to adopt and enforce policies that ban text messaging while driving recipient-owned, recipient-rented, or privately owned vehicles when on official government business or when performing any work for or on behalf of the Federal Government. Recipients are also encouraged to conduct the initiatives of the type described in Section 3(a) of E.O. 13513.</p>

Article 20 Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (a list of certified air carriers can be found at: [Certificated Air Carriers List | US Department of Transportation, https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list](https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list)) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article 21 Hotel and Motel Fire Safety Act of 1990

Recipients must ensure that all conference, meeting, convention, or training space funded entirely or in part by federal award funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a.

Article 22 John S. McCain National Defense Authorization Act of Fiscal Year 2019

Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. The statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

Article 23 Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article 24 Lobbying Prohibitions

Recipients must comply with 31 U.S.C. § 1352 and 6 C.F.R. Part 9, which provide that none of the funds provided under a federal award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification. Per 6 C.F.R. Part 9, recipients must file a lobbying certification form as described in Appendix A to 6 C.F.R. Part 9 or available on Grants.gov as the Grants.gov Lobbying Form and file a lobbying disclosure form as described in Appendix B to 6 C.F.R. Part 9 or available on Grants.gov as the Disclosure of Lobbying Activities (SF-LLL).

Article 25 National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article 26 Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article 27 Non-Supplanting Requirement

Recipients of federal awards under programs that prohibit supplanting by law must ensure that federal funds supplement but do not supplant non-federal funds that, in the absence of such federal funds, would otherwise have been made available for the same purpose.

Article 28**Notice of Funding Opportunity Requirements**

All the instructions, guidance, limitations, scope of work, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this federal award are incorporated by reference. All recipients must comply with any such requirements set forth in the NOFO. If a condition of the NOFO is inconsistent with these terms and conditions and any such terms of the Award, the condition in the NOFO shall be invalid to the extent of the inconsistency. The remainder of that condition and all other conditions set forth in the NOFO shall remain in effect.

Article 29**Patents and Intellectual Property Rights**

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq. and applicable regulations governing inventions and patents, including the regulations issued by the Department of Commerce at 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts, and Cooperative Agreements) and the standard patent rights clause set forth at 37 C.F.R. § 401.14.

Article 30**Procurement of Recovered Materials**

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962) and 2 C.F.R. § 200.323. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article 31**Rehabilitation Act of 1973**

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified as amended at 29 U.S.C. § 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article 32**Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of the federal award, then the recipient must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated by reference.

Article 33 Reporting Subawards and Executive Compensation

For federal awards that equal or exceed \$30,000, recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation set forth at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated by reference.

Article 34 Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. Waivers When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. (a) When the Federal agency has determined that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at “Buy America” Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. Definitions The definitions applicable to this term are set forth at 2 C.F.R. § 184.3, the full text of which is incorporated by reference.

Article 35	SAFECOM Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. The SAFECOM Guidance is updated annually and can be found at Funding and Sustainment CISA.
Article 36	Terrorist Financing Recipients must comply with E.O. 13224 and applicable statutory prohibitions on transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible for ensuring compliance with the E.O. and laws.
Article 37	Trafficking Victims Protection Act of 2000 (TVPA) Recipients must comply with the requirements of the government-wide financial assistance award term which implements Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 106 (codified as amended at 22 U.S.C. § 7104). The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated by reference.
Article 38	Universal Identifier and System of Award Management Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated reference.
Article 39	USA PATRIOT Act of 2001 Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c.
Article 40	Use of DHS Seal, Logo and Flags Recipients must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.
Article 41	Whistleblower Protection Act Recipients must comply with the statutory requirements for whistleblower protections at 10 U.S.C § 470141 U.S.C. § 4712.

Article 42**Environmental Planning and Historic Preservation (EHP) Review**

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal, state and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. General guidance for FEMA's EHP process is available on the DHS/FEMA Website at:

<https://www.fema.gov/grants/guidance-tools/environmental-historic>. Specific applicant guidance on how to submit information for EHP review depends on the individual grant program and applicants should contact their grant Program Officer to be put into contact with EHP staff responsible for assisting their specific grant program. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archaeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article 43**Applicability of DHS Standard Terms and Conditions to Tribes**

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to sub-recipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

Article 44**Acceptance of Post Award Changes**

In the event FEMA determines that an error in the award package has been made, or if an administrative change must be made to the award package, recipients will be notified of the change in writing. Once the notification has been made, any subsequent requests for funds will indicate recipient acceptance of the changes to the award. Please call FEMA Grant Management Operations at (866) 927-5646 or via e-mail to: ASK-GMD@fema.dhs.gov if you have any questions.

Article 45**Disposition of Equipment Acquired Under the Federal Award**

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state sub-recipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state sub-recipients must follow the disposition requirements in accordance with state laws and procedures.

Article 46**Prior Approval for Modification of Approved Budget**

Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. section 200.308. For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. section 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. For purposes of awards that support both construction and non-construction work, FEMA is utilizing its discretion under 2 C.F.R. section 200.308(h)(5) to require the recipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work. You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article 47**Indirect Cost Rate**

2 C.F.R. section 200.211(b)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.

Article 48**Award Performance Goals**

FEMA will measure the recipient's performance of the grant by comparing the number of items requested in its application, the numbers acquired (ordered, paid, and received) within the period of performance. In order to measure performance, FEMA may request information throughout the period of performance. In its final performance report submitted at closeout, the recipient is required to report on the recipients compliance with the applicable industry, local, state and national standards described in the NOFO.

Obligating document

1. Agreement No. EMW-2023-FG-06834	2. Amendment No. N/A	3. Recipient No. 626000374	4. Type of Action AWARD	5. Control No. WX03513N2024T		
6. Recipient Name and Address MURFREESBORO, CITY OF 111 W VINE ST MURFREESBORO, TN 37130		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Reisha Watson		9a. Phone No. 6158931422	10. Name of FEMA Project Coordinator Assistance to Firefighters Grant Program		10a. Phone No. 1-866-274-0960	
11. Effective Date of This Action 07/08/2024	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING		14. Performance Period 07/15/2024 to 07/14/2026 Budget Period 07/15/2024 to 07/14/2026		
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
FG	97.044	2024-F3-GB01 - P410-xxxx-4101-D	\$0.00	\$357,636.89	\$357,636.89	\$35,763.69
Totals			\$0.00	\$357,636.89	\$357,636.89	\$35,763.69
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)	DATE
18. FEMA SIGNATORY OFFICIAL (Name and Title)	DATE
PAMELA WILLIAMS, Assistant Administrator, Grant Programs	07/08/2024