

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Council Chambers – 6:00 PM
March 27, 2025

Public Comment on Actionable Agenda Items

PRAYER

Mr. Shawn Wright

PLEDGE OF ALLEGIANCE

Consent Agenda

1. Professional Services Agreement for Old Fort Park, Ballfield, and Parking Renovations (Facilities)
2. Professional Services Agreement for Ceiling Renovations at Bradley Academy (Facilities)
3. Asphalt and Concrete Purchase Report (Street)
4. Murfreesboro Transit Center Contingency Allowance Allocation (Project Development)
5. Amendment Number 1 to Kimley Horn's Professional Services Agreement (Project Development)
6. CIP Transfer Reallocation (Finance)
7. RFCSP Approval Community Development (Purchasing)
8. RFCSP Approval for Parks and Recreation (Purchasing)
9. JBS Task Order No. 25-02 River Raw Water Pump No. 1 (Water Resources)
10. Sewer Blasting Participation-Rucker Donnell-Hwy 99 at Veterans Parkway (Water Resources)
11. Thompson Lane Widening-ELI Engineering Design Amendment No. 3 (Water Resources)

New Business

Resolution

12. Resolution 25-R-04 Schools Budget Amendment #7 (Schools)

Ordinance

13. Murfreesboro Cable TV Structure Changes Ordinance 25-O-08 (Communications)
 - a. First Reading: Ordinance 25-O-08

On Motion

14. Adams Tennis Complex Court Resurface Project (Facilities)
15. Microsoft Enterprise Agreement (Information Technology)
16. Renewal of IT Managed Security (Information Technology)

17. Contract with Dickson County Equipment for Purchase of Maintenance Equipment (Parks)
18. Veterans Park Materials Engineering and Testing Services Task Order No. 18 (Project Development)
19. Construction Contract for the Rutherford Adaptive Signal Control Technology Project (Transportation)
20. Addendum #2 for Construction Administration for the Rutherford Adaptive Signal Control Project (Transportation)
21. Contract with Dynamic Security (Transportation)
22. Murfreesboro Major Transportation Plan Update (Transportation)
23. Cherry Lane Corridor Study Proposal (I-840 to I-24) (Administration)
24. Shared Cost for Repairs to Firing Range at the Rutherford County Sheriff's Office (Police)
25. City Judge Employment Agreement (Council)

Board & Commission Appointments

Licensing

25. Beer Permits (Finance)

Payment of Statements

Other Business

26. Purchase of First Due Software (Fire)

Adjourn

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Professional Services Agreement - Construction Administration and Construction Engineering and Inspection for Old Fort Park Ballfield and Parking Renovations

Department: Facilities

Presented by: Brad Hennessee, Facilities Manager

Requested Council Action:

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

Summary

Consider approving the agreement for Construction Administration and Construction Engineering and Inspection Professional Services for the Old Fort Park Ballfield and Parking Renovations.

Staff Recommendation

Approve the agreement from Energy, Land, & Infrastructure, LLC (ELI).

Background Information

In June 2023, the City entered into an agreement with ELI for planning and design services for the Old Fort Park Ballfield and Parking Renovations project in the amount of \$116,410. Upon entering into this agreement, city staff anticipated the oversight of construction administration and construction engineering and inspections to be handled in-house. Due to the complexity of the engineering submittals related to this project and other considerations, it is recommended that the project design firm's proposal for Construction Administration (CA) and Construction Engineering and Inspection (CEI) be accepted.

Council Priorities Served

Establish strong City brand

The ballfield, parking, and lighting renovations at Old Fort Park will provide the community with a desirable and safe place to enjoy softball and provide overflow parking to other amenities of the park and improve storm water drainage issues.

Fiscal Impact

The expense, \$30,876, is funded by the FY21 CIP.

Attachments

ELI Professional Services Agreement for Construction Administration and Construction Engineering and Inspection

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **City of Murfreesboro, Tennessee** (Owner) and **Energy Land & Infrastructure, LLC** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Old Fort Park Ballfield and Parking Renovation** (Project). Engineer's services under this Agreement (Services) are generally identified as **Construction Administration (CA) and Construction Engineering and Inspection (CEI) for the Ballfield and Parking Renovations at Old Fort Park in Murfreesboro, TN.**

Owner and Engineer further agree as follows:

1.01 Services of Engineer

- A. Engineer shall provide or furnish the Services set forth in this Agreement, and any Additional Services authorized by Owner and consented to by Engineer. Refer to Appendix 3 – Scope of Services for details.**

2.01 Owner's Responsibilities

- A. Owner shall provide Engineer with existing Project-related information and data in Owner's possession and needed by Engineer for performance of Engineer's Services. Owner will advise the Engineer of Project-related information and data known to Owner but not in Owner's possession. Engineer may use and rely upon Owner-furnished information and data in performing its Services, subject to any express limitations applicable to the furnished items.**
 - 1. Following Engineer's assessment of initially-available Project information and data, and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information and data as Additional Services.**
 - B. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance. Owner shall give prompt notice to Engineer whenever Owner observes or otherwise becomes aware of (1) any relevant, material defect or nonconformance in Engineer's Services, or (2) any development that affects the scope or time of performance of Engineer's Services.**

3.01 Schedule for Rendering Services

- A. Engineer shall complete its Services within the following specific time period: **the time for CA/CEI services is generally the Contract time for the Old Fort Park Ballfield and Parking Renovations project. The period of CA/CEI services is expected to be approximately 6 months.** If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.**

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

4.01 Invoices and Payments

A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

B. Payment: As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

C. Failure to Pay: If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges, and in such case Owner waives any and all claims against Engineer for any such suspension; and (3) if any payment due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.A.2.

D. Reimbursable Expenses: Engineer is entitled to reimbursement of expenses only if so indicated in Paragraph 4.01.E or 4.01.F. If so entitled, and unless expressly specified otherwise, the amounts payable to Engineer for reimbursement of expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external expenses allocable to the Project, including Engineer's subcontractor and subconsultant charges, with the external expenses multiplied by a factor of **1.0**.

E. Basis of Payment

1. **Hourly Rates.** Owner shall pay Engineer for Services as follows:

a. An amount equal to the cumulative hours charged to the Project by Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services.

b. Engineer's Standard Hourly Rates are attached as Appendix 1.

c. The total compensation for Services and reimbursement of expenses is estimated to be **\$30,876.00**.

F. Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services. Engineer's standard hourly rates are attached as Appendix 1.

5.01 Termination

A. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. In addition to its termination rights in Paragraph 5.01.A.1, Engineer may terminate this Agreement for cause upon 7 days' written notice (a) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, (b) if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, (c) if payment due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, or (d) as the result of the presence at the Site of undisclosed Constituents of Concern as set forth in Paragraph 6.01.l.
3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.

B. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.

C. Payments Upon Termination: In the event of any termination under Paragraph 5.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement, and to reimbursement of expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of all deliverable documents, whether completed or under preparation, subject to the provisions of Paragraph 6.01.F, at Owner's sole risk.

1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Paragraph 4.01.F.

6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions of probable construction cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Engineer grants to Owner a limited license to use the deliverable documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the deliverable documents, and subject to the following limitations:
 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific

purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants;

3. Owner shall, to the extent permitted by law, indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
4. such limited license to Owner shall not create any rights in third parties.

G. Owner and Engineer agree to transmit, and accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

H. Waiver of Damages; Limitation of Liability: To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or two-times (2x) the total amount of compensation received by Engineer, whichever is greater.

I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.

J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute will be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

K. This Agreement is to be governed by the laws of the state in which the Project is located.

L. Engineer's Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

7.01 Definitions

- A. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, subcontractors, and subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 Successors, Assigns, and Beneficiaries

- A. Successors and Assigns
 1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 8.01.A.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
 2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- B. Beneficiaries: Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

9.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Attachments: Appendix 1, Engineer's Standard Hourly Rates
Appendix 2, Reimbursable Expenses Schedule
Appendix 3, Scope of Services

This Agreement's Effective Date is _____.

Owner:

City of Murfreesboro, Tennessee

(name of organization)

Engineer:

Energy Land & Infrastructure, LLC

(name of organization)

By:

(authorized individual's signature)

Date:

(date signed)

Name: Shane McFarland

(typed or printed)

Title: Mayor

(typed or printed)

By:



(authorized individual's signature)

Date:

3/14/25

(date signed)

Name: Timothy L. Haggard, PE, RLS

(typed or printed)

Title: Associate VP | Office Lead

(typed or printed)

Address for giving notices:

City of Murfreesboro

111 West Vine Street

Murfreesboro, TN 37130

Designated Representative:

Name: Brad Hennessee

(typed or printed)

Title: Facilities Manager

(typed or printed)

Address:

City of Murfreesboro

620 West Main Street

Murfreesboro, TN 37130

Phone: 629-543-4581

Email: bhennessee@murfreesborotn.gov

Address for giving notices:

Energy Land & Infrastructure, LLC

745 S. Church Street, Suite 801

Murfreesboro, TN 37130

Designated Representative:

Name: John Gordon, PE

(typed or printed)

Title: Sr. Project Manager

(typed or printed)

Address:

Energy Land & Infrastructure, LLC

745 S. Church Street, Suite 801

Murfreesboro, TN 37130

Phone: 615-878-3334

Email: john.gordon@eli-llc.com

APPROVED AS TO FORM:

Signed by:



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Adam Tucker, City Attorney

APPENDIX 1: ENGINEER'S STANDARD HOURLY RATES

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraph 4.01 and are subject to annual review and adjustment.

B. Schedule of Hourly Rates:

Professional Staff Rates

Senior Principal Engineer	\$235
Operations Manager/Discipline Lead	\$235
Program Manager/Principal Engineer	\$219
Senior Project Manager	\$219
Project Manager	\$182
Assistant Project Manager	\$162
Senior Engineer/Engineer V	\$177
Engineer IV	\$162
Engineer III	\$141
Engineer II	\$125
Engineer I	\$115
Intern	\$83
CAD Manager	\$146
Senior CAD Designer	\$125
CAD Designer I	\$94
CAD Technician II	\$89
CAD Technician I	\$73

CEI Staff Rates

CEI Manager	\$219
CEI Team Leader (Specialty) Sr./RPR.	\$162
CEI Project Manager/RPR	\$141
Sr Construction Inspector	\$125
Construction Inspector	\$115
Sr Construction Support Tech	\$94
Construction Support Tech.	\$83

Survey Staff Rates

Director of Survey	\$203
Survey Manager (Office Level)	\$172
Senior R/PLS Assistant Survey Manager	\$156
R/PLS Survey/SUE Team Leader	\$146
Survey /SUE Project Manager	\$136
Lead Survey Technician	\$120
Senior Survey Technician/Senior CAD Technician	\$104
Survey Technician /CAD Technician	\$94
Professional Land Surveyor (R/PLS)	\$130
Sr Survey/SUE Crew Chief	\$104
Survey/SUE Crew Chief	\$94
Sr Survey/SUE Technician	\$83
Survey/SUE Technician	\$73
Survey Crew (4-Person)	\$302
Survey Crew (3-Person)	\$234
Survey Crew (2-Person)	\$166
Survey Crew (1-Person)	\$151
UAS/UAV Photogrammetry Crew	\$291
UAS/UAV LiDAR Crew	\$296
Mobile Scan Crew	\$260

Administrative Staff Rates

Senior Administrative Professional	\$94
Administrative Professional	\$62

APPENDIX 2: REIMBURSABLE EXPENSES SCHEDULE

Reimbursable Expenses are subject to review and adjustment on an annual basis.

Photocopies (8.5"x11")	\$ 0.12/page
Copies of Drawings (half-size black & white)	\$ 0.35/sheet
Copies of Drawings (full-size black & white)	\$ 2.00/sheet
Mileage (auto) ¹	\$ Current GSA Rate/mile
Air Transportation	at cost
Laboratory Testing	at cost
Meals and Lodging for Overnight Travel	at cost or current GSA Rates for State and/or Federally Funded Projects

Notes:

¹Owner will not be invoiced for travel within Davidson, Williamson, and Rutherford Counties.

APPENDIX 3: SCOPE OF SERVICES

Project Description

The City of Murfreesboro has bid and is planning to award the construction contract for the **Old Fort Park Ballfield and Parking Renovation** (Project). The Project consists of ballfield and parking improvements at Old Fort Park. The ballfield work includes approximately 92,375 SF of artificial turf field area, fences, and related ballfield items. The parking work includes approximately 59,820 SF of permeable paver area, curbs, and related parking items. Construction will consist of demolition, grading, drainage, curbing, concrete driveways, turf ballfield, permeable paver parking lot, sidewalks, parking lot lighting, water service and water fountain, landscaping and irrigation, as well as other related work as shown on the plans and listed in the project documents.

Scope of Services

Engineer will provide the following services under this agreement:

1. Construction Administration (CA).

Engineer will assist the City with Construction Administration during the construction of the ballfield and parking improvements. Expected tasks include the following:

- A. Meetings (Kickoff, Progress, Site, Punchlist, Final, etc.)
- B. Permit Assistance for the City Land Disturbance/Grading/Stormwater permitting and TDEC Stormwater permitting
- C. Shop Drawing and submittals review
- D. Review of monthly pay requests
- E. Final punchlist review

2. Construction Engineering and Inspection (CEI).

Engineer will provide limited CEI services during the construction of the ballfield and parking improvements. Expected tasks include the following:

- A. Site visits weekly or as requested for review or inspection
- B. Review and respond to RFI's or questions
- C. Provide engineering assistance during construction
- D. provide utility coordination during construction

Exclusions

The following items are excluded from this agreement or can be provided as additional services in accordance with Agreement paragraph 4.01 F:

- As-Built Surveys
- Construction staking or layout, or field surveying for quantities
- Materials Testing
- Underground utility locating services
- Maintenance of Traffic or Traffic Control Plans
- Geotechnical Investigation or Analysis
- Utility relocation design and/or permitting
- Environmental Reviews, Assessments or Permitting
- Public notifications, public involvement, or public meeting coordination

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Professional Services Agreement for Ceiling Renovations at Bradley Academy

Department: Facilities

Presented by: Brad Hennessee, Facilities Manager

Requested Council Action:

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

Summary

Consider approving the agreement with Johnson + Bailey Architects, P.C. for Ceiling Renovations at Bradley Academy.

Staff Recommendation

Approve the agreement with Johnson + Bailey Architects, P.C.

Background Information

The existing components of the suspended ceiling in the classrooms and hallways have reached the end of their useful life. This project will consist of the removal of the existing ceilings, asbestos abatement of the water pipe insulation, and installation of new suspended acoustic tile ceilings in those areas.

This project is very similar to the ceiling renovations done at Mitchell-Neilson Elementary (2023) and Hobgood Elementary (2024). The project costs are anticipated to be between \$450,000-\$500,000 and are in line with the previous projects. The Murfreesboro City School Board approved the project on March 11, 2025.

Council Priorities Served

Responsible budgeting

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

Fiscal Impact

The expense, \$60,000, is funded by shared proceeds from County facility bonds.

Attachments

Professional Services Agreement for Ceiling Renovations at Bradley Academy



Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of March in the year Two Thousand and Twenty-Five
(2025)

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

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

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

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

Ceiling Renovations at Bradley Academy
511 Dr. Martin Luther King Jr. Blvd
Murfreesboro, Tennessee 37130
J+B No. 2506

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

Init.

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User Notes:

(3B9ADA49)

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

| Incorporated by reference - Johnson + Bailey Architects P.C. proposal letter dated March 3, 2025

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

| Five Hundred Thousand Dollars (\$500,000.00)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

| Incorporated by reference - Johnson + Bailey Architects P.C. proposal letter dated March 3, 2025

| .2 Construction commencement date:

| Incorporated by reference - Johnson + Bailey Architects P.C. proposal letter dated March 3, 2025

| .3 Substantial Completion date or dates:

| Incorporated by reference - Johnson + Bailey Architects P.C. proposal letter dated March 3, 2025

| .4 Other milestone dates:

| *(Paragraphs Deleted)*

| *(Paragraphs Deleted)*

| *(Paragraph Deleted)*

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

| Brad Hennessee
Facilities Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

| *(Paragraphs Deleted)*

| *(Paragraphs Deleted)*

| *(Paragraph Deleted)*

| *(Paragraph Deleted)*

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

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

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Asbestos Abatement Consultant:

Kam Environmental, Inc.
Bethlehem Church Rd.
Shelbyville, TN 37160

| *(Paragraph Deleted)*

3 Electrical Engineer:

Entech Engineering, Inc.
2948 Sidco Drive
Nashville, TN 37204

§ 1.1.11.2 Consultants retained under Supplemental Services:

None

§ 1.1.12 Other Initial Information on which the Agreement is based:

None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

The parties will use AIA Document E203TM-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9. Architect shall not cancel or modify an insurance coverage required by this Agreement without providing Owner with at least 30-days' prior written notice.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and One Million Dollars (\$ 1,000,000.00) in the aggregate for bodily injury and property damage.

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

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such

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primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Hundred Thousand Dollars (\$ 100,000.00) each accident, One Hundred Thousand Dollars (\$ 100,000.00) each employee, and One Hundred Thousand Dollars (\$ 100,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and One Million Dollars (\$ 1,000,000.00) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.5.9 Indemnification. The Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from any and all third party claims of any nature, including all costs, expenses and attorneys' fees, only to the extent caused by the Architect's negligent acts or omissions or intentional misconduct in performing work under this Agreement, except to the extent that such claims arise from the negligent acts or omissions of the City or its employees and agents. Architect's obligation to indemnify, save and hold harmless the Owner shall not be limited to the amount of insurance actually secured under this Agreement, including any insurance above the minimum required, but shall extend to the full amount on any claims, loss or damage incurred or awarded, including costs, expenses and attorneys' fees.

§ 2.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall exercise due professional care in endeavoring to comply with the requirements imposed by governmental authorities having jurisdiction over the Project, including, but not limited to, applicable ADA standards. The Architect shall use the standard care ordinarily utilized by other architects designing projects under the applicable standards and in identifying requirements imposed by governmental authorities. The Architect shall also identify to the Owner requirements that may be interpreted as conflicting with other requirements imposed by law.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall review thoroughly the services and information for completeness and sufficiency, and provide timely written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the

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commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 The Architect shall assist the Owner in determining allowable construction time and amount of liquidated damages.

§ 3.1.8 In accordance with the standard of care, The Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants, or by others. If preliminary or design development Work has been performed by others, Architect is nevertheless fully responsible for and accepts full responsibility for such earlier Work when Architect performs subsequent phases of the basic services called for under this Agreement, as fully as if the preliminary, schematic, and design development Work had been performed by the Architect itself. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Owner's approval of the documents must be in writing to be binding against either party.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Owner's approval of the documents must be in writing to be binding against either party.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Construction drawings, specifications, or other Construction Documents submitted by Architect must be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws. By submitting the same, Architect certifies that Architect has informed the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

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§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, inform the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time, and take any action required under Section 6.5, and request the Owner's written approval. Owner's approval of the documents must be in writing to be binding against either party. The Architect will also ascertain that all elements of the construction documents specific to the Owner's requirements, including modifications to the General Conditions, are correctly contained within the construction documents prior to bidding.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) assessing competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 organizing and conducting a pre-bid conference for prospective bidders;
- .2 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .3 responding to requests of substitutions;
- .4 analysis and recommendations of bids received

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the

Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 The Architect shall be responsible for conducting progress meetings not less than monthly or as needed and for the preparation, distribution, and accuracy of minutes pertaining thereto to all parties as directed by the Owner.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect and Owner shall have the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or timely so as not to affect the Contract Time or the Contract Sum.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents; provided however, the Owner, with advice and assistance from the Architect, shall make final decisions on matters relating to aesthetic effect, Contract Sum, and/or Contract time.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, in a timely manner so as not to affect the Contract Time or the Contract Sum.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall timely report to Owner, in writing, those minor changes in the Work authorized by Architect pursuant to this section. If the Architect and the Owner determine that the implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. Additionally, the Architect shall review and, upon request by Owner, provide written documentation of the same of all change order requests and proposals with respect to the following criteria:

- .1 confirm proposed change is a material change to the Contract;
- .2 confirm appropriate credits are included for Work not completed;
- .3 verify that the proposed additional cost or credit is reasonable with respect to industry standards. Cost verifications may, as authorized by Owner, include independent estimates and/or consultations with contractors and vendors; and
- .4 confirm that the appropriate back up documentation is included and mathematically correct including mark ups and taxes pursuant to the requirements of the Contract Documents.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall review, approve, and forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and the Contractor to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect & Owner
§ 4.1.1.2 Multiple preliminary designs	Architect's Basic Services
§ 4.1.1.3 Measured drawings	Not Provided

§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Not Provided
§ 4.1.1.9 Landscape design	Not Provided
§ 4.1.1.10 Architectural interior design	Not Provided
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.21 Telecommunications/data design	Not Provided
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

The Architect is to perform all required Programming and Design Services, and to coordinate all work with the Owner's Consultants

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

(Paragraphs Deleted)

- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph Deleted)

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give timely written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

(Paragraphs Deleted)

- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

Init.

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- .1 One (1) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Weekly visits to the site by the Architect during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner, with the Architect's assistance, shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.3.1 The Owner has the right to reject any portion of the Architect's Work on the Project, including but not limited to Schematic Design Documents, Design Development Documents, Construction Documents, or the Architect's provision of services during the construction of the Project, or any other design Work or documents on any reasonable basis, including, but not limited to aesthetics or because in the Owner's opinion, the construction cost of such design is likely to exceed the budget for Cost of the Work. If at any time the Architect's Work is rejected by the Owner, the Architect must proceed when requested by the Owner, to revise the design Work or documents prepared for that phase to the Owner's satisfaction. These revisions shall be made without adjustment to the compensation provided hereunder, unless revisions are made to Work previously approved by the Owner under previous phases, in which case such revision services will be paid as a Change in Services. Should there be substantial revisions to the original program after the approval of the Schematic Design Documents, which changes substantially increase the scope of design services to be furnished hereunder, such revision services will be paid as a Change in Services. The Architect must so notify the Owner of all Changes in Services in writing and receive approval from Owner before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to the Architect for additional Work or Changes in Services without such written approval by Owner.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including invert and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 To the extent reasonably required for the timely and safe design and construction of the Project, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Architect shall assist Owner in obtaining these services.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 Unless otherwise provided in this Agreement, the Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 In accordance with the standard of care, the Owner shall be entitled to rely on the accuracy and completeness of services and information provided by the Architect. The Owner shall provide timely written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall timely notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

(Paragraph Deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect, in consultation with the Owner, shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 undertake a good faith effort to obtain necessary and timely approval of Council for an increase in the budget for the Cost of the Work, as may be necessary, and then if approval is timely obtained, give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under Section 6.6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive, irrevocable, royalty-free, right and license to use the Architect's Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas; any future renovation, addition, or alteration to the Project; and any future maintenance or operations issue as it pertains to the Project. Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by Owner or Owner's representatives using the Architect's Instruments of Service.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect from liability for claims and causes of action arising from such use..

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable Tennessee law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

(Paragraph Deleted)

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in

advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court whose jurisdiction includes Rutherford County, Tennessee

Other: *(Specify)*

(Paragraph Deleted)

§ 8.3 [Intentionally Omitted]

(Paragraphs Deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments of **undisputed amounts** to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, in accordance herewith, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and shall negotiate with the Owner any expenses incurred in the interruption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner and the Architect shall negotiate the amount of any compensation the Owner will pay the Architect for expenses incurred in the interruption and resumption of the Architect's services. The Owner and the Architect shall negotiate any adjustments to the Architect's fees for the remaining services and the time schedules for completion.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred and unpaid.

§ 9.7 *[Intentionally Omitted]*

(Paragraphs Deleted)

(Paragraph Deleted)

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

§ 9.10 In the event of any termination under this Article, the Architect consents to the Owner's selection of another architect of the Owner's choice to assist the Owner in any way in completing the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by Owner and such other architect as Owner may desire. Any services provided by Architect that are requested by Owner after termination will be fairly compensated by Owner in accordance with Article 11.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

Init.

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§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect shall immediately report to the Owner's project manager the presence, handling, removal or disposal of, or exposure of persons to and location of any hazardous material which it discovers.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement. Notwithstanding the foregoing, the Owner may disclose any information specifically required by law.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

| *(Paragraph Deleted)*

A fixed fee of sixty thousand dollars
(\$60,000.00)

(Paragraph Deleted)

(Paragraph Deleted)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly rates for services indicated in this Agreement

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Hourly rates for services indicated in this Agreement

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Hourly rates for services indicated in this Agreement

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic & Design Development Phase	Thirty-Five	percent (35	%)
Construction Documents Phase	Forty	percent (40	%)
Bidding or Negotiation Phase	Five	percent (5	%)
Construction Phase	Twenty	percent (20	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The Architect's rates and multiples for service as set forth in this Agreement shall remain in effect for the life of this Agreement unless unforeseen events which are not the fault of the Architect delay the Project completion. In such event, an equitable adjustment in the Architect's rates may be negotiated with the Owner.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category **Rate (\$0.00)**
(Table Deleted)

Architectural Services

Principal Architect	Two hundred dollars per hour (\$200.00 per hour)
Staff Architect	One hundred and fifty dollars per hour (\$150.00 per hour)
Intern Architect	One hundred and twenty-five dollars per hour (\$125.00 per hour)
Field Representative	One hundred dollars per hour (\$100.00 per hour)
Draftsman	One hundred dollars per hour (\$100.00 per hour)
Administrative Personnel	Sixty-five dollars per hour (\$65.00 per hour)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

(Paragraphs Deleted)

- .3 Fees paid for securing approval of permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;

(Paragraph Deleted)

(Paragraph Deleted)

- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

(Paragraphs Deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

(Paragraphs Deleted)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero dollars (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

Three percent per annum =

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- 1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

(Paragraph Deleted)

(Paragraph Deleted)

4 Other documents:

(List other documents, if any, forming part of the Agreement.)

- Johnson + Bailey Architects P.C. proposal letter dated March 3, 2025

This Agreement entered into as of the day and year first written above.

CITY OF MURFREESBORO JOHNSON + BAILEY ARCHITECTS
P.C.

OWNER (Signature)

Shane McFarland Mayor
(Printed name and title)

Signed by:



ARCHITECT (Signature)

Keaton S. Pettit President
(Printed name, title, and license number, if required)

OWNER

APPROVED AS TO FORM:

Signed by:



(Signature)

Adam F. Tucker, City Attorney
Date:

(Printed name, title, and license number, if required)

Init.

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User Notes:

COUNCIL COMMUNICATION

Meeting Date: 3/27/2025

Item Title: Asphalt and Concrete Purchase Report

Department: Street

Presented by: Tracy Brown – Assistant Director, Street

Requested Council Action:

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

Summary

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
7/26/2024	Hawkins	411D 64-22	\$ 87.90	3.80	\$ 334.02	\$ 334.02
8/14/2024	Hawkins	411E	\$ 90.97	9.10	\$ 827.83	\$ 1,161.85
12/12/2024	Hawkins	411E	\$ 85.97	9.97	\$ 857.12	\$ 2,018.97
12/19/2024	Hawkins	411E	\$ 85.97	5.44	\$ 467.68	\$ 2,486.64
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
8/14/2024	Vulcan	307BM PG 64-22	\$ 76.00	4.32	\$ 328.32	\$ 1,064.76
8/28/2024	Vulcan	411E PG 64-22	\$ 87.50	5.31	\$ 464.63	\$ 1,529.39
8/29/2024	Vulcan	411E PG 64-22	\$ 87.50	6.40	\$ 560.00	\$ 2,089.39
9/6/2024	Vulcan	411E PG 64-22	\$ 87.50	4.29	\$ 375.38	\$ 2,464.77
10/4/2024	Vulcan	411E PG 64-22	\$ 84.70	12.32	\$ 1,043.50	\$ 3,508.27
10/31/2024	Vulcan	307BM PG 64-22	\$ 73.90	10.28	\$ 759.69	\$ 4,267.96
10/31/2024	Vulcan	411E PG 64-22	\$ 134.45	1.26	\$ 169.41	\$ 4,437.37
10/31/2024	Vulcan	411E PG 64-22	\$ 140.00	1.21	\$ 169.40	\$ 4,606.77
10/31/2024	Vulcan	411E PG 64-22	\$ 152.61	1.11	\$ 169.40	\$ 4,776.17
10/29/2024	Vulcan	411E PG 64-22	\$ 84.70	8.31	\$ 703.86	\$ 5,480.02
10/29/2024	Vulcan	411E PG 64-22	\$ 84.70	4.17	\$ 353.20	\$ 5,833.22
10/29/2024	Vulcan	411E PG 64-22	\$ 84.70	3.24	\$ 274.43	\$ 6,107.65
11/4/2024	Vulcan	411E PG 64-22	\$ 84.27	5.27	\$ 444.10	\$ 6,551.75
11/5/2024	Vulcan	411E PG 64-22	\$ 84.27	14.11	\$ 1,189.05	\$ 7,740.80
11/15/2024	Vulcan	411E PG 64-22	\$ 84.27	4.40	\$ 370.79	\$ 8,111.59
11/15/2024	Vulcan	411E PG 64-22	\$ 84.27	2.42	\$ 203.93	\$ 8,315.52
11/21/2024	Vulcan	411E PG 64-22	\$ 84.27	3.43	\$ 289.05	\$ 8,604.57
12/16/2024	Vulcan	411E PG 64-22	\$ 85.58	4.12	\$ 352.59	\$ 8,957.16
1/17/2025	Vulcan	411E PG 64-22	\$ 88.67	20.61	\$ 1,827.49	\$ 10,784.65
2/13/2025	Vulcan	411E PG 64-22	\$ 88.84	21.90	\$ 1,945.60	\$ 12,730.24
2/14/2025	Vulcan	307BM PG 64-22	\$ 78.26	15.84	\$ 1,239.64	\$ 13,969.88
2/24/2025	Vulcan	411E PG 64-22	\$ 88.84	18.07	\$ 1,605.34	\$ 15,575.22
2/26/2025	Vulcan	411E PG 64-22	\$ 88.84	10.11	\$ 898.17	\$ 16,473.39
2/26/2025	Vulcan	411E PG 64-22	\$ 88.84	16.29	\$ 1,447.20	\$ 17,920.60
2/27/2025	Vulcan	411E PG 64-22	\$ 88.84	16.22	\$ 1,440.98	\$ 19,361.58
2/27/2025	Vulcan	411E PG 64-22	\$ 88.84	10.14	\$ 900.84	\$ 20,262.42
2/28/2025	Vulcan	411E PG 64-22	\$ 88.84	6.09	\$ 541.04	\$ 20,803.45
2/28/2025	Vulcan	411E PG 64-22	\$ 88.84	14.18	\$ 1,259.75	\$ 22,063.21
3/3/2025	Vulcan	411E PG 64-22	\$ 88.84	16.09	\$ 1,429.44	\$ 23,492.64
3/4/2025	Vulcan	411E PG 64-22	\$ 89.19	10.44	\$ 931.14	\$ 24,423.79
3/7/2025	Vulcan	411E PG 64-22	\$ 89.19	6.13	\$ 546.73	\$ 24,970.52
3/10/2025	Vulcan	411E PG 64-22	\$ 87.19	10.30	\$ 898.06	\$ 25,868.58
3/11/2025	Vulcan	411E PG 64-22	\$ 87.19	15.08	\$ 1,314.83	\$ 27,183.40
3/12/2025	Vulcan	411E PG 64-22	\$ 87.19	10.76	\$ 938.16	\$ 28,121.57
3/13/2025	Vulcan	307BM PG 64-22	\$ 76.51	14.57	\$ 1,114.75	\$ 29,236.32
3/14/2025	Vulcan	411E PG 64-22	\$ 87.19	13.40	\$ 1,168.35	\$ 30,404.66

FY 25 STREET DEPARTMENT ASPHALT PURCHASES

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
7/26/2024	Wiregrass Construction	TDOT 411-D PG 64-22	\$ 113.03	3.41	\$ 385.43	\$ 2,765.16
8/7/2024	Wiregrass Construction	TDOT 307-BM PG64-22	\$ 78.15	21.43	\$ 1,674.75	\$ 4,439.92
8/7/2024	Wiregrass Construction	TDOT 307-BM PG64-22	\$ 78.15	21.59	\$ 1,687.26	\$ 6,127.18
8/7/2024	Wiregrass Construction	TDOT 307-BM PG64-22	\$ 78.15	20.40	\$ 1,594.26	\$ 7,721.44
8/15/2024	Wiregrass Construction	Commercial 411-E	\$ 95.19	3.08	\$ 293.19	\$ 8,014.62
8/16/2024	Wiregrass Construction	Commercial 411-E	\$ 95.19	6.89	\$ 655.86	\$ 8,670.48
8/27/2024	Wiregrass Construction	Commercial 411-E	\$ 95.19	5.88	\$ 559.72	\$ 9,230.20
9/9/2024	Wiregrass Construction	Commercial 411-E	\$ 95.05	6.56	\$ 623.53	\$ 9,853.73
9/10/2024	Wiregrass Construction	Commercial 411-E	\$ 95.05	4.91	\$ 466.70	\$ 10,320.42
9/18/2024	Wiregrass Construction	Commercial 411-E	\$ 95.05	4.30	\$ 408.72	\$ 10,729.14
10/1/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	4.26	\$ 400.23	\$ 11,129.36
10/2/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	4.00	\$ 375.80	\$ 11,505.16
10/3/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	10.11	\$ 949.83	\$ 12,455.00
10/7/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	6.16	\$ 578.73	\$ 13,033.73
10/10/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	4.21	\$ 395.53	\$ 13,429.26
10/14/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	8.31	\$ 780.72	\$ 14,209.98
10/25/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	4.25	\$ 399.29	\$ 14,609.27
10/28/2024	Wiregrass Construction	Commercial 411-E	\$ 93.95	5.94	\$ 558.06	\$ 15,167.33
1/28/2025	Wiregrass Construction	TDOT 307-BM PG64-22	\$ 76.35	17.46	\$ 1,333.07	\$ 16,500.41
2/10/2025	Wiregrass Construction	Commercial 411-E	\$ 93.13	2.04	\$ 189.99	\$ 16,690.39
2/25/2025	Wiregrass Construction	Commercial 411-E	\$ 93.13	10.01	\$ 932.23	\$ 17,622.62
3/6/2025	Wiregrass Construction	Commercial 411-E	\$ 93.46	16.39	\$ 1,531.81	\$ 19,154.43

FY 25 STREET DEPARTMENT CONCRETE PURCHASES

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/3/2024	Nashville Ready Mix	Flowable Fill TDOT	\$ 126.00	2.00		\$ 252.00	\$ 252.00
7/8/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2.00		\$ 276.00	\$ 528.00
7/9/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	4.00		\$ 552.00	\$ 1,080.00
		Min Load Charge	\$ 75.00	1.00		\$ 75.00	\$ 1,155.00
		Fuel Surcharge	\$ 50.00	1.00		\$ 50.00	\$ 1,205.00
		Retarder 2%	\$ 8.00	4.00		\$ 32.00	\$ 1,237.00
7/10/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	2.00		\$ 276.00	\$ 1,513.00
7/11/2024	Nashville Ready Mix	3500 PSI Chips	\$ 138.00	1.50		\$ 207.00	\$ 1,720.00
7/12/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	2.00		\$ 276.00	\$ 1,996.00
7/15/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.50		\$ 207.00	\$ 2,203.00
7/16/2024	Nashville Ready Mix	3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 2,341.00
7/17/2024	Nashville Ready Mix	3413CF5 3500 PSI Chips AE	\$ 138.00	1.50		\$ 207.00	\$ 2,548.00
7/18/2024	Nashville Ready Mix	3413CF5 3500 PSI Chips AE	\$ 138.00	2.50		\$ 345.00	\$ 2,893.00
7/25/2024	Nashville Ready Mix	3413CF5 3500 PSI Chips AE	\$ 138.00	1.50		\$ 207.00	\$ 3,100.00
7/26/2024	Nashville Ready Mix	3413CF5 3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 3,238.00
7/29/2024	Nashville Ready Mix	3413CF5 3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 3,376.00
8/2/2024	Nashville Ready Mix	4451 CF5 4000 PSI Chips AE	\$ 140.00	2.00		\$ 280.00	\$ 3,656.00
		Fiber 2 Full Fibers	\$ 5.00	2.00		\$ 10.00	\$ 3,666.00
8/5/2024	Nashville Ready Mix	3413CF5 3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 3,804.00
8/5/2024	Nashville Ready Mix	3375LF5 3000 PSI AE	\$ 135.00	1.00		\$ 135.00	\$ 3,939.00
8/6/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	2.00		\$ 276.00	\$ 4,215.00
8/7/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	2.00		\$ 276.00	\$ 4,491.00
8/8/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 4,629.00
8/8/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	2.00		\$ 276.00	\$ 4,905.00
8/13/2024	Nashville Ready Mix	Flowable Fill TDOT	\$ 126.00	10.00		\$ 1,260.00	\$ 6,165.00
		Fuel Surcharge	\$ 50.00	1.00		\$ 50.00	\$ 6,215.00
8/13/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	2.50		\$ 345.00	\$ 6,560.00
8/15/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 6,698.00
8/26/2024	Nashville Ready Mix	3500 CF5 3500 PSI Chips AE	\$ 138.00	1.50		\$ 207.00	\$ 6,905.00
8/27/2024	Nashville Ready Mix	3500 CF5 3500 PSI Chips AE	\$ 138.00	1.00		\$ 138.00	\$ 7,043.00
		Fiber 1 half fibers	\$ 3.00	1.00		\$ 3.00	\$ 7,046.00
8/30/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	2.00		\$ 276.00	\$ 7,322.00
		Retarder 2%	\$ 8.00	2.00		\$ 16.00	\$ 7,338.00
		Fiber 2 Full Fibers	\$ 5.00	2.00		\$ 10.00	\$ 7,348.00
9/3/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	2.50		\$ 345.00	\$ 7,693.00
9/4/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	3.00		\$ 414.00	\$ 8,107.00
9/5/2024	Nashville Ready Mix	3413 CF5 3500 PSI Chips AE	\$ 138.00	1.50		\$ 207.00	\$ 8,314.00
9/6/2024	Nashville Ready Mix	3500LF5 PSI AE	\$ 137.00	2.00		\$ 274.00	\$ 8,588.00
		Fiber 2 Full Fibers	\$ 5.00	2.00		\$ 10.00	\$ 8,598.00
9/9/2024	Nashville Ready Mix	5555CF5	\$ 147.00	1.50		\$ 220.50	\$ 8,818.50
		Half-Fibers .50lb dose	\$ 3.00	1.50		\$ 4.50	\$ 8,823.00
9/11/2024	Nashville Ready Mix	3413CF5	\$ 138.00	1.00		\$ 138.00	\$ 8,961.00
9/13/2024	Nashville Ready Mix	3413CF5	\$ 138.00	1.00		\$ 138.00	\$ 9,099.00
9/16/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.00		\$ 276.00	\$ 9,375.00
9/17/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.00		\$ 276.00	\$ 9,651.00
9/19/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 9,858.00
9/20/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.00		\$ 138.00	\$ 9,996.00
9/26/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 10,203.00
10/8/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 10,410.00
10/9/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.00		\$ 138.00	\$ 10,548.00
10/11/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 10,755.00
10/15/2024	Nashville Ready Mix	3500 CF5	\$ 138.00	1.50		\$ 207.00	\$ 10,962.00
10/16/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 11,169.00
10/17/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.00		\$ 138.00	\$ 11,307.00
10/18/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 11,514.00
10/21/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 11,859.00
10/22/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.00		\$ 276.00	\$ 12,135.00
10/23/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 12,480.00
10/24/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 12,825.00
10/25/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.00		\$ 138.00	\$ 12,963.00
11/8/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 13,308.00
		ACCEL2 Non-Chloride	\$ 14.00	2.50		\$ 35.00	\$ 13,343.00

FY 25 STREET DEPARTMENT CONCRETE PURCHASES

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
11/12/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 13,688.00
11/13/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.00		\$ 138.00	\$ 13,826.00
11/14/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 14,033.00
11/27/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	1.50		\$ 207.00	\$ 14,240.00
12/9/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 14,585.00
12/11/2024	Nashville Ready Mix	3413CF5	\$ 138.00	2.50		\$ 345.00	\$ 14,930.00
		ACCEL2 Non-Chloride	\$ 14.00	2.50		\$ 35.00	\$ 14,965.00
12/20/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 15,310.00
		ACCEL2 Non-Chloride	\$ 14.00	2.50		\$ 35.00	\$ 15,345.00
		Fiber2 Full Fibers	\$ 5.00	2.50		\$ 12.50	\$ 15,357.50
12/23/2024	Nashville Ready Mix	3413 CF5	\$ 138.00	3.00		\$ 414.00	\$ 15,771.50
		ACCEL2 Non-Chloride	\$ 14.00	3.00		\$ 42.00	\$ 15,813.50
		Hot Water	\$ 4.00	3.00		\$ 12.00	\$ 15,825.50
12/30/2024	Nashville Ready Mix	CRB40CF5	\$ 155.00	2.00		\$ 310.00	\$ 16,135.50
1/15/2025	Nashville Ready Mix	3413 CF5	\$ 138.00	2.00		\$ 276.00	\$ 16,411.50
		ACCEL2 Non-Chloride	\$ 14.00	2.00		\$ 28.00	\$ 16,439.50
		Hot Water	\$ 3.00	2.00		\$ 6.00	\$ 16,445.50
1/16/2025	Nashville Ready Mix	3413 CF5	\$ 138.00	2.50		\$ 345.00	\$ 16,790.50
		ACCEL2 Non-Chloride	\$ 14.00	2.50		\$ 35.00	\$ 16,825.50
		Hot Water	\$ 3.00	2.50		\$ 7.50	\$ 16,833.00
1/27/2025	Nashville Ready Mix	3413 CF5	\$ 143.00	2.00		\$ 286.00	\$ 17,119.00
1/28/2025	Nashville Ready Mix	3413 CF5	\$ 143.00	1.00		\$ 143.00	\$ 17,262.00
		ACCEL2 Non-Chloride	\$ 14.00	1.00		\$ 14.00	\$ 17,276.00
2/3/2025	Nashville Ready Mix	Flowable Fill TDOT	\$ 131.00	5.50		\$ 720.50	\$ 17,996.50
2/10/2025	Nashville Ready Mix	3413 CF5	\$ 143.00	1.00		\$ 143.00	\$ 18,139.50
		ACCEL2 Non-Chloride	\$ 14.00	1.00		\$ 14.00	\$ 18,153.50

Invoice Date	Vendor	Type	Rate	Yards	Surcharge	Total	FY Total
7/5/2024	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
11/18/2024	Smyrna Ready Mix	3000 PSI Start Chips	\$ 144.00	1.50		\$ 216.00	\$ 216.00
11/27/2024	Smyrna Ready Mix	5000 PSI Strt Concrete	\$ 155.00	5.00		\$ 775.00	\$ 991.00
		Environmental/Fuel	\$ 40.00	1.00		\$ 40.00	\$ 1,031.00
		Residential Fibers	\$ 3.00	5.00		\$ 15.00	\$ 1,046.00
		System Short Load	\$ 100.00	1.00		\$ 100.00	\$ 1,146.00

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Murfreesboro Transit Center Contingency Allowance Allocation

Department: Project Development Department

Presented by: Scott Elliott, Manager of Project Development

Requested Council Action:

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

Summary

Report of Murfreesboro Transit Center contract contingency allowance.

Staff Recommendation

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

Background Information

The attached change control log identifies the change requests, through change control forms, and tracks the allowance allocations issued through field work change directives. Note that this work change directive no. 8 does not change the contract price or contract time. The final contract price and number of working days will be adjusted accordingly in the final balancing change order at the end of the project.

Council Priorities Served

Expand infrastructure

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

Fiscal Impact

The amount of the increased expense, \$34,682.69, is accommodated in the contingency allowance with no change in the total contract amount of \$17,845,843.

Attachments

Change Control Log and Forms



AIA Document G701™ - 2017

Change Order

PROJECT: (name and address)	CONTRACT INFORMATION:	CHANGE ORDER INFORMATION:
Murfreesboro Transit Center 324 New Salem Highway Murfreesboro , Tennessee 37129	Contract For: Murfreesboro Transit Center Date:	Change Order Number: 009 Date: 12/16/2024
OWNER: (name and address)	ARCHITECT: (name and address)	TO CONTRACTOR: (name and address)
CITY OF MURFREESBORO 111 WEST VINE STREET MURFREESBORO, Tennessee 37130	HDR, INC. 120 BRENTWOOD COMMONS WAY#525 BRENTWOOD, Tennessee 37027	Bulley & Andrews Rock City, LLC 830 Crescent Centre Drive - Suite 140 Franklin, Tennessee 37067

THE CONTRACT IS CHANGED AS FOLLOWS:

Total Deduct of this CO= (\$34,682.69)

Owner Contingency After CO = \$431,460.05

PCO 006 Transit Pavilion Thickened Slab and Additional Rebar (\$396.65)	\$0.00
PCO 008 Added Shear Blocking Trusses (\$1,411.01)	\$0.00
PCO 009 Transit Pavilion Trench Drain added SOG reinforcement (\$419.58)	\$0.00
PCO 010 Additional Bus Maintenance Building Foundation Rebar (\$1,564.27)	\$0.00
PCO 015 Curtain Wall Support Bracing (\$3,897.98)	\$0.00
PCO 019 Transit Pavilion Aluminum Exterior Signage (\$8,208.40)	\$0.00
PCO 020 Telecom conduit towards New Salem Hwy (\$5,586.07)	\$0.00
PCO 021 Revised Site Electrical +\$2,690.20	\$0.00
PCO 022 Security/Access Control Changes (\$15,304.12)	\$0.00
PCO 023 Credits for Landscaping buffer zone, Anodized aluminum window frames +\$52,050.00	\$0.00
PCO 024 Additional Side walk at Admin building parking lot (\$3,603.60)	\$0.00
PCO 025 Added casework in work room (\$6,754.00)	\$0.00
PCO 026 Bus Stop Canopy Signage - (\$5,696.29)	\$0.00
PCO 027 Change in bus Access Control Equipment (\$23,978.02)	\$0.00
PCO 028 Admin Building Additional wall Heater (\$2532.00) Rev.1	\$0.00
PCO 030 Added transfer duct for shell room (\$2,539.90)	\$0.00
PCO 032 Added Outlets in Bus Maintenance Building - (\$1,540)	\$0.00
PCO 033 TYMETAL Gates (\$5,991)	\$0.00

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

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

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



Document G701™ - 2017

HDR, INC.

ARCHITECT (Firm name)

079C3CDDEEEE4D5

SIGNATURE

Neal Corbett, AIA, ACHA, Vice President

PRINTED NAME AND TITLE

3/6/2025

DATE

Bulley & Andrews Rock City, LLC

CONTRACTOR (Firm name)

57D2F8836C7E4D4...

SIGNATURE

Joe Hyken PM

PRINTED NAME AND TITLE

3/6/2025

DATE

CITY OF MURFREESBORO

OWNER (Firm Name)

2430FEE75D2A4B9...

SIGNATURE

Darren W. Gore, City Manager

PRINTED NAME AND TITLE

3/12/2025

DATE

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User Notes:

2

Signed by: (1932678762)
 APPROVED AS TO FORM

 Adam P. Tucker, City Attorney
 43A2036E51F9401

CHANGE CONTROL FORM NO. 8

Date Issued:	March 6, 2025	Project:	Murfreesboro Transit Center
Project No.:	ITB-07-2023	Contractor:	Rock City Construction Co LLC
This Document is a: <input type="checkbox"/> Request for Proposal <input type="checkbox"/> Field Order <input checked="" type="checkbox"/> Work Change Directive <input type="checkbox"/> Contractor Change Request			
Description of Change (attach necessary supporting documentation): Add PCO's 6, 8, 9, 10, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32, and 33. Deduct \$ 34,682.69 from the owner's contingency leaving \$431,460.05 remaining.			
Initiated By:		<input checked="" type="checkbox"/> Contractor <input type="checkbox"/> Engineer	<input type="checkbox"/> Owner <input type="checkbox"/> Resident Project Representative
Drawing(s) Reference:		Spec. Reference:	
RFI Reference:		Date of RFI:	
Attachments: CO # 9			
REQUEST FOR PROPOSAL/CHANGE REQUEST			
We propose to perform the Work or make the Claim described above for the following change in Contract Cost and Contract Times:			
<input checked="" type="checkbox"/> No Change in Contract Amount is Required		<input type="checkbox"/> A Change in Contract Amount is Required:	
<input checked="" type="checkbox"/> No Change in Contract Time is required		<input type="checkbox"/> A Change in Contract Time is Required:	
WORK CHANGE DIRECTIVE			
You are directed to proceed to make the changes to the Work described in this Work Change Directive. Any change in Contract Price or Contract Time will be determined in accordance with the General Conditions.			
FIELD ORDER			
This Field Order issued in accordance with the General Conditions for minor changes in the Work without changes in the Contract Price or Contract Time. If you consider that a change in Contract Price or Contract Times is required, notify the Engineer immediately and before proceeding with the proposed Work.			
AUTHORIZING SIGNATURES			
ENGINEER:	CONTRACTOR:	OWNER:	RESIDENT PROJECT REPRESENTATIVE:
_____	_____	_____	_____
(print name)	(print name)	(print name)	(print name)
Date: _____	Date: _____	Date: _____	Date: _____

CHANGE CONTROL LOG

Owner:	City of Murfreesboro	Original Contract Amount:	\$ 17,145,843.00
Project Name:	Murfreesboro Transit Center	Adjusted Contract Amount:	\$ 17,845,843.00
Contract No.:	ITB-07-2023	Contingency Allowance Amount:	\$ 700,000.00
Arch/Eng:	HDR Engineering, Inc.	Remaining Contingency Allowance Amount:	\$ 431,460.05
Contractor:	Rock City Construction Co LLC		

CCF No.	Brief Description of Change Item	Change Type	Initial By	Status (Approved/ Pending/ Rejected)	Approved By:	Date From/ To Contractor	Date Submitted to Owner	Date Approved/ Rejected by Owner	Contract Time Extension (days)	Add/ Deduct (+/-) from Allowance	Cumulative Add/ Deduct (+/-) from contract	Adjusted Contingency Amount
1	ADD-Owners Contingency Allowance	CO	OWNER	APPROVED	Council	1/9/2024	1/9/2024	1/26/2024	0	\$ -	\$ 700,000.00	
2	ADD-MTE Fees over Allowance	CCR	CONTRACTOR	APPROVED	Craig Tindall	12/6/2023	12/6/2023	2/14/2024	0	\$ (27,121.18)	\$ -	\$ 672,878.82
3	ADD-Irrigation Change to spray heads	CCR	CONTRACTOR	APPROVED	Craig Tindall	12/6/2023	12/6/2023	2/14/2024	0	\$ (2,676.05)	\$ -	\$ 670,202.77
4	ADD-GAS Fees over Allowance	CCR	CONTRACTOR	APPROVED	Craig Tindall	1/5/2024	1/5/2024	2/14/2024	0	\$ (17,940.00)	\$ -	\$ 652,262.77
5	ADD-Communication lines new route	WCD	CONTRACTOR	APPROVED	Craig Tindall	4/2/2024	4/17/2024	4/29/2024	0	\$ (40,240.84)	\$ -	\$ 612,021.93
6	DEDUCT-PCO 12,13 Foundation and Piping credit	WCD	CONTRACTOR	APPROVED	Craig Tindall	4/30/2024	5/14/2024	5/23/2024	0	\$ 18,166.00	\$ -	\$ 630,187.93
7	ADD-IT over allowance	WCD	CONTRACTOR	APPROVED	Council	10/1/2024	10/1/2024	11/8/2024	0	\$ (164,045.19)	\$ -	\$ 466,142.74
8	ADD- PCO's 6,8,9,10,15, 19 through 28, 30, 32,33	WCD	CONTRACTOR	PENDING	Darren Gore	12/16/2024	3/6/2025		0	\$ (34,682.69)	\$ -	\$ 431,460.05
9												
10												
11												
12												
13												
14												
Totals									0	\$ (268,539.95)	\$ 700,000.00	\$ 431,460.05

A Contract Times
Extension Requires
City Council Approval

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

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Amendment 1 to Kimley-Horn Agreement for Patterson Park Playground and Splashpad

Department: Project Development

Presented by: Scott Elliott, Manager of Project Development

Requested Council Action:

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

Summary

Consider approving Amendment 1 to the Professional Services Agreement for Construction Administration services for the Patterson Park Playground and Splashpad

Staff Recommendation

Approve the contract amendment.

Background Information

On June 16, 2023, the City of Murfreesboro entered into a Professional Services Agreement with Kimley-Horn for the design of the Patterson Park Playground and Splashpad. Kimley-Horn has successfully fulfilled its design services obligations, and the project was publicly advertised for bids. The contract was subsequently awarded to FTM Company, LLC.

As the project now transitions into the construction phase, the City intends to amend Kimley-Horn's contract to include Construction Administration services. This amendment, referred to as Amendment 1, will expand the scope of the original agreement, allowing Kimley-Horn to provide oversight, coordination, and quality assurance throughout the construction process.

Council Priorities Served

Establish strong City brand

The addition of a playground and splashpad will be an amenity for the City residents that will be well used.

Fiscal Impact

The expense, \$25,100, is funded by 2021 CIP allocations.

Attachments

1. Amendment Number 1 to Professional Services Agreement



March 4, 2025

Mr. Nate Williams
City of Murfreesboro
2140 N. Thompson Lane
Murfreesboro, TN 37129

Re: Amendment Number 1 to Professional Services Agreement
Patterson Park Playground and Splashpad Construction Documents

Dear Mr. Williams:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") and City of Murfreesboro, Tennessee ("Client") entered in a Professional Services Agreement dated June 16, 2023 ("Agreement") concerning Patterson Park Playground and Splashpad Construction Documents ("Project").

The parties now desire to amend the Agreement to include services to be performed by Consultant for compensation as set forth below in accordance with the terms of the Agreement, which are incorporated by reference.

Kimley-Horn will provide the services specifically set forth below.

Task 1 - Pre-Construction Conference

Kimley-Horn will conduct a Pre-Construction Conference before the start of construction. Kimley-Horn will prepare a meeting agenda and minutes for documentation.

Task 2 - Site Visits and Construction Observation

Kimley-Horn will make up to four (4) visits to observe the progress of the work beyond the OAC meetings and substantial completion efforts listed in tasks below. Observations will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation. Based on the site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work.

Consultant will not supervise, direct, or control Contractor's work, and will not have authority to stop the Work or responsibility for the means, methods, techniques, equipment choice and use, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for failure of Contractor to comply with laws. Consultant does not guarantee Contractor's performance and has no responsibility for Contractor's failure to perform in accordance with the Contract Documents.

Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement.



Task 3 - Construction Meetings

Kimley-Horn will attend up to four (4) bi-monthly construction meetings on site. Kimley-Horn will prepare meeting minutes to document general discussion topics.

Task 4 - Change Orders

Kimley-Horn will review and make recommendations for up to three (3) Change Orders submitted or proposed by the Contractor.

Task 5 - Shop Drawings and Samples

Kimley-Horn will review up to fifteen (15) Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

Task 6 - Applications for Payment

Based on its observations and on review of applications for payment and supporting documentation, Kimley-Horn will review up to eight (8) pay apps and recommend amounts that Contractor be paid. Recommendations will be based on Kimley-Horn's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Kimley-Horn's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.

Task 7 - Substantial Completion

When requested by Contractor and Client, Kimley-Horn will conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.

Task 8 - Final Notice of Acceptability of the Work

Kimley-Horn will conduct a final site visit to evaluate whether the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend final payment to Contractor.

Task 9 - Owner Assistance with Project Close-out

Kimley-Horn will assist the owner in gathering required documents to complete their contract with the Contractor. Consultant will not be responsible for Contractor's work product but will assist the owner to support the gathering of documents related to project close out. This may include documents such as the operation and maintenance manual, project directory, and any products or services provided by the Contractor with a warranty. No warranty, express or implied, is made or intended by the Consultant's undertaking herein, or its performance of services, and it is agreed that the Consultant is



not a fiduciary with respect to the Client.

For the services set forth above, Client shall pay Kimley-Horn the following compensation:

Kimley-Horn will perform the services in Tasks 1-9 above for the total lump sum labor fee below. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1 – Pre-Construction Conference	\$1,100
Task 2 – Site Visits and Construction Observation	\$3,900
Task 3 – Construction Meetings	\$3,900
Task 4 – Change Orders	\$1,800
Task 5 – Shop Drawings and Samples	\$9,600
Task 6 – Applications for Payment	\$1,700
Task 7 – Substantial Completion	\$1,800
Task 8 – Final Notice of Acceptability of the Work	\$ 700
Task 9 – Owner Assistance with Project Close-out	\$ 600

Fees and expenses will be invoiced monthly based, as applicable, upon the percentage of services performed on actual services performed and expenses incurred as of the invoice date. Payment will be due within 25 days of your receipt of the invoice.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed:

A handwritten signature in black ink that reads "Alisha Eley".

Printed Name: Alisha Eley, PLA

Title: Project Manager

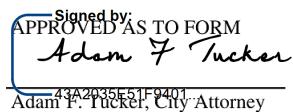


AGREED AND ACCEPTED:
City of Murfreesboro, Tennessee

By: _____

Title: Mayor

Date: _____

Signed by:
APPROVED AS TO FORM

Adam F. Tucker

4342035E51F9401
Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: CIP Transfers Reallocation

Presented by: Erin Tucker

Requested Council Action:

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

Summary

Notification to Council of City Manager approved CIP transfers.

Background Information

Funding for capital improvement projects is provided through borrowing. Funds are allocated to projects in the CIP that is approved annually by Council. Reallocation of these funds sometimes becomes necessary when circumstances change. Requests for CIP Funds Transfers are submitted to the City Manager for approval and then placed on the Consent Agenda to serve as notification to Council. The following CIP Funds Transfers have been approved for Parks and Recreation:

Bradley Academy HVAC Replacement (2021 Bond / 2022 Bond)

Reallocate \$17,800 from Bradley Academy Parking 2021 and 2022 Bonds to Bradley Academy HVAC Replacement.

Priorities Served

Responsible budgeting

CIP Fund Transfers reallocate available resources in an efficient manner after receiving City Manager approval.

Fiscal Impact

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

Attachments

CIP Funds Transfer Request – 2021 Bond / 2022 Bond



... creating a better quality of life

CIP Funds Reallocation Request

Mr. Gore:

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

CIP Loan 2021 Bond / 2022 Bond

Transfer CIP funds from:

Transfer CIP funds to:

Bradley Academy Parking (2021) \$ (5,717.76)

Bradley Academy HVAC (2021) \$ 5,717.76

Bradley Academy Parking (2022) \$ (12,082.24)

Bradley Academy HVAC (2022) \$ 12,082.24

TOTAL TRANSFER \$ (17,800.00)

TOTAL TRANSFER \$ 17,800.00

Explanation: HVAC at Bradley Academy needs to be replaced. It is requested that funding from Bradley

Academy Parking be reallocated for the HVAC replacement

Dee
CEO/City Recorder

Date

2-27-25

Reviewed by Finance

Date

02/27/25

Approved

City Manager

Declined

1

Date

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

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Approval of Competitive Sealed Proposals for Procurement of Professional Services for CDBG and Home Program Activities

Department: Purchasing

Presented by: Cathy Smith, 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

Consider use of Request for Competitive Sealed Proposals (RFCSP) for professional services to assist the Community Development Department with plan and program updates.

Staff Recommendation

Approve the use of the RFCSP process for procurement of these services.

Background Information

Due to the contracts with our current consultant, BlueLynx, expiring, the City needs to bid these services. An RFCSP allows staff to evaluate different services offered by qualified vendors and choose the most appropriate service for the money.

Pursuant to state statute and City Code, Council approval is required to use the RFCSP process for procurement.

Council Priorities Served

Responsible budgeting

By using this procurement method, the Purchasing Department can assist the Community Development Department in achieving a more qualified pool of proposals, which allows staff to choose an experienced vendor that provides both the required services and beneficial pricing.

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Approval of Request for Competitive Sealed Proposals for Procurement of Concessions Vendors for Parks and Recreation

Department: Purchasing

Presented by: Cathy Smith, 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

Consider use of Request for Competitive Sealed Proposals (RFCSP) for vendors to provide concession services at Old Fort Ball Park for Parks and Recreation.

Staff Recommendation

Approve the use of the RFCSP process for procurement of these services.

Background Information

Parks and Recreation wishes to add concession opportunities to Old Fort Park Ball Park that is currently being renovated. The concessionaire will be responsible for supplying the concessions and providing the City with a portion of the profits. It was decided by Purchasing and Legal that an RFCSP would be the best and most fair approach in choosing a vendor to provide these services.

Pursuant to state statute and City Code, Council approval is required to use the RFCSP process for procurement.

Council Priorities Served

Responsible budgeting

By using this procurement method, the Purchasing Department can assist the Parks and Recreation Department in obtaining a qualified pool of vendor choices which will allow staff to choose an experienced vendor that provides all of the required services.

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: JBS Task Order No. 25-02 River Raw Water Pump No. 1

Department: Water Resources

Presented by: Valerie Smith

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

Consider the JBS Task Order No. 25-02 River Raw Water Pump No. 1 for the Stones River Water Treatment Plant.

Staff Recommendation

Approve JBS Task Order No. 25-02. The Water Resources Board approved this matter on March 25, 2025.

Background Information

This project includes supplying and machining new shafts as needed, fabricating and installing impeller wear rings, balancing impellers, installing new bearings as needed, reassembling, delivering the pump back to the pump station, supplying crane service to reinstall the pump and to test run the repaired pump.

Council Priorities Served

Responsible Budgeting

Maintaining plant infrastructure assures continued reliability of high-quality drinking water for the community.

Fiscal Impact

This cost for this Task Order is \$38,020. Funding will come from working capital reserves.

Attachments

JBS Task Order No. 25-02 River Raw Water Pump No. 1



TASK ORDER NO. 25-02

March 12, 2025

BETWEEN

JOHN BOUCHARD & SONS COMPANY AND CITY OF MURFREESBORO
acting by and through the Murfreesboro Resources Department

UNDER

Water/Wastewater System Mechanical/Electrical Services Contract

DATED

February 3, 2025 thru February 3, 2026

FOR

Stones River WTP Raw Water Pump & Motor #1 Repairs

Task Order No. 25-02

Stones River WTP Raw Water Pump & Motor #1 Repairs

BACKGROUND

JBS was issued TO 25-01 to pull and inspect the Raw Water Pump #1 from the Stones River WTP. This work was completed and this task order is to perform the repairs deemed necessary from our inspection. This includes supply and machine new shafts as needed, fabricate and install impeller wear rings, balance impellers, install new bearings as needed, reassemble, deliver, supply crane service to reinstall and test run.

SCOPE OF WORK

Labor and materials by JBS as described above.

COST ESTIMATE

Murfreesboro Service Contract Rate Sheet - 2025			
RW#1 Repairs			
Description	Qty (hrs)	Rate	Extended
Project Mgr (RT)	8	\$85.00	\$680.00
Project Mgr (OT)		\$125.00	\$0.00
Superintendent (RT)		\$80.00	\$0.00
Superintendent (OT)		\$115.00	\$0.00
Machine Shop Millwright (RT)	280	\$78.00	\$21,840.00
Machine Shop Millwright (OT)		\$117.00	\$0.00
Electrician (RT)		\$66.00	\$0.00
Electrician (OT)		\$99.00	\$0.00
Apprentice/Helper (RT)		\$50.00	\$0.00
Apprentice/Helper (OT)		\$75.00	\$0.00

Equipment	Qty (hrs)	Rate/Hr	Extended
Welder		\$16.00	\$0.00
Power Threader		\$12.00	\$0.00
Mini/Midi Hammer		\$10.00	\$0.00
Variable Reach Forklift		\$28.00	\$0.00
Pickup Truck	100	\$17.00	\$1,700.00
30-50 ton RT Crane*		N/A	\$5,000.00

Materials & Subcontractors		
Misc. Material, Shafts, couplings, brass, cleaning		\$6,200.00
Motor Bearings/Misc Material		\$1,800.00
Markup on Material & Subcontractors	10.00%	\$800.00

TOTAL ESTIMATE	\$38,020.00
-----------------------	--------------------

Contractor:

John Bouchard and Sons Company

By: David G Proctor AVName: David ProctorTitle: Project ManagerDate: 3/12/25

City:

City of Murfreesboro

By: _____

Name: Shane McFarlandTitle: Mayor

Date: _____

Signed by:



43A2035E51F9401...

Adam Tucker, Deputy City Attorney

Approved as to Form:

CONTRACTOR NOTICE CONTACT INFORMATION

John Bouchard and Sons Company

Mailing address 1024 Harrison St.Nashville, TN 37203Phone number 615-256-0112Fax number 615-256-2427Company Contact David ProctorE-mail David.Proctor@jbouchard.com**CITY NOTICE CONTACT INFORMATION**

Murfreesboro Water and Sewer Dept.

Mailing address 316 Robert Rose DriveMurfreesboro, TN 37129Phone number 615-890-0862Fax number 615-896-4259Company Contact Valerie SmithE-mail vsmith@murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Sewer Blasting Participation-Rucker Donnell-Hwy 99 @ Veterans

Department: Water Resources

Presented by: Valerie Smith

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

Consider participation with Rucker Donnell in the costs of blasting a future sewer main extension. The future extension will be a larger, deeper sewer main than what the Rucker Donnell Foundation (RDF) development needs.

Staff Recommendation

Approve the sewer blasting participation request.

Background Information

In May of 2024, the RFD donated a 40' sewer easement to the City for a future sewer extension, extending from Overall Creek at Salem Highway, northwest parallel to Veterans Blvd to their northwestern property line. Since that time, staff learned that Atmos Energy has a project planned to extend a gas main parallel to Veterans along the same path as the sewer main. AE shared the construction drawings with Rucker Donnell and specified that AE does not allow any blasting within 30 feet of their gas mains. Rucker Donnell had SEC, Inc to design the future sewer main extension in coordination with the gas main so that they could have a contractor blast for the future sewer main prior to the installation of the gas main. Staff is requiring this blasting to be at a depth, deeper than RDF anticipated, because this future sewer main must serve a larger area than just the RDF property.

Contractor Pricing for the blasting is as follows:

Drill & Shoot Depth

0 to 12 feet	\$178/LF	\$103,952
<u>12-22 feet</u>	<u>\$257/LF</u>	<u>\$150,088</u>
Total Difference:		\$ 46,136

Flip & Recompact Trench

0 to 12 feet	\$95/LF	\$55,480
<u>12-22 feet</u>	<u>\$125/LF</u>	<u>\$73,000</u>
Total Difference:		\$17,520
Total Participation:		\$63,656

This participation recommendation is consistent with the Department's participation policy, within our approved Policies, Procedures & General Design Requirements adopted in 2009 by the Board & Council:

1. Prior to dedication and acceptance of the improvements by the City, the Developer requesting reimbursement must present to the City Council a detailed statement of the actual eligible costs and the City Council in its discretion may amend the agreement, and the reimbursement amount, to reflect the actual project costs.
2. Should a project be eligible for participation by the City due to the upsizing of a water or sewer line, the Department reserves the right to publicly bid the project or the portion of the project eligible for participation.
3. Participation in the cost to upsize water and/or sewer lines shall be in accordance with established policies in effect. The Department or Developer can prepare a schedule of upsize participation, based on recent bid results or agreed upon unit pricing, which the Department and the Developer may accept in lieu of publicly bidding, subject to approval of the Water and Sewer Board and City Council.
4. The Department will only participate in that portion of sewer deeper than twelve (12) feet deep if the sewer is upsized and if the material changes.
5. Sewer must extend to the limits of construction at strategic locations for future extension.

Council Priorities Served

Expand infrastructure

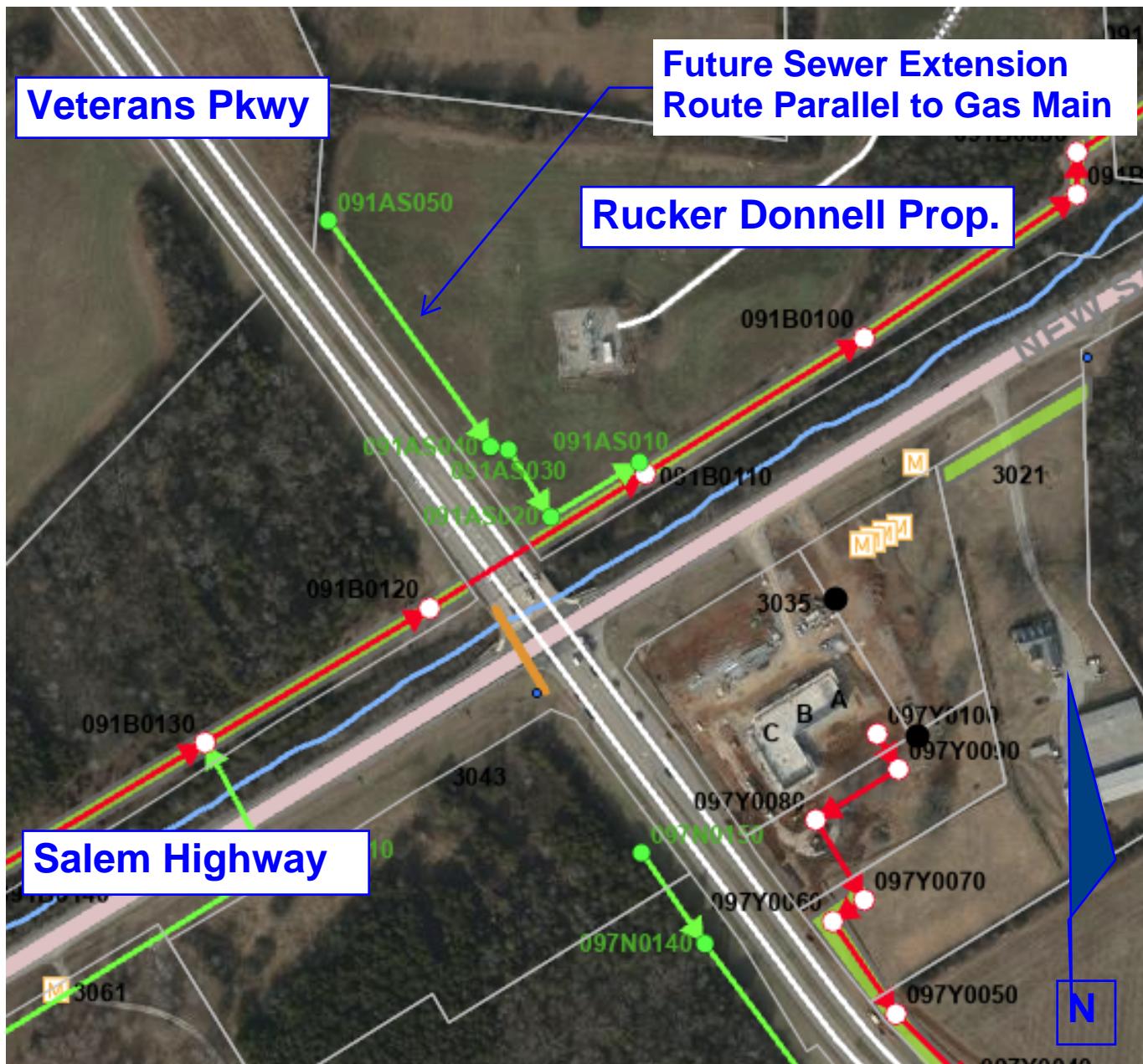
The installation of a larger and deeper line will allow the Department to expand our sewer infrastructure to serve a larger development area in the future.

Fiscal Impact

The difference, \$63,656, will be paid from the Department's working capital reserves.

Attachments

GIS Exhibits





**Future Sewer Service
Area**



COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Thompson Ln Widening-ELI Engineering Design Amendment No. 3

Department: Water Resources

Presented by: Valerie Smith

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

Consider Amendment No. 3 to Work Authorization (WA) No. 4 for the re-design of portions of the water, sewer, and repurified water relocations along Thompson Lane.

Staff Recommendation

Approval of Amendment No. 3 of WA No.4 with ELI.

Background Information

In 2015 the Department received Preliminary Field Review plans and notice that TDOT was going to reconstruct and widen Thompson Lane. On December 30, 2019, all Utilities received notification to proceed with the design necessary to relocate water, sewer, and repurified water mains. February 6, 2020, the Council approved Engineering WA No.4 in the amount of \$175,000 for the TDOT "A date" submittal and May 6, 2021, the Council approved Amendment No. 1 for the design of the "B date" submittal in the amount of \$233,952. October 3, 2024, the Council approved Amendment No. 2 in the amount of \$110,560 to continue to design the MWRD relocations to avoid conflicts with other utilities and because TDOT added a revision for an additional MTE transmission line to the project.

At this time, there continue to be revisions to the project. The latest was because TDOT survey wasn't up to date for recently constructed subdivisions, drainage system revisions, revisions from staff to make sure gravity sewer is deep enough to serve future developments and easement description and exhibit revisions that have already been provided to the Department.

Council Priorities Served

Responsible budgeting

Funding for this project has been set aside and shown in the Working Capital Reserves dashboard since November of 2020.

Fiscal Impact

The additional engineering cost for Amendment No. 3, \$87,050, will be funded from Working Capital Reserves for a total engineering fee of \$606,562.

Attachments

ELI Amendment No. 3



AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. 3

Owner: **City of Murfreesboro, Tennessee**
 Engineer: **Energy Land & Infrastructure, LLC**
 Project: **Work Authorization #4 – Thompson Lane Utility Relocations (TDOT PIN 115906.00)**
 Effective Date of Owner-Engineer Agreement (MSA): **February 15, 2018**
 Effective Date of the Work Authorization #4: **February 6, 2020**
 Effective Date of Amendment No. 1 (B-Date Supplement): **May 7, 2021**
 Effective Date of Amendment No. 2 **October 4, 2024**

Nature of Amendment: (Check those that apply)

- Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

Amendment 2, with an effective date of October 4, 2024 was expected to cover design effort necessary to complete the B-Date submittal based upon what was known to be anticipated effort at that time. However, numerous TDOT plan changes, additional conflicts, alignment changes, and system improvements have been identified beyond what was anticipated. These revisions required ongoing reassessment of potential utility conflicts, utility deconfliction effort, and associated utility plan revisions. Additionally, conflicting information regarding the location of the existing water main at the Stones River crossing facilitated the spearheading and coordination of SUE QL-A and QL-B for determination of the exact horizontal and vertical location of the water main for relocation design. This effort resulted in additional survey and an update to the TDOT survey and plan set. This amendment is requested to cover the additional effort required due to the numerous revisions and changes necessary to deliver the completed the project by the required April 8, 2025, B-Date submittal deadline.

Agreement Summary:

Original Work Authorization #4 amount:	\$ 175,000.00
Net Change for Prior Amendments:	\$ 344,511.56
This Amendment Amount:	\$ 87,050.00 (see EXHIBIT A)
Adjusted Agreement Amount:	\$ 606,561.56
Change in Time for Services (days or date, as applicable):	No change

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of this Amendment is _____.

Owner

City of Murfreesboro, Tennessee

(typed or printed name of organization)

Engineer

Energy Land & Infrastructure, LLC

(typed or printed name of organization)

By:

(individual's signature)

By:

(individual's signature)

Date:

(date signed)

Date:

March 20, 2025

(date signed)

Name: Shane McFarland

(typed or printed)

Name:

Timothy L. Haggard, PE, RLS

(typed or printed)

Title: Mayor

(typed or printed)

Title:

Associate VP | Operations Manager

(typed or printed)

Approved as to Form:

Signed by:

Adam F. Tucker

43A2033E51F9401...

Adam Tucker, City Attorney

EXHIBIT A

ELI SCOPE AND FEE ESTIMATE - Amendment 3

SR-268 Thompson Lane Utility Relocation

Water & Sewer Relocation Design Services

Murfreesboro, Rutherford County, TN

B-Date Relocation Design Services

MANHOUR ESTIMATE

TASK	PM	Engineer	Survey Manger	Survey CAD	Survey Crew	HOURS
B-Date Services						
Design review meetings with MWRD	6	16				22
TDOT Conflict Review & Design Review Meetings	16	24				40
Plan revisions - Alignment Changes/Updates	24	64				88
Plan Revisions - Conflict Resolution	24	64				88
Generate Final Construction Quantities & Estimate	24	80				104
QA/QC and Plan-In-Hand Field Review	24	48				72
Finalize Utility Construction Plans and Submit to TDOT (B-Date)	24	80				104
Survey and SUE Coordination Related to conflicts Between TDOT Survey and MWRD GIS Data (Out of Scope)	69	12	15	2	15	113
B-DATE SUBTOTAL MANHOURS	211	388	15	2	15	631

COST PROPOSAL

	Hours	Rate	Amount
PM -Project Manager	211	\$ 195.00	\$41,145.00
Engineer - Project Engineer I (EI)	388	\$ 110.00	\$42,680.00
Survey Manager	15	\$ 85.00	\$1,275.00
Survey CAD Technician	2	\$ 75.00	\$150.00
Survey Crew - 2 Person Survey Crew	15	\$ 120.00	\$1,800.00
	Subtotal		\$87,050.00
TOTAL COST - Amendment 3			\$87,050.00



COUNCIL COMMUNICATION

Meeting Date: 03/27/25

Item Title: Schools FY25 Budget Amendment #7

Department: City Schools

Presented by: Trey Duke, Director

Requested Council Action:

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

Summary

Consider schools budget amendment #7 to the FY25 General Purpose fund.

Staff Recommendation

Approve Resolution 25-R-04 amending the FY25 General Purpose fund as presented.

Background Information

On February 11th, the Murfreesboro City School Board approved new revenue for the General Purpose fund in Interest Income, Donations and Gifts, and Education of Handicap.

- Interest Income of \$34,725 with a reduction of unemployment compensation by \$5,000 within the account to offset \$39,725 of expenditures for the board and audit services. The City of Murfreesboro approved the increase of board compensation on May 23, 2024, and this amendment will be used to cover the remaining expenditures for this fiscal year.
- Donations and Gifts of \$3,500 by an individual donor for indigent children care will be recognized to offset expenses to help assist children in need.
- New revenue from High-Cost Funding and State Special Schools Transportation reimbursement. The \$105,038 from High Cost funding and the \$16,728 from the reimbursement will offset expenditures in special education and transportation with private agencies.

On February 25th, the Murfreesboro City School Board approved new revenue for the General Purpose fund in unassigned fund balance and donations and gifts.

- The unassigned fund balance of \$3,100,000 will be used for a portion of the purchase of 910 Ridgley Rd. This portion of funding along with the County Share Bonds and the City of Murfreesboro will make up the total \$5,250,000 for the purchase of the new facility.
- Donations and Gifts in the amount of \$10,956 were made through the City Schools Foundation to be used for the renovation of the Mobile Resource Van.

Council Priorities Served

Responsible budgeting

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

Fiscal Impact

The total increase in revenue of \$170,947 will be adjusted within the General Purpose fund to recognize new revenues to offset related expenditures and the unassigned fund balance will be used for the new facility purchase. This will reduce fund balance.

Attachments

1. Resolution 25-R-04
2. Exhibit A: MCS Budget Amendment #7

RESOLUTION 25-R-04 amending the Fiscal Year 2025 (hereafter "FY2025") Murfreesboro City Schools Budget (7th Amendment).

WHEREAS, the City Council adopted Resolution 24-R-17 on June 13, 2024 to implement the FY2025 Murfreesboro City Schools Budget; and

WHEREAS, it is now desirable and appropriate to adjust and modify the FY2025 Murfreesboro City Schools Budget by this Resolution to incorporate expenditure decisions made by the Murfreesboro City School Board.

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

SECTION 1. The FY2025 Murfreesboro City Schools Budget as adopted by the City Council is hereby revised as shown on attached Exhibit A.

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

Passed: _____

Shane McFarland, Mayor

ATTEST:

Erin Tucker
City Recorder

APPROVED AS TO FORM:

Signed by:

Adam F. Tucker

Adam F. Tucker
City Attorney

Murfreesboro City Schools Budget Amendment (#7)

BOE Approval

2/11/2025

General Purpose Schools Fund 141
Fiscal Year 2024-25

Exhibit A to Resolution 25-R-04

BUDGET Account Description	AS PASSED OR PREV AMENDED	AMENDMENT AMENDED BUDGET	INCREASE (DECREASE)
<u>Revenues</u>			
Interest Income	286,680	321,405	34,725
Total Increase in Revenues	\$ 286,680	\$ 321,405	\$ 34,725
<u>Expenditures</u>			
Board and Committee Mbr. Fee	\$ 34,200	\$ 68,400	\$ 34,200
Social Security	10,350	12,475	2,125
Medicare	2,420	2,920	500
Audit Services	57,250	58,350	1,100
Communication	-	1,800	1,800
Unemployment Compensation	51,000	46,000	(5,000)
Total Increase in Expenditures	\$ 155,220	\$ 189,945	\$ 34,725

CHANGE IN FUND BALANCE (CASH)

Recognize additional interest income of \$34,725 not previously budgeted. This will be used for the new expenditures related to the increase in Board Fee's and benefits. A reduction of \$5,000 out of unemployment compensation will be used to offset the additional expenditure.

Murfreesboro City Schools Budget Amendment (#7)

BOE Approval

2/11/2025

General Purpose Schools Fund 141
Fiscal Year 2024-25

Exhibit A to Resolution 25-R-04

BUDGET Account Description	AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Donations and Gifts	157,047	160,547	3,500
Total Increase in Revenues	\$ 157,047	\$ 160,547	\$ 3,500

Expenditures

Other Charges	\$ 9,625	\$ 13,125	\$ 3,500
Total Increase in Expenditures	\$ 9,625	\$ 13,125	\$ 3,500

CHANGE IN FUND BALANCE (CASH)

Donations in the amount of \$3,500, were received by an individual donor for the Indigent Children. These funds will be used assisting children in need.

Murfreesboro City Schools Budget Amendment (#7)

BOE Approval

2/11/2025

General Purpose Schools Fund 141
Fiscal Year 2024-25

Exhibit A to Resolution 25-R-04

BUDGET Account Description	AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Education of Handicap	15,000	136,766	121,766
Total Increase in Revenues	\$ 15,000	\$ 136,766	\$ 121,766
<u>Expenditures</u>			
Contracts w/ Private Agencies	110,000	215,038	105,038
Contracts w/ Private Agencies	40,000	56,728	16,728
Total Increase in Expenditures	\$ 150,000	\$ 271,766	\$ 121,766
CHANGE IN FUND BALANCE (CASH)			
-			

The new revenue for \$105,038 is High Cost Funding and the \$16,728 is State Special Schools Transportation reimbursement. These will be offset by expenditures in two different accounts for contracts with private agencies.

Murfreesboro City Schools Budget Amendment (#7)

BOE Approval

2/25/2025

General Purpose Schools Fund 141
Fiscal Year 2024-25

Exhibit A to Resolution 25-R-04

BUDGET Account Description	AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Unassigned Fund Balance	(24,700)	(3,124,700)	(3,100,000)
Total Increase in Revenues	\$ (24,700)	\$ (3,124,700)	\$ (3,100,000)
<u>Expenditures</u>			
Other Capital Outlay	-	3,100,000	3,100,000
Total Increase in Expenditures	\$ -	\$ 3,100,000	\$ 3,100,000
CHANGE IN FUND BALANCE (CASH)			(3,100,000)

This recognizes unassigned fund balance of \$3,100,000 to purchase and make building improvements to the new warehouse and transportation facility. The overall purchase and renovation will be covered by unassigned fund balance, county share bonds, and city funding.

Murfreesboro City Schools Budget Amendment (#7)

BOE Approval

2/25/2025

General Purpose Schools Fund 141
Fiscal Year 2024-25

Exhibit A to Resolution 25-R-04

BUDGET Account Description	AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>			
Donations and Gifts	179,075	190,031	10,956
Total Increase in Revenues	\$ 179,075	\$ 190,031	\$ 10,956
<u>Expenditures</u>			
Other Contracted Services	54,600	65,556	10,956
Total Increase in Expenditures	\$ 54,600	\$ 65,556	\$ 10,956

CHANGE IN FUND BALANCE (CASH)

New revenue from the Foundation to be used for the renovation of the Mobile Resource Van. The \$10,956.49 will offset expenditures within the Communications account to retrofit the van to be able to hold books and other family and outreach resource materials.

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Murfreesboro Cable TV Structure Changes Ordinance
[First Reading]

Department: Communications

Presented by: Alan Bozeman, Communications 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

Consider ordinance 25-O-08 regarding structural changes for Murfreesboro Cable TV. This ordinance dissolves the Murfreesboro Cable TV Commission and changes future actionable items and recommendations related to the cable tv franchise presented to the City Council by City staff instead of the Murfreesboro Cable TV Commission.

Staff Recommendation

Approve the first reading of Ordinance 25-O-28.

Background Information

The Murfreesboro Cable TV Commission was created by the City Council in 1991. Their mission was to create the City local government television channel, oversee the local cable television franchise agreement, receive complaints from City residents and assure full compliance with the terms and provisions of the local cable television franchise, keep abreast of the federal and state laws affecting and influencing the use of cable television and local control of the cable television franchise, make recommendations related to cable tv franchising to the City Council, among other duties.

In recent years, the Murfreesboro Cable TV Commission only met once each year. As federal and state laws related to cable tv franchising have changed over the years and become more deregulated there is less work for the Commission to hear and review. Additionally, the local government channel has been in operation now for over 30 years run by city staff who follow a programming policy and procedures document which no longer involves the Commission.

A change in structure is recommended and would dissolve the Murfreesboro Cable TV Commission, and future recommendations related to the cable tv franchise (renewals, transfers, franchise fee audits, etc.) would be presented to the City Council by a staff recommendation instead of as a recommendation from the Murfreesboro Cable TV Commission. Cable tv complaints from residents submitted to the City would continue to be addressed directly with Comcast by the Communications Director. The Communications Director would continue to work closely with MTSU on their continued

use of two local educational television channels on Comcast cable tv system that are provided for in the local franchise agreement.

Fiscal Impact

None

Attachment

Ordinance 25-O-08

ORDINANCE 25-O-08 amending the Murfreesboro City Code, Chapter 2, Administration, Article X. Cable Commission and Chapter 36, Cable Communications, Sections 36-2, 36-4, 36-10, 36-14 and 36-16, dissolving the Murfreesboro Cable Commission.

WHEREAS, the Murfreesboro Cable TV Commission for the past several years has only met once per year; and,

WHEREAS, federal and state laws related to cable tv franchising have changed over the years and become more deregulated requiring less work for the Murfreesboro Cable TV Commission to hear and review; and,

WHEREAS, the local government tv channel has been in operation now for over 30 years run by City staff who follow a programming policy and procedures document which no longer involves the Murfreesboro Cable TV Commission; and,

WHEREAS, a change in structure would dissolve the Murfreesboro Cable TV Commission, and future recommendations related to the cable tv franchise such as renewals, transfers of ownership, and franchise fee audits would be presented to the City Council by City staff recommendation instead of as a recommendation from the Murfreesboro Cable TV Commission.

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

SECTION 1. Chapter 2, Administration, Article X. Cable Commission, of the Murfreesboro City Code is hereby repealed in its entirety and marked as "Reserved."

SECTION 2. Section 36-2, Definitions and word usage, of the Murfreesboro City Code is hereby amended by deleting the following definition:

"Cable Commission." The Murfreesboro Cable Television Commission, its designee or any successor entity."

SECTION 3. Section 36-2, Definitions and word usage, of the Murfreesboro City Code is hereby amended by adding following definition in appropriate alphabetical order:

"Communications Director." The City of Murfreesboro Communications Director and/or Communications Department Head, his or her designee or any successor.

SECTION 4. Section 36-4, Applications for initial grant or modification of franchise, of the Murfreesboro City Code is hereby amended by replacing all references in subsections (B)(1) through (B)(5) to the "Cable Commission" or "Commission" or "Commission or its designee" with "Communications Director or his/her designee" as indicated below.

"(B) Application for grant of an initial franchise.

- (1) A Person may apply for an initial franchise by submitting an application containing the information required in § 36-4(C) to the Communications Director or his/her designee. Upon receipt of such an application, the Communications Director or his/her designee may either (a) evaluate the application pursuant to § 36-4(B)(4), conducting such investigations as it deems necessary; or (b) issue a Request for Proposals ("RFP"), after conducting a proceeding to identify the future cable-related needs and interests of the community. Any such RFP shall be mailed to the Person submitting the initial application, which triggered the RFP and made available to any other interested party. The RFP may contain a proposed franchise agreement.
- (2) An applicant shall respond to an RFP by filing an application with the Communications Director or his/her designee within the time directed by the City, providing the information and material set forth in § 36-4(C). The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to subsection 36-4(B)(3) herein need not re-file the same materials with its RFP response, but must amplify its application to include any additional or different materials required by the RFP. The Communications Director or his/her designee may seek additional information from any applicant and establish deadlines for the submission of such information.
- (3) Notwithstanding the provisions of § 36-4(B)(1) and (2), above, a person may apply for an initial franchise by submitting an unsolicited application containing the information required in § 36-4(C) and requesting an evaluation of that application pursuant to § 36-4(B)(4). Prior to evaluating that application, the Communications Director or his/her designee shall conduct, or cause to be conducted, such investigations as are necessary to determine whether the application satisfies the standards set forth in § 36-4(B)(4) and may seek additional applications by RFP or otherwise in accordance with this Chapter.
- (4) In evaluating an application for an initial franchise, the Communications Director or his/her designee shall consider, among other things, the following factors:
 - (a) The extent to which the applicant has substantially complied with applicable law and the material terms of any existing cable franchise for the City;
 - (b) Whether the quality of the applicant's proposed service is reasonable in light of the needs and interests of the communities proposed to be served;
 - (c) Whether the applicant has the financial, technical, and legal qualifications to provide cable service;
 - (d) Whether the application satisfies the minimum requirements established by the City and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;
 - (e) Whether, to the extent not considered under § 36-4(B)(4)(d), the applicant will provide adequate educational, and governmental access channel capacity, facilities, or other support;
 - (f) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public rights-of-way that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of

property or involve disruption of property, public services, or use of the public rights-of-way; the effect of granting a franchise on the ability of the applicant to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications;

- (g) What effects a grant of the application may have on competition in the delivery of cable service in the City;
- (h) Whether the applicant is capable of and willing to accept franchise terms and conditions no more favorable nor less burdensome than those imposed on current franchisee(s); and,
- (i) Those factors set forth in § 7-59-202 of the Tennessee Code Annotated, as same may be amended from time to time.

(5) After evaluating a fully completed application, including all additional information requested by the City, the Communications Director or his/her designee shall transmit recommendations to the City Council."

SECTION 5. Section 36-10, Indemnification, of the Murfreesboro City Code is hereby amended at subsection (A)(3) by deleting it in its entirety and substituting in lieu thereof the following:

"(3) The above information shall not apply to any claims, suits, cause of action, proceedings or judgments attributable to gross negligence or willful misconduct on the part of the City or any of its permitted designees, including, but not limited to, the City Council, Communications Director or his/her designee."

SECTION 6. Section 36-14, Channels and facilities for educational and governmental use; leased access, of the Murfreesboro City Code is hereby amended at subsection (A) by deleting reference to "Cable Commission" and replacing it with "the Communications Director or his/her designee".

SECTION 7. Section 36-16, Administration, of the Murfreesboro City Code is hereby amended by deleting subsections (A) and (C) in their entirety and substituting in lieu thereof the following:

- (A) *Duties of the Communications Director.* The Communications Director, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Chapter and any franchise agreements. The Communications Director or his/her designee may recommend that the City Council take certain actions with respect to a franchise. The Communications Director or his/her designee shall keep the Council apprised of developments in cable and provide the Council with assistance, advice and recommendations as appropriate.
- (C) *Transfer of Authority.* If at any time the powers of the Council or the Communications Director or his/her designee, or any agency, commission or official of the City or the Council are transferred by law to another board, agency, commission, authority or official, then such other board, agency, commission, authority or official shall have the powers, rights and duties previously vested under this Chapter or by law in the Council or the Communications Director or his/her designee, or any agency or official of the City or the Council.

SECTION 8. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Erin Tucker
City Recorder

Signed by:
Adam F. Tucker
5A203551P8401

Adam F. Tucker
City Attorney

SEAL

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Adams Tennis Complex Court Resurface Project

Department: Facilities

Presented by: Brad Hennessee, Facilities Manager

Requested Council Action:

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

Summary

Consider approving the agreement with Sports Surface Pros, LLC for the resurfacing of 8 Indoor and 16 Outdoor Courts at Adams Tennis Complex.

Staff Recommendation

Approve the agreement with Sports Surface Pros, LLC.

Background Information

The indoor and outdoor courts need to be resurfaced because of wear and to meet NCAA and USTA guidelines. This project consists of surface preparation, crack repair, leveling (if needed), color coating, line painting, and post-completion inspection for all 24 courts.

This project was competitively bid, and Sports Surface Pros, LLC was the lowest responsible bidder. It is pending legal approval of bonds and insurance.

Council Priorities Served

Establish strong City brand

The court renovations at Adams Tennis Complex will provide the community with a desirable and safe place to enjoy this sport.

Fiscal Impact

The expense, \$138,600, is funded by FY25 CIP.

Attachments

1. Agreement with Sports Surface Pros, LLC
2. Notice of Award to Sports Surface Pros, LLC
3. Bid Tab Sheet for ATC Indoor and Outdoor Court Resurfacing

**Agreement for
Adams Tennis Courts Resurfacing**

This Agreement is entered into and effective as of _____ (the "Effective Date") by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Sports Surface Pros LLC**, a limited liability company of the State of Illinois ("Contractor").

This Agreement consists of the following documents:

- This document
- ITB-25-2025 Adams Tennis Complex Indoor and Outdoor Court Resurfacing issued February 18, 2025 (the "Solicitation");
- Contractor's Proposal, dated March 6, 2025 ("Contractor's Proposal");
- Contractor's Price Proposal, dated March 6, 2025 (the "Price Proposal"); and
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor.

- a. Scope of Work. Contractor is engaged to perform services as described in ITB specifications for the resurfacing of 16 outdoor tennis courts and 8 indoor tennis courts at Adams Tennis Complex.
- b. Supervision and Superintendence of Work.
 1. Contractor will supervise and direct the work efficiently and with Contractor's best skill and attention. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor will be responsible to see that the finished work complies accurately with the Contract documents.
 2. Contractor will keep on the work site at all times during work progress a competent resident superintendent. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.
- c. Labor, Materials, and Equipment.
 1. Contractor will provide competent, suitably qualified personnel to perform the work as set forth in Contractor's Quotes. The Contractor will at all times maintain good discipline and order at the site.
 2. Contractor will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, and all other incidentals necessary for the execution, testing, initial operation and completion of the work.
 3. All materials will be new, except as otherwise provided in the Contract documents. If required by the City, Contractor will furnish satisfactory evidence

as to the kind and quality of materials and equipment.

4. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract documents.

d. Warranty and Guarantee.

1. Contractor warrants that the Goods purchased by the City from Contractor pursuant to this Agreement will conform to the specifications set forth in the Scope of Work; that title to the Goods will pass to the City free of and clear of all liens, claims, security interests, or other encumbrances no later than the time of the City's payment for the Goods; and that the Goods do not infringe or misappropriate any third party's patent or other intellectual property rights.
2. With respect to any Goods manufactured by Contractor and sold to the City pursuant to this Agreement, Contractor warrants that such items will be free from any defects in workmanship, material, and design for sixty (60) months from the date of installation or the longest warranty period offered by Contractor to its customer for such items, whichever is longer. In addition, Contractor hereby assigns to the City the Contractor's right, title, benefit, and interest in and to any manufacturer warranty associated with any Goods purchased by the City from Contractor pursuant to this Agreement, including the Contractor's right to receive the benefits of and to make claim under any such manufacturer warranty.
3. The Contractor warrants that the Services will be performed in accordance with generally accepted industry standards and warrants the installation of the Goods against defects in workmanship for twelve (12) months from the date of installation or the longest warranty period offered by Contractor to its customer for such work, whichever is longer. Notwithstanding, the City acknowledges that due to the natural movement of the substrate, temperature changes, and other environmental factors, cracks may appear, expand, or cause surface irregularities over time. As a result, The City further acknowledges that any appearance of cracks caused by such factors shall not constitute a defect in workmanship and shall not be covered under any warranty.
4. The Contractor agrees that all warranties in the Contract documents shall survive acceptance of, delivery of, and payment for, the goods, whether any defects shall be latent or patent, and agrees to indemnify and hold the City harmless from any loss, damage, or other expense, including attorneys' fees, that the City may suffer as a result of the failure of the Goods or workmanship to be as warranted.
5. The warranties set forth in this section are cumulative and shall not exclude or affect the operation of any other warranty or guaranty provided by law or any greater warranty included in Contractor's Proposal.
6. The Contractor agrees to correct any defect in the Goods or workmanship that may develop during the period of such warranties at no cost to the City and to the satisfaction of the City. Upon receipt of notice from City of noncompliance with any warranty set forth in this section or any other warranty provided by law or equity, Contractor shall, at its own cost and expense, within fifteen (15) days: (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to the

Contractor and the delivery of repaired or replacement Goods to the City; and/or (ii) correct or re-perform the applicable installation work.

e. Subcontractors.

1. Contractor will not employ any subcontractor to perform any of the work required under the Contract documents without first obtaining the written approval of the City's designated representative to employ the subcontractor.
2. Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract documents shall create any contractual relationships between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor, except as may otherwise be required by law. The City may furnish to any subcontractor, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.
3. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the City.
4. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate written agreement between Contractor and the subcontractor.

f. Permits

Contractor will secure and pay for all construction permits and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the work, which are applicable at the time of Contractor's bid. Contractor will also pay all public utility charges.

g. Use of Premises.

1. Contractor will confine Contractor's equipment, the storage of materials and equipment and the operations of Contractor's workers to areas permitted by law, ordinances, permits, or the requirements of the Contract documents, and shall not unreasonably encumber the premises with materials or equipment.
2. Contractor will not load nor permit any part of the structure to be loaded with weights that will endanger the structure, nor will Contractor subject any part of the work to stresses or pressures that will endanger it.

h. Safety and Protection.

1. Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:
 - a. All employees on the work and other persons who may be affected thereby,
 - b. All the work and all materials or equipment to be incorporated there, whether in storage on or off the site, and
 - c. Other property at the site or adjacent property, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor will comply with all applicable laws, ordinances, rules, regulations and order of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor will erect and

maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. Contractor will notify the City of adjacent utilities when prosecution of the work may affect them. All damage, injury, or loss to any property referred to in subparagraph (2) or (3) of this section caused directly or indirectly, in whole or in part, by Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, will be remedied by Contractor; except damage or loss attributable to the fault of drawings or specifications or to the acts or omissions of the City or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor.

2. Contractor will designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the City.

- i. Emergencies. In emergencies affecting the safety of persons or the work or property at the site or adjacent property, Contractor, without special instruction or authorization from the City, is obligated to act, at Contractor's discretion, to prevent threatened damage, injury or loss.
- j. Cleaning Up. Contractor will keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the work, and at the completion of the work Contractor will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the City. Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract documents.
- k. Access to the Work. Representatives of the City will at all times have access to the work. Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing by others.
- l. Contractor's Continuing Obligation. Contractor's obligation to perform the work and complete the Project in accordance with the Contract documents shall be absolute. Neither any payment by the City to Contractor under the Contract documents, nor any use or occupancy of the Project or any part by the City, nor any act of acceptance by the City nor any failure to do so, nor any correction of defective work by the City shall constitute acceptance of work not in accordance with the Contract documents.

2. Term.

The term of this Agreement is One Hundred Twenty calendar days from the Notice to Proceed, or as extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate,

stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.

- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. Price; Compensation; Method of Payment.

Contractor will be compensated upon the delivery and acceptance of the goods and services specified in Contractor's bid submitted in response to ITB-25-2025, which reflects a price of **\$132,000.00 plus Owner's Contingency of 5% for a total price of \$138,600.** The Owner's Contingency is to be used strictly at the discretion and approval of the Owner. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. The final payment shall be made only after Contractor has completely performed its duties under this Contract and the work has been accepted by the City and all work has been approved by an inspector from the Murfreesboro Building and Codes Department or City designee, if applicable. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. All invoices should be sent to: accountspayable@murfreesborotn.gov

4. Insurance.

Contractor must maintain commercial general liability insurance for bodily injury and property damage, automobile liability insurance, and workers' compensation insurance as required by the State of Tennessee and as specified in Exhibit A hereto. Contractor must name the City and the City of Murfreesboro as an additional insured Contractor must notify the City within five days if the insurance policy is renewed, cancelled, or altered in any manner and provide written documentation of such alteration.

5. Payment and Performance Bonds. Contractor must furnish a Performance Bond and a Payment Bond each in the amounts of 100% of the Contract Sum covering the faithful performance and completion of the Agreement and the payment of all obligations arising there under. Bonds shall be issued on a form acceptable to the City by a surety licensed in the State of Tennessee. The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within 30 days of Notice of Award, the Contractor Bid Bond may be forfeited, and the Contract may be awarded to an alternate contractor. The City will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders that individually or cumulatively exceed 10% of the original Contract Sum. The Contractor shall furnish to the City and keep in force during the term of the Contract, performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and materials furnished for the Work. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

6. Indemnification.

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

7. Notices.

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

If to the City of Murfreesboro: If to Contractor:

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

Sports Surface Pros LLC
Attn: Alexandra Webb
736 N Western Avenue
Lake Forest, IL 60045
alex@sportssurfacepros.com

8. Maintenance of Records.

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

9. Modification.

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

10. Relationship of the Parties.

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

11. Waiver.

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

12. Employment.

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

13. Non-Discrimination.

It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

14. Gratuities and Kickbacks.

It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

15. Assignment.

The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.

16. Integration.

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.

17. Force Majeure.

No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

18. Governing Law and Venue.

The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

19. Severability.

Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.

20. Attorney Fees.

In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.

21. Iran Divestment Act of Tennessee.

By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.

22. Non-Boycott of Israel.

By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.

23. Effective Date.

This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

CITY OF MURFREESBORO, TENNESSEE

By: _____
Shane McFarland, Mayor

SPORTS SURFACE PROS LLC

By: _____
Alexandra Webb, Managing Partner

Approved as to Form:

Adam F. Tucker, City Attorney

Exhibit A

Insurance Requirements

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

Contractor must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers' compensation and employer's liability insurance, providing the following coverages, limits and endorsements:

1. Commercial General Liability Insurance.

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than \$1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$1,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
 - a. Include the per project aggregate endorsement;
 - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
 - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
 - d. Includes a severability of interest clause; and
 - e. Waive all rights of recovery against the Additional Insureds.

2. **Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. **Auto Liability Insurance**

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
- 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
- 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. **Term of Coverage**

- 4.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").
- 4.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 4.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 4.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

5. **Subcontractor and Lower-Tier Entities Insurance Requirements**

- 5.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
 - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
 - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
 - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.
 - d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

6. Other Policy Provisions. Each policy to be furnished by Contractor and each Subcontractor must:

- 6.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 6.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 6.3 Include the Project per aggregate endorsement;
- 6.4 Waive all rights of subrogation against the Owner;
- 6.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and
- 6.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

7. Certificates and Endorsements

- 7.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 7.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.
- 7.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

8. Reduction in Coverage. Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

9. Suppliers and Materialmen Coverages

- 9.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.

9.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

10. Condition Precedent to Starting Work

10.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

10.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

11. Additional Proofs of Insurance. Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.

12. Indemnity. The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

13. Interpretation. In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.



NOTICE OF AWARD

Owner:	City of Murfreesboro	Owner's Contract No.:	
Contractor:	Sports Surface Pros, LLC	Contractor's Project No.:	ITB-25-2025
Project:	Adams Tennis Complex Indoor and Outdoor Court Resurfacing	Contract Name:	Adams Tennis Complex Indoor and Outdoor Court Resurfacing
		Effective Date of Contract:	March 28, 2025

TO CONTRACTOR:

You are notified that Owner has accepted your Bid dated March 6, 2025, for the above Contract, and that you are the Successful Bidder and are awarded a Contract for the above-mentioned Project.

The Total Contract Price of the awarded Contract is \$138,600.00. The Contract price includes \$132,000.00 based on the bid submitted on March 6, 2025, as well as a 5% Owner's Contingency of \$6,600.00, to be used solely at the Owner's discretion. Contract Price is subject to adjustment based on the provisions of the Contract.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders Section 1.43 and in the Sample Agreement, Section 4 and Exhibit A. Payment and Performance bonds should be left undated.
2. Other conditions precedent (if any): N/A

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited, if applicable. Upon Receipt and Approval of the required bid security, Owner will send Contract Documents for signature via DocuSign for execution by all parties.

Owner: City of Murfreesboro

By: _____

Shane McFarland, Mayor

**Bid Tabulation Sheet For
ITB-25-2025 – Adams Tennis Complex Indoor and
Outdoor Court Resurfacing**

Contractors	Price	GC Form/ License	Iran /Israel	Non- Collusion Affidavit	Drug Free Workplace	References	Signature Sheet	Vendor Info Sheet
Competition Athletic Surfaces	\$201,000.00	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes
Court Kings, LLC	DQ- No GC License	No/No	Yes	No	Yes	No	Yes	Yes
FTM Contracting	\$247,317.60	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes
Seal Rite, Inc.	\$224,991.00	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes
Sport Surface Pros, LLC	\$132,000.00	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes
Totally New Resurfacing Specialists of Nashville	DQ- No GC License	No/No	Yes	Yes	Yes	Yes	Yes	Yes

COUNCIL COMMUNICATION

Meeting Date: 03/27/25

Item Title: Microsoft Enterprise Agreement

Department: Information Technology Department

Presented by: Matthew Jarratt

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

Renew Microsoft 365, which serves as a primary tool for City operations.

Staff Recommendation

Information Technology recommends approval to renew the three-year enterprise agreement of Microsoft 365 under the State of Tennessee's Restricted State-Wide Contract #3999 NASPO Commercial Off-The Shelf Software Contract with Insight.

Background Information

Microsoft 365 is a cloud-based subscription service that provides email, calendars, two-factor authentication, single sign-on, document collaboration, messaging, web conferencing, and intranet access from virtually any device. City employees have used Microsoft 365 since 2013 as the primary platform for productivity and communication. Future renewals through department budgeting & that will cover you for the life of the contract.

Upon execution of the agreement with Insight, Microsoft will issue the official Enterprise Agreement (EA) renewal. The attached renewal documents are provided as examples for reference purposes only.

Council Priorities Served

Excellent Services with a Focus on Customer Service

Fiscal Impacts

The annual cost associated with the subscription of Microsoft 365 hosted services is \$471,338.77 per year. Pricing is based on 1,327 users and will increase per additional licensed user. MWRD will fund 25% of the total amount.

Attachments:

1. Insight Quote, Insight Agreement, Microsoft EA Renewal

Agreement for Microsoft Enterprise Products

This Agreement is entered into and effective as of the ____ day of _____ 2025, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Insight Public Sector, Inc.** a Corporation of the State of Illinois ("Contractor").

This Agreement consists of the following documents:

- This document
- State of Tennessee SWC 3999 NASPO COTS SOFTWARE (CONTRACT CTR060025) with Insight Public Sector, Inc.
- Insight Public Sector Quotation #0125-City of MurfreesboroV3-MSEA-CPY dated January 24, 2025
- Any properly executed amendments to this Agreement

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

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority)
- Second, this Agreement
- Third, Contractor's State of Tennessee SWC 3999 NASPO COTS SOFTWARE (CONTRACT CTR060025)
- Lastly, Insight Public Sector Quotation #0125-City of MurfreesboroV3-MSEA-CPY dated January 24, 2025

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide and City agrees to purchase the Microsoft Enterprise Products and Additional Products set forth on Insight Public Sector Quotation #0125-City of MurfreesboroV3-MSEA-CPY dated January 24, 2025 from Insight Public Sector, Inc. in accordance with the Contractor's State of Tennessee SWC 3999 NASPO COTS SOFTWARE (CONTRACT CTR060025).
2. **Term.** Contractor's performance may be terminated in whole or in part:
 - a. Contract expires March 31, 2028, Insight Public Sector Quotation #0125-City of MurfreesboroV3-MSEA-CPY dated January 24, 2025.
 - b. Upon 30-day prior notice, for the convenience of the City.
 - c. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - d. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
 - e. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

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

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Insight Public Sector Quotation #0125-City of MurfreesboroV3-MSEA-CPY dated January 24, 2025, which reflects an annual purchase of \$471,338.77. The total purchase price for the three-year term of the contract is **\$1,414,016.31**. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. Payment Terms: Net 30 days after receipt of goods
- c. Deliveries of all items shall be made within 5 weeks of issuance Purchase Order to Attn: Matt Jarratt – IT Department - 111 W. Vine, Murfreesboro, TN 37130 - Contact Person: Matt Jarratt (tel. 615-542-4085; email: mjarratt@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- d. Deliveries of all items shall be made as stated in the quote. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- e. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.
- f. All deliveries made pursuant to the Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the purchase price.

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

5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.

6. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.

7. Indemnification.

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

neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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

If to the City of Murfreesboro:

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

If to the Contractor:

Insight Public Sector
Erica Falchetti
6820 S. Harl Ave.,
Tempe, AZ 85383

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

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

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

21. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
23. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

[signatures appear on the following page]

IN WITNESS WHEREOF, the parties enter into this agreement as of _____, 2025 (the "Effective Date").

CITY OF MURFREESBORO, TENNESSEE

By: _____
Shane McFarland, Mayor

INSIGHT PUBLIC SECTOR, INC.

By: _____
Printed: _____
Title: _____

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

Program Signature Form

MBA/MBSA number

Proposal ID

Agreement number

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*
Tax ID

* indicates required field

Microsoft Affiliate
Microsoft Corporation
<p>Signature _____</p> <p>Printed First and Last Name</p> <p>Printed Title</p> <p>Signature Date (date Microsoft Affiliate countersigns)</p>
<p>Agreement Effective Date (may be different than Microsoft's signature date)</p>

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
<p>Name of Entity (must be legal entity name)*</p> <p>Signature* _____</p> <p>Printed First and Last Name*</p> <p>Printed Title</p> <p>Signature Date*</p>

** indicates required field*

Outsourcer
<p>Name of Entity (must be legal entity name)*</p> <p>Signature* _____</p> <p>Printed First and Last Name*</p> <p>Printed Title</p> <p>Signature Date*</p>

** indicates required field*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6880 Sierra Center Parkway
 Reno, Nevada 89511
 USA

Enterprise Agreement State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

This Microsoft Enterprise Agreement ("Agreement") is entered into between the entities identified on the signature form.

Effective date. The effective date of this Agreement is the earliest effective date of any Enrollment entered into under this Agreement or the date Microsoft accepts this Agreement, whichever is earlier.

This Agreement consists of (1) these Agreement terms and conditions, including any amendments and the signature form and all attachments identified therein, (2) the Product Terms applicable to Products licensed under this Agreement, (3) any Affiliate Enrollment entered into under this Agreement, and (4) any order submitted under this Agreement.

Please note: Documents referenced in this Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this Agreement by reference, including the Product Terms and Use Rights. These documents may contain additional terms and conditions for Products licensed under this Agreement and may be changed from time to time. Customer should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed.

Terms and Conditions

1. Definitions.

"Affiliate" means

- a. with regard to Customer,
 - (i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
 - (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and
 - (iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
- b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft.

"Customer" means the legal entity that has entered into this Agreement with Microsoft.

"Customer Data" means all data, including all text, sound, software, image, or video files that are provided to Microsoft by, or on behalf of, an Enrolled Affiliate and its Affiliates through use of Online Services.

"day" means a calendar day, except for references that specify "business day".

"Enrolled Affiliate" means an entity, either Customer or any one of Customer's Affiliates that has entered into an Enrollment under this Agreement.

“Enrollment” means the document that an Enrolled Affiliate submits under this Agreement to place orders for Products.

“Enterprise” means an Enrolled Affiliate and the Affiliates for which it is responsible and chooses on its Enrollment to include in its enterprise.

“Fixes” means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“License” means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses.

“Microsoft” means the Microsoft Affiliate that has entered into this Agreement or an Enrollment and its Affiliates, as appropriate.

“Online Services” means the Microsoft-hosted services identified as Online Services in the Product Terms.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including pre-release or beta versions.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Volume Licensing Site and is updated from time to time.

“SLA” means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“Software Assurance” is an offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product Terms.

“Trade Secret” means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

“use” or “run” means to copy, install, use, access, display, run or otherwise interact.

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

“Volume Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. **How the Enterprise program works.**

- a. **General.** The Enterprise program consists of the terms and conditions on which an Enrolled Affiliate may acquire Product Licenses. Under the Enterprise program, Customer and its Affiliates may order Licenses for Products by entering into Enrollments.
- b. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments. Notwithstanding any other provision of this Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment.

c. **Licenses.** The types of Licenses available are (1) Licenses obtained under Software Assurance (L&SA), and (2) Subscription Licenses. These License types, as well as additional License Types, are further described in the Product List.

3. **Licenses for Products.**

a. **License Grant.** Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this Agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this Agreement.

b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.

c. **Applicable Use Rights.** The latest Use Rights as updated from time to time, apply to the use of all Products, subject to the following exceptions.

- (i) **For products with metered usage-based pricing (e.g. metered Microsoft Azure Services)** Material adverse changes published after the start of a calendar month will apply beginning the following month.
- (ii) **For Versioned Software.** Material adverse changes published after the date a Product is first licensed will not apply to any licenses for that Product acquired during the applicable Enrollment term unless the changes are published with the release of a new version and Customer chooses to update to that version. Renewal of Software Assurance does not change which Use Rights apply to perpetual Licenses acquired during a previous term or Enrollment
- (iii) **For all other Products (e.g. Office 365 services).** Material adverse changes published after the start of the subscription term will not apply to any licenses for that Product acquired during the applicable Enrollment term.
- (iv) **For use rights granted through Software Assurance.** Material adverse changes published after the date a Product is first licensed will not apply to any licenses for that Product during the applicable enrollment term unless the changes are published with the release of a new version and Customer chooses to update to that version.

d. **Downgrade rights.** Enrolled Affiliate may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. For Licenses acquired in the current Enrollment term, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enrolled Affiliate chooses not to use the new version immediately.

- (i) Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
- (ii) If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses

obtained through Software Assurance replace any perpetual Licenses for the earlier version.

- f. **License confirmation.** This Agreement, the applicable Enrollment, Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Enrolled Affiliate's evidence of all Licenses obtained under an Enrollment.
- g. **Reorganizations, consolidations and privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of (1) a reorganization, consolidation or privatization of an entity or an operating division, (2) a privatization of an Affiliate or an operating division of Enrolled Affiliate or any of its Affiliates, or (3) a consolidation including a merger with a third party that has an existing agreement or Enrollment, Microsoft will work with Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this Agreement.

4. Making copies of Products and re-imaging rights.

- a. **General.** Enrolled Affiliate may make as many copies of Products, as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this Agreement.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 20 complimentary copies of any licensed Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
 - (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace, and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
 - (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

5. **Transferring and reassigning Licenses.**

- a. **License transfers.** License transfers are not permitted, except that Customer or an Enrolled Affiliate may transfer only fully paid perpetual Licenses to:
 - (i) an Affiliate, or
 - (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (2) a reorganization, or (3) a consolidation.
- Upon such transfer, Customer or Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.
- b. **Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the licenses being transferred (including the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any License transfer not made in compliance with this section will be void.
- c. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.

6. **Term and termination.**

- a. **Term.** The term of this Agreement will remain in effect unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.
- b. **Termination without cause.** Either party may terminate this Agreement, without cause, upon 60 days' written notice. In the event of termination, new Enrollments will not be accepted, but any existing Enrollment will continue for the term of such Enrollment and will continue to be governed by this Agreement.
- c. **Mid-term termination for non-appropriation of Funds.** Enrolled Affiliate may terminate this Agreement or an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Agreement or Enrollment are not appropriated or allocated by the Enrolled Affiliate for such purpose.
- d. **Termination for cause.** Without limiting any other remedies it may have, either party may terminate an Enrollment if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give Customer a copy of that notice and Customer agrees to help resolve the breach. If the breach affects other Enrollments and cannot be resolved between Microsoft and Enrolled Affiliate, together with Customer's help, within a reasonable period of time, Microsoft may terminate this Agreement and all Enrollments under it. If an Enrolled Affiliate ceases to be Customer's Affiliate, it must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be Customer's Affiliate, then Enrolled Affiliate will have the early termination rights described in the Enrollment.

e. Early termination. If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminates an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:

- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
- (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
 - 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
 - 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.
- (iii) In the case of early termination under subscription Enrollments, Enrolled Affiliate will have the following options:
 - 1) For eligible Products, Enrolled Affiliate may obtain perpetual Licenses as described in the section of the Enrollment titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
 - 2) In the event of a breach by Microsoft, if Customer chooses not to exercise a buy-out option, Microsoft will issue Enrolled Affiliate a credit for any amount paid in advance for Subscription Licenses that the Enterprise will not be able to use to do the termination of the Enrollment.

Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment.

f. Effect of termination or expiration. When an Enrollment expires or is terminated,

- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments for any order of any kind remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
- (ii) Enrolled Affiliate's right to Software Assurance benefits under this Agreement ends if it does not renew Software Assurance.

g. Modification or termination of an Online Service for regulatory reasons. Microsoft may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating in the jurisdiction; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may conflict with any such requirement or obligation.

h. Program updates. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at the time of an Enrollment renewal.

7. Use, ownership, rights, and restrictions.

- a. **Products.** Unless otherwise specified in a supplemental agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable supplemental agreement.
- b. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. **Non-Microsoft software and technology.** Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.
- d. **Restrictions.** Enrolled Affiliate must not (and is not licensed to) (1) reverse engineer, decompile, or disassemble any Product or Fix; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer must not (and is not licensed to) (1) separate and run parts of a Product or Fix on more than one device, upgrade or downgrade parts of a Product or Fix at different times, or transfer parts of a Product or Fix separately; or (2) distribute, sublicense, rent, lease, lend any Products or Fixes, in whole or in part, or use them to offer hosting services to a third party.
- e. **Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

8. Confidentiality.

“Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand is confidential, including Customer Data. Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality obligation, (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party’s business, products or services.

Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (“Representatives”) and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other’s Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives’ unaided memories in the development or deployment of the parties’ respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

These obligations apply (1) for Customer Data until it is deleted from the Online Services, and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

9. Privacy and compliance with laws.

- a. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- b. Personal information collected under this agreement (1) may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities and (2) will be subject to the privacy terms specified in the Use Rights. Microsoft will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of personal data from the European Economic Area and Switzerland.
- c. **U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and end-user, end use and destination restrictions issued by U.S. and other governments related to Microsoft products, services and technologies.

10. Warranties.

a. Limited warranties and remedies.

- (i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date the Enterprise is first licensed for that version. If it does not and the Enterprise notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Enrolled Affiliate paid for the Software license, or (2) repair or replace the Software.
- (ii) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during the Enterprise's use. The Enterprise's remedies for breach of this warranty are in the SLA.

The remedies above are the Enterprise's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse, or use in a manner inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta products, or to components of Products that Enrolled Affiliate is permitted to redistribute.
- c. **Disclaimer.** Except for the limited warranties above, Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

11. Defense of third party claims.

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, authority, and must take all reasonable action to mitigate its losses arising from the third-party claim. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Enrolled Affiliate against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope

of the license granted (unmodified from the form provided by Microsoft and not combined with anything else) misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, at its option, either (1) modify or replace the Product or Fix with a functional equivalent; or (2) terminate Enrolled Affiliate's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Enrolled Affiliate's continued use of a Product or Fix after being notified to stop due to a third-party claim.

- b. By Enrolled Affiliate.** To the extent permitted by applicable law, Enrolled Affiliate will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or non-Microsoft software hosted in an Online Service by Microsoft on Enrolled Affiliate's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Enrolled Affiliate's use of any Product or Fix, alone or in combination with anything else, violates the law or damages a third party.

12. Limitation of liability.

For each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate paid for the applicable Products during the term of this Agreement, subject to the following:

- a. Online Services.** For Online Services, Microsoft's maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.
- b. Free Products and Distributable Code.** For Products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or for loss of use, loss of business information, loss of revenue, or interruption of business, however caused or on any theory of liability.
- d. Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

13. Verifying compliance.

- a. Right to verify compliance.** Enrolled Affiliate must keep records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to the extent permitted by applicable law, to verify such compliance with the Product's license terms. Microsoft will engage an independent auditor and Enrolled Affiliate must provide the independent auditor with any information the auditor reasonably requests in furtherance of the verification, including visible access to systems running the Products and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate must provide, without undue delay, the foregoing information and access upon request of the independent auditor.
- b. Verification process.** Microsoft will notify Enrolled Affiliate at least 30 calendar days in advance of its intent to verify Enrolled Affiliate's compliance with the license terms for the Products Enrolled Affiliate uses or distributes. The independent auditor is subject to a confidentiality obligation sufficient to cover the auditor's engagement with Enrolled Affiliate for the verification process. Enrolled Affiliate may, at its discretion, also require a mutually agreeable confidentiality agreement with the independent auditor for access to premises, data

and systems. Such confidentiality agreement between Enrolled Affiliate and auditor must be completed within fourteen (14) days of such request, and shall not restrict the ability for the independent auditor to accurately verify compliance and share the resulting information with Microsoft. Any information collected will be used solely for purposes of determining Enrolled Affiliate's compliance. This verification will take place during normal business hours and the auditor will make best efforts not to interfere with Enrolled Affiliate's operations during the course of the audit.

- c. **Remedies for non-compliance.** If verification reveals any use of Products without applicable license rights, then within 30 days Enrolled Affiliate must order sufficient licenses to cover its use, and, if such use or distribution is determined to be in excess of Enrolled Affiliate's existing licenses by 5% or more of the audited environment(s) in aggregate, then Enrolled Affiliate must reimburse Microsoft for the costs Microsoft incurred in obtaining the verification and acquire the necessary additional licenses. Such licenses will be obtained at 125% of the price, based on the then-current price list. The use percentage is based on the total number of Products used without applicable license rights (as described above) compared to the total Product use. If it is verified that Product use is sufficiently licensed, Microsoft will not require the Enterprise to engage in another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce its rights under these Additional Use Rights and Restrictions or to protect its intellectual property by any other legal or contractual means.

14. Miscellaneous.

- a. **Use of contractors.** Microsoft may use contractors to perform services but will be responsible for their performance subject to the terms of this Agreement.
- b. **Microsoft as independent contractor.** The parties are independent contractors. Enrolled Affiliate and Microsoft each may develop products independently without using the other's Confidential Information.
- c. **Notices.** Notices to Microsoft must be sent to the address on the signature form. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Enrolled Affiliate about upcoming ordering deadlines, services, and subscription information in electronic form, including by email to contacts provided by Enrolled Affiliate. Emails will be treated as delivered on the transmission date.
- d. **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products.
- e. **Amendments.** Any amendment to this Agreement must be executed by both parties, except that Microsoft may change the Product Terms and the Use Rights from time to time in accordance with the terms of this Agreement. Any conflicting terms and conditions contained in an Enrolled Affiliate's purchase order will not apply. Microsoft may require Customer to sign a new agreement or an amendment before an Enrolled Affiliate enters into an Enrollment under this agreement.
- f. **Assignment.** Either party may assign this Agreement to an Affiliate but must notify the other party in writing of the assignment. Any other proposed assignment must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- g. **Applicable law; dispute resolution.** The terms of this Agreement will be governed by the laws of Customer's state, without giving effect to its conflict of laws. Disputes relating to this Agreement will be subject to applicable dispute resolution laws of Customer's state.

- h. **Severability.** If any provision in this agreement is held to be unenforceable, the balance of the agreement will remain in full force and effect.
- i. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- j. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights.
- k. **Survival.** All provisions survive termination or expiration of this Agreement except those requiring performance only during the term of the Agreement.
- l. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) at: <https://www.microsoft.com/licensing/servicecenter> (or a successor site). Upon the effective date of this Agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.
- m. **Order of precedence.** In the case of a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order from highest to lowest priority: (1) this Enterprise Agreement, (2) any Enrollment, (3) the Product Terms, (4) orders submitted under this Agreement, and (5) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- n. **Free Products.** It is Microsoft's intent that the terms of this Agreement and the Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate and is not provided for use by or personal benefit of any specific government employee.
- o. **Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the Online Services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.
- p. **Natural disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.
- q. **Copyright violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this Agreement and the Use Rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this Agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this Agreement for unlicensed use.

Enterprise Enrollment

Enterprise Enrollment number
(Microsoft to complete)

Previous Enrollment number
(Reseller to complete)

State and Local

Framework ID
(if applicable)

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (6) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. **Order requirements.**

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) **Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) **Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

(ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.

g. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.

- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
- (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
 - 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services in a given Product pool that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as (a) the initial order minimum requirements are maintained and (b) all then-active users of each Online Service are included the total quantity of Licenses remaining after the reduction. An Enrolled Affiliate may reduce Licenses for Online Services on or before the Enrollment anniversary date and place a reservation order for such licenses within 90 days after the anniversary date; however, any licenses ordered as described in this section will be invoiced to the Enrolled Affiliate for the time period the licenses were made available.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

(v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional

Products. This update statement must be signed by Enrolled Affiliate's authorized representative.

(vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

(vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft may invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

- (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
- (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Unless otherwise expressly agreed to by the parties and except for Online Services designated in the Product Terms as being exempt from fixed pricing, Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. ***End of Enrollment term and termination.***

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.
- c. **If Enrolled Affiliate elects not to renew.**
 - (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
 - (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
 - 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term option that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
 - 2) **Cancellation during Extended Term.** At any time during the first twelve months of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, Microsoft may condition the continued use of each Online Service on the acceptance of new terms by the Enrolled Affiliate. Enrolled Affiliate will be notified in writing of any new terms at least 60 days before any such changes take effect. Enrolled Affiliate acknowledges and agrees that after the notice described in this section, its continued use of each Online Service after the effective date provided in the notice will constitute its acceptance of the new terms. If Enrolled Affiliate does not agree to the new terms, it must stop using the Online Services and terminate the Extended Term as provided in this section. Enrolled Affiliate's termination under this section will be effective at the end of the month following 30 days after Microsoft has received the notice.
 - (iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. **Early termination.** Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

- a. Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.
- b.** All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c.** Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i)** Government Community Cloud Services will be offered only within the United States.
 - (ii)** Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii)** References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.



Legal Review

Enrollment Details

1. Enrolled Affiliate's Enterprise.

Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

- Enrolled Affiliate only
- Enrolled Affiliate and the following Affiliate(s):

Unless specifically identified above, all Affiliates of Customer, either existing at the execution of this Enrollment or created or acquired after the execution of this Enrollment, will be excluded from the Enterprise. To request that an additional Affiliate be included in Customer's Enterprise, Customer must identify an Affiliate to Microsoft in writing and provide any required documentation. Microsoft will reasonably review requests under this paragraph and may approve the inclusion of an Affiliate in Customer's Enterprise in its sole discretion.

1. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)*

Contact name: First* Middle Last*

Contact email address*

Street address*

City*

State*

Postal code*

(Please provide the zip + 4, e.g. xxxx-xxxx)

Country*

Phone*

Tax ID

** indicates required fields*

b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name: First* **Middle** **Last***

Contact email address*

Street address*

City*

State*

Postal code* -

(Please provide the zip + 4, e.g. xxxxx-xxxx)

Country*

Phone*

Language preference. Choose the language for notices. English

This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

* indicates required fields

c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name: First* **Middle** **Last***

Contact email address*

Phone*

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

* indicates required fields

d. **Reseller information.** Reseller contact for this Enrollment is:

Reseller company name*

Street address (PO boxes will not be accepted)*

City*

State*

Postal code*

Country*

Contact name*

Phone*

Contact email address*

* indicates required fields

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature*

Printed name*

Printed title*

Date*

* indicates required fields

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*

- (i) Additional notices contact
- (ii) Software Assurance manager
- (iii) Subscriptions manager
- (iv) Customer Support Manager (CSM) contact

1. ***Financing elections.***

Is a purchase under this Enrollment being financed through MS Financing? Yes, No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.



Legal Review



City of Murfreesboro

Quotation: 0125-City of MurfreesboroV3-MSEA-CPY
Date: January 24, 2025
Enrollment: Renewal Quote
Contract: CTR060025/SWC 3999/77151-61002335

Year One: 12 Months

Part Number	Item Name	Level	Purchase Unit	Purchase Period	Pool	Product Family	Quantity	Term Price	Extended Price	MSRP
Enterprise Products										
AAA-10732	EMS E3 ALng Sub Per User	D	1 Month(s)	Non-Specific	Servers	EMS E3	1327	\$102.95	\$ 136,614.65	\$127.20
AAA-10842	O365 E3 Existing Customer Sub Per User	D	1 Month(s)	Non-Specific	Servers	O365 E3 Exist Cust	510	\$246.89	\$ 125,913.90	\$303.60
AAA-10758	O365 E3 FSA Renewal Sub Per User	D	1 Month(s)	Non-Specific	Non-specific	O365 E3 FSA Renewal	817	\$209.81	\$ 171,414.77	\$258.00
Additional Products										
KF5-00002	Defender O365 P1 Sub Per User	D	1 Month(s)	Non-Specific	Servers	Defender O365 P1	1327	\$18.30	\$ 24,284.10	\$22.80
831-00001	M365 Copilot Sub Add-on	D	1 Month(s)	Non-Specific	Applications	M365 Copilot	20	\$365.94	\$ 7,318.80	\$450.00
7LS-00002	Planner & Project P3 Sub Per User	D	1 Month(s)	Non-Specific	Servers	Planner & Project P3	5	\$273.72	\$ 1,368.60	\$337.20
SEJ-00002	Power Apps Premium Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power Apps Premium	1	\$214.68	\$ 214.68	\$264.00
104-00001	Power Automate Premium Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power Automate Premium	2	\$161.01	\$ 322.02	\$198.00
68B-00008	Power BI Premium USL Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power BI Premium USL	1	\$182.48	\$ 182.48	\$224.40
NK4-00002	Power BI Pro Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power BI Pro	10	\$91.12	\$ 911.20	\$112.80
NYG-00001	Teams AC with Dial Out US/CA Sub Add-on	D	1 Month(s)	Non-Specific	Servers	Teams AC with Dial Out US/CA	1327	\$0.00	\$ -	\$0.00
V9B-00001	Teams Rooms Pro Sub Per Device	D	1 Month(s)	Non-Specific	Servers	Teams Rooms Pro	3	\$429.37	\$ 1,288.11	\$528.00
N9U-00002	Visio P2 Sub Per User	D	1 Month(s)	Non-Specific	Applications	Visio P2	11	\$136.86	\$ 1,505.46	\$169.20
12 Month Total:								\$	471,338.77	

Year Two: 12 Months

Part Number	Item Name	Level	Purchase Unit	Purchase Period	Pool	Product Family	Quantity	Term Price	Extended Price	MSRP
Enterprise Products										
AAA-10732	EMS E3 ALng Sub Per User	D	1 Month(s)	Non-Specific	Servers	EMS E3	1327	\$102.95	\$ 136,614.65	\$127.20
AAA-10842	O365 E3 Existing Customer Sub Per User	D	1 Month(s)	Non-Specific	Servers	O365 E3 Exist Cust	510	\$246.89	\$ 125,913.90	\$303.60
AAA-10758	O365 E3 FSA Renewal Sub Per User	D	1 Month(s)	Non-Specific	Non-specific	O365 E3 FSA Renewal	817	\$209.81	\$ 171,414.77	\$258.00
Additional Products										
KF5-00002	Defender O365 P1 Sub Per User	D	1 Month(s)	Non-Specific	Servers	Defender O365 P1	1327	\$18.30	\$ 24,284.10	\$22.80
831-00001	M365 Copilot Sub Add-on	D	1 Month(s)	Non-Specific	Applications	M365 Copilot	20	\$365.94	\$ 7,318.80	\$450.00
7LS-00002	Planner & Project P3 Sub Per User	D	1 Month(s)	Non-Specific	Servers	Planner & Project P3	5	\$273.72	\$ 1,368.60	\$337.20
SEJ-00002	Power Apps Premium Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power Apps Premium	1	\$214.68	\$ 214.68	\$264.00
104-00001	Power Automate Premium Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power Automate Premium	2	\$161.01	\$ 322.02	\$198.00
68B-00008	Power BI Premium USL Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power BI Premium USL	1	\$182.48	\$ 182.48	\$224.40
NK4-00002	Power BI Pro Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power BI Pro	10	\$91.12	\$ 911.20	\$112.80
NYG-00001	Teams AC with Dial Out US/CA Sub Add-on	D	1 Month(s)	Non-Specific	Servers	Teams AC with Dial Out US/CA	1327	\$0.00	\$ -	\$0.00
V9B-00001	Teams Rooms Pro Sub Per Device	D	1 Month(s)	Non-Specific	Servers	Teams Rooms Pro	3	\$429.37	\$ 1,288.11	\$528.00
N9U-00002	Visio P2 Sub Per User	D	1 Month(s)	Non-Specific	Applications	Visio P2	11	\$136.86	\$ 1,505.46	\$169.20
12 Month Total:								\$	471,338.77	

Year Three: 12 Months

Part Number	Item Name	Level	Purchase Unit	Purchase Period	Pool	Product Family	Quantity	Term Price	Extended Price	MSRP
Enterprise Products										
AAA-10732	EMS E3 ALng Sub Per User	D	1 Month(s)	Non-Specific	Servers	EMS E3	1327	\$102.95	\$ 136,614.65	\$127.20
AAA-10842	O365 E3 Existing Customer Sub Per User	D	1 Month(s)	Non-Specific	Servers	O365 E3 Exist Cust	510	\$246.89	\$ 125,913.90	\$303.60
AAA-10758	O365 E3 FSA Renewal Sub Per User	D	1 Month(s)	Non-Specific	Non-specific	O365 E3 FSA Renewal	817	\$209.81	\$ 171,414.77	\$258.00
Additional Products										
KF5-00002	Defender O365 P1 Sub Per User	D	1 Month(s)	Non-Specific	Servers	Defender O365 P1	1327	\$18.30	\$ 24,284.10	\$22.80
831-00001	M365 Copilot Sub Add-on	D	1 Month(s)	Non-Specific	Applications	M365 Copilot	20	\$365.94	\$ 7,318.80	\$450.00
7LS-00002	Planner & Project P3 Sub Per User	D	1 Month(s)	Non-Specific	Servers	Planner & Project P3	5	\$273.72	\$ 1,368.60	\$337.20
SEJ-00002	Power Apps Premium Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power Apps Premium	1	\$214.68	\$ 214.68	\$264.00
104-00001	Power Automate Premium Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power Automate Premium	2	\$161.01	\$ 322.02	\$198.00
68B-00008	Power BI Premium USL Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power BI Premium USL	1	\$182.48	\$ 182.48	\$224.40
NK4-00002	Power BI Pro Sub Per User	D	1 Month(s)	Non-Specific	Servers	Power BI Pro	10	\$91.12	\$ 911.20	\$112.80
NYG-00001	Teams AC with Dial Out US/CA Sub Add-on	D	1 Month(s)	Non-Specific	Servers	Teams AC with Dial Out US/CA	1327	\$0.00	\$ -	\$0.00
V9B-00001	Teams Rooms Pro Sub Per Device	D	1 Month(s)	Non-Specific	Servers	Teams Rooms Pro	3	\$429.37	\$ 1,288.11	\$528.00
N9U-00002	Visio P2 Sub Per User	D	1 Month(s)	Non-Specific	Applications	Visio P2	11	\$136.86	\$ 1,505.46	\$169.20
12 Month Total:								\$	471,338.77	

Confidential.

As-Is-Renewal

Thank you for the opportunity to quote.

36 Month Total: \$ 1,414,016.31

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Renewal of IT Managed Security

Department: Information Technology

Presented by: Matt Jarratt, Department Director - Information Technology

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

Consider renewal of current contracted security services for City and Water Resources.

Staff Recommendation

Approve contract for renewal of the City's managed security service.

Background Information

Technology security is critical to protect the City's infrastructure and operations. The proposed service provides 24-hour cyber-security monitoring that aids staff in the identification and remediation of security threats. The software also ensures that all IT infrastructure and policy is compliant with current best-practice standards. Pricing for this service is based off the National Cooperative Purchasing Alliance. Future purchases under this contract are subject to department budgeting approval and will be brought to City Council for approval, with the contract term ending on December 31, 2026, unless extended by NCPA.

Council Priorities Served

Responsible budgeting

Security software is essential for safeguarding vital information, ensuring system protection and integrity, and securing the City's investments in its assets.

Fiscal Impact

Estimated expenditure, or \$520,552, is funded from the IT and Water Resources operation budgets. The invoice will be split 70% IT and 30% Water.

Attachments

Renewal of IT Managed Security

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

City of Murfreesboro, Tennessee

By: _____
Shane McFarland, Mayor

Approved as to form:

Signed by:

Adam F. Tucker

43A2035E51F9401
Adam F. Tucker, City Attorney

QUOTE

Bill To

City of Murfreesboro
Matt Jarratt
111 W Vine St
Murfreesboro, TN 37130

Phone 615.893.5210
Email mjarratt@murfreesborotn.gov

Ship To

City of Murfreesboro
Matt Jarratt
111 W Vine St
Murfreesboro, TN 37130

Phone 615.893.5210
Email mjarratt@murfreesborotn.gov

Account Manager

Contract

Line	Qty	Description	Unit Price	Ext. Price
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Line	Qty	Description	Unit Price	Ext. Price

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Line	Qty	Description	Unit Price	Ext. Price

Total**\$256,898.70**

Please contact me if I can be of further assistance.

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QUOTE

Bill To

Murfreesboro Police Department

1004 North Highland Avenue
Murfreesboro, TN 37130

Phone 615.893.1311

Email

Ship To

Murfreesboro Police Department

1004 North Highland Avenue
Murfreesboro, TN 37130

Phone 615.893.1311

Email

Account Manager

Contract

Line	Qty	Description	Unit Price	Ext. Price
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Line	Qty	Description	Unit Price	Ext. Price
			Total	\$263,653.56

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COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Contract with Dickson County Equipment for Purchase of Maintenance Equipment

Department: Parks and Recreation

Presented by: Nate Williams, Executive Director of Recreation Services

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

Consider Contract with Dickson County Equipment, Inc., for purchase of maintenance equipment.

Staff Recommendation

Approve contract with Dickson County Equipment, Inc.

Background Information

To properly maintain the greenway and general park space, staff is recommending the purchase of the following items: New Holland TS6.110 tractor / Diamond rear cradle boom (\$156,000) & New Holland C330 Skid Steer with 72" bucket (\$55,500).

These pieces of equipment are regularly needed by MPRD maintenance and have to be borrowed from Public Works, limiting the productivity of both departments.

Council Priorities Served

Establish strong City brand

Proper maintenance of Murfreesboro's growing park system is important for the livability of Murfreesboro and the strong brand quality and safety of the Murfreesboro Parks and Recreation Department.

Fiscal Impact

The costs, or \$211,500, are funded through the FY25 CIP and procured through a State Contract with Dickson County Equipment.

Attachment

Contract with Dickson County Equipment, Inc.

CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
DICKSON COUNTY EQUIPMENT, INC.
FOR PURCHASE OF NEW HOLLAND MOWER WITH ACCESSORIES

This Contract is entered into and effective as of _____, (the "Effective Date") by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **DICKSON COUNTY EQUIPMENT**, a corporation of the State of Tennessee ("Contractor").

This Contract consists of the following documents:

- ***This Contract***
- ***State of Tennessee Contract SWC242 with Dickson County Equipment #66012 ("State Contract")***
- ***Price Quotation from Dickson County Equipment, Inc. for One (1) New Holland TS6.110 Cab and Diamond 21' Rear Cradle Boom with options as listed dated February 25, 2025 and Price Quotation for One (1) New Holland C330 Open Station 72' Bucket with options as listed dated February 18, 2025 ("Contractor's Quotes")***
- ***Any properly executed amendments to this Agreement***

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

- ***First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)***
- ***Second, this Contract***
- ***Third, the State Contract***
- ***Fourth, Contractor's Quotes***

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase **New Holland TS6.110 Cab and Diamond 21' Rear Cradle Boom and New Holland C330 Open Station 72" bucket with options as listed** as set forth on Contractor's Quotes, and as set forth in the State Contract.
2. **Term.** The term of this contract shall be from the Effective Date to the expiration of the State Contract on March 31, 2025. Contractor's performance may be terminated in whole or in part:
 - a. Upon 30-day prior notice, for the convenience of the City.
 - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
 - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
 - e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. Price; Compensation; Method of Payment.

- a. The price for the goods and other items to be provided under this Contract is set forth in the Contractor's Quote for One (1) **New Holland TS6.110 Cab and Diamond 21' Rear Cradle Boom and New Holland C330 Open Station 72" bucket with options as listed** reflecting a **Total Purchase Price of \$211,500.00**. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. Invoices should be sent to accountspayable@murfreesborotn.gov.
- b. Deliveries and pick-up of all items shall be made within 30-40 days of issuance of Purchase Order to Attn: Mark Brown— Maintenance Superintendent – 351 Overall Street Murfreesboro, TN 37130. Contact Person Mark Brown (tel. 615-624-3140; email: mbrown@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
- c. Deliveries of all items shall be made as stated in the Contract documents. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered “accepted” until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.
- e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

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

5. Indemnification.

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

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

<i>If to the City of Murfreesboro:</i> City of Murfreesboro Attn: City Manager 111 West Vine Street Murfreesboro, TN 37130	<i>If to the Contractor:</i> Dickson County Equipment Attn: Keith Perales P.O. BOX 1227 Dickson, TN 37056 dce1@bellsouth.net
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7. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.

8. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state, and local laws and regulations.
9. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
15. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

16. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder
17. **Integration.** This Contract and State contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
18. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
19. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
20. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
21. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
22. **Iran Divestment Act of Tennessee.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
23. **Non-Boycott of Israel.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.
24. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

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

CITY OF MURFREESBORO

By: _____

Shane McFarland, Mayor

APPROVED AS TO FORM:

Signed by:

Adam F. Tucker

Adam F. Tucker, City Attorney

DICKSON COUNTY EQUIPMENT, INC.

DocuSigned by:

Keith Perales

Keith Perales, Owner

F918254433D415

Retail Purchase Order

[] New [] Used [] Demonstrator Date of Purchase 2/25/2025

Date of Delivery 5/31/2025

P U R C H A S E R I N F O R M A T I O N

CITY OF MURFREESBORO PARKS & REC



DELIVERY DATE MAY 31st

615-642-3140

Dickson County Equipment Company, Inc.

552 Hwy. 46 South
P. O. Box 1227
Dickson, TN 37056
(615) 446-8114 888-446-8114
Fax (615) 446-2102

I (we) the undersigned, hereby order from you the equipment described below, to be delivered as shown above. This order is subject to your ability to obtain such Equipment from the manufacturer and you shall be under no liability if delivery of the Equipment is delayed or prevented due to labor disturbances, transportation difficulties, or for any reason beyond your control. The price shown below is subject to your receipt of the Equipment prior to any change in price by the manufacturer. It is also subject to any new or increased taxes imposed upon the sale of the Equipment after the date of this order.

QTY.	MODEL #	DESCRIPTION AND SERIAL NUMBER	\$ AMOUNT
1	TS6.110	NEW HOLLAND TS6.110 CAB, 4WD, AIR SEAT,	\$113,285.00
		16X8 POWER SHUTTLE TRANSMISSION	
		(25% SWC242 LINE 3 DISCOUNT)	(\$28,321.25)
		TOTAL	\$84,963.75
1	DMB-C-P	DIAMOND 21' REAR CRADLE BOOM	\$96,889.00
		50" HEAD, JOYSTICK CONTROL,	
		(21% SWC242 LINE 4 DISCOUNT)	(\$20,346.69)
		TOTAL	\$76,542.31
		(ADDITIONAL DISCOUNT OFF STATE CONTRACT	(\$5,000.00)

Trade-In Equipment

MAKE, MODEL, DESCRIPTION	SERIAL NUMBER	ALLOWANCE
Gross Trade-In Allowance		
Less: Amount owed to:		
Net Trade-In Allowance		

Note: Complete this section when tractors are sold without ROPS (Roll Over Protective Structure) and seat belt.

Statistics show that severity of injuries are greatly reduced and fatalities practically eliminated through use of both ROPS and a seat belt if a tractor overturns. I have been advised and understand that the use of ROPS and a seat belt is recommended in almost all applications. I have knowingly and voluntarily requested that my dealer remove the ROPS and seat belt from the tractor.

Signature of Purchaser: _____

Freight & Handling Charges	
Sub Total	
Sales Tax	
Other Charges	
Total Cash Price	\$156,000.00

Trade-In Allowance Total	
Total Cash Price after Trade-In	
Cash with Order:	
Cash on Delivery:	
Total Cash:	
Balance to pay by Cash [<input checked="" type="checkbox"/>] Financed [<input type="checkbox"/>]	\$156,000.00

Accepted by: (Dealer)

Purchaser's Signature:

Date Accepted

Salesman

Co-Purchaser's Signature:

Co-Purchaser's Address:

Retail Purchase Order

[] New [] Used [] Demonstrator Date of Purchase 2/18/2025

Date of Delivery

P U R C H A S E R I N F O R M A T I O N

CITY OF MURFREESBORO PARKS & REC



615-642-3140

Dickson County Equipment Company, Inc.

552 Hwy. 46 South
P. O. Box 1227
Dickson, TN 37056
(615) 446-8114 888-446-8114
Fax (615) 446-2102

I (we) the undersigned, hereby order from you the equipment described below, to be delivered as shown above. This order is subject to your ability to obtain such Equipment from the manufacturer and you shall be under no liability if delivery of the Equipment is delayed or prevented due to labor disturbances, transportation difficulties, or for any reason beyond your control. The price shown below is subject to your receipt of the Equipment prior to any change in price by the manufacturer. It is also subject to any new or increased taxes imposed upon the sale of the Equipment after the date of this order.

QTY.	MODEL #	DESCRIPTION AND SERIAL NUMBER	\$ AMOUNT
1	C330	NEW HOLLAND C330	\$84,709.00
		OPEN STATION EH CONTROLS	
		72" BUCKET	
		(25% SWC242 LINE 3 DISCOUNT)	(\$21,177.25)
		ADDITIONAL DISCOUNT	(\$8,031.75)

Trade-In Equipment

MAKE, MODEL, DESCRIPTION	SERIAL NUMBER	ALLOWANCE
Gross Trade-In Allowance		
Less: Amount owed to:		
Net Trade-In Allowance		

Note: Complete this section when tractors are sold without ROPS (Roll Over Protective Structure) and seat belt.

Statistics show that severity of injuries are greatly reduced and fatalities practically eliminated through use of both ROPS and a seat belt if a tractor overturns. I have been advised and understand that the use of ROPS and a seat belt is recommended in almost all applications. I have knowingly and voluntarily requested that my dealer remove the ROPS and seat belt from the tractor.

Signature of Purchaser: _____

Freight & Handling Charges	
Sub Total	
Sales Tax	
Other Charges	
Total Cash Price	\$55,500.00

Trade-In Allowance Total	
Total Cash Price after Trade-In	
Cash with Order:	
Cash on Delivery:	
Total Cash:	
Balance to pay by Cash [<input checked="" type="checkbox"/>] Financed [<input type="checkbox"/>]	\$55,500.00

Accepted by: (Dealer)

Purchaser's Signature:

Date Accepted

Salesman

Co-Purchaser's Signature:

Co-Purchaser's Address:

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Veterans Park Materials Engineering and Testing Services Task Order No. 18

Department: Project Development

Presented by: Scott Elliott, Manager of Project Development

Requested Council Action:

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

Summary

Consider approving Task Order 18 with TTL, Inc. for Materials Engineering and Testing Services during the construction of Veterans Park.

Staff Recommendation

Approve the Task Order with TTL, Inc.

Background Information

The City of Murfreesboro awarded the Veterans Park project to Moody Excavating, LLC on January 14, 2025. Per the contract requirements, the City is responsible for securing independent inspection, laboratory testing, and other quality control (QC) services.

The scope of testing and inspection includes:

- Concrete Testing: Consistency, air content, compressive strength, and cylinder testing.
- Formwork and Steel Inspection: Verification of concrete formwork and steel reinforcement.
- Backfill and Paving Tests: Compaction and material compliance testing.
- Geotechnical Testing: Laboratory analysis and load testing.
- Masonry and Steel Inspection: Structural integrity verification.

The Special Inspector will provide detailed reports and a final engineer-stamped summary of all tests. TTL, a firm with a proven track record of delivering satisfactory geotechnical services for the City, is expected to perform these inspections.

Council Priorities Served

Improve economic development

Quality of life elements in our community such as a robust parks system provide the City with a competitive advantage in economic development activities.

Fiscal Impact

The expense, \$118,881, is funded by FY 25 CIP Budget.

Attachments

Proposal for Construction Materials Engineering and Testing Services Task Order 18



624 Grassmere Park, Ste. 14

Nashville, TN 37211

615.331.7770

www.TTLUSA.com

February 17, 2025

Mr. Scott Elliott
City of Murfreesboro
111 West Vine Street | P.O. Box 1139
Murfreesboro, Tennessee 37133-1139

**RE: PROPOSAL FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES
VETERANS PARK
TASK ORDER NO. 18
Murfreesboro, Tennessee
TTL Project No. 000250800506.00**

Dear Mr. Elliott:

Thank you for the opportunity to provide construction materials engineering and testing services for the construction planned at the new Veterans Park. We have prepared this proposal to outline our understanding of the project, proposed scope of services, estimated fees, and schedule. Our services for this project will be performed under the Master Services Agreement between the City of Murfreesboro and TTL.

PROJECT UNDERSTANDING

Project information was provided by Mr. Scott Elliott and Mr. James Hill (City of Murfreesboro) in several email transmissions and phone conversations. The emails included a link to a set of drawings in PDF format labeled "Combined-Drawings_4556302_Veterans-Park_2024-12-10" and a Project manual labeled "Project-Manual-Specifications_4556302_Veterans-Park_2024-12-10" prepared by Gresham Smith, dated November 25, 2024. We were not provided with information about the construction schedule. We are familiar with the project in that we previously performed a geotechnical exploration for the project (TTL Project No. 000240802299.00, report dated September 25, 2024).

Plans are being made to construct a new park on approximately 143-acres located on the east side of Veterans Parkway in Murfreesboro, Tennessee. A provided drawing shows most of the improvements will be constructed in the east-central part of the property. However, walking trails and other improvements are planned in parts of the central and northwest areas of the property. The improvements will generally include roads, four pavilions, playing fields, and parking and drive areas. The park will include a small outdoor venue to accommodate concerts and other activities. Stormwater management areas are also planned at several locations throughout the property.

Review of provided information shows several karst features (sinkholes) are present on the property. The drawings show one of the features is located within a fill slope adjacent to a road. Current plans include repairing this feature during mass grading.

SCOPE OF SERVICES

Based on the information provided and our experience on similar projects, we propose to provide the following services during construction:

Earthwork Construction:

- Observe undercutting of fat clays (CH) within the planned construction areas where they are encountered at subgrade elevations in general accordance with the recommendations provided in the geotechnical report.
- Observe and test fill placement and compaction activities and confirm whether the materials were compacted to the project requirements. In general, this will include a proofroll and/or nuclear density gauge testing, if applicable.
- Perform laboratory classification and standard Proctor compaction testing for soil and mineral aggregate materials used as fill to confirm whether they meet the project criteria and as a comparison for in-place density tests, respectively.
- Observe and document repair of karst feature(s), as required.

Concrete Construction:

- Observe reinforcing steel prior to concrete placement to evaluate conformance with the specifications in regard to size, grade, spacing, profiles, lap lengths, and coverage.
- Make test specimens and perform field tests on plastic concrete. Tests will include slump, air content, unit weight, and temperature. We will cast five test cylinders (4 in. x 8 in.) for every 50 cubic yards, with at least one set per placement.
- Field cure concrete samples for the first 24 to 48 hours. Upon completion of field curing, the specimens will be transported to our laboratory for final curing and compressive strength testing.

Asphalt Pavement Testing:

- Observe proofrolling and perform density testing of mineral aggregate base course materials and asphalt pavement layers.

Masonry Construction

- Observe reinforcing steel prior to grout and mortar placement to evaluate conformance with the project drawings and specifications.
- Observe CMU block cells for cleanliness prior to grouting.
- Make test specimens and perform field tests on fresh mortar (six 2-in. by 2-in. cubes) and CMU block fill grout (four 3.25-in. by 3.25-in. by 6.5-in. grout prisms), including slump and temperature, as appropriate for the material.

- Field cure grout and mortar samples using an on-site curing box for the first 24 to 48 hours. Upon completion of field curing, the specimens will be transported to our laboratory for final curing and compressive strength testing.

Structural Steel Construction

- Review Welder Procedure Qualifications documentation prior to steel erection for conformance to project specifications.
- Observe field-welded and field-bolted connections of structural steel elements in general accordance with the Special Inspection requirements, defined by the Structural Engineer of Record. We have assumed an approved steel fabricator per section 1704.2.5.2 of the International Building Code (IBC) will be utilized; therefore, our scope of work does not include observations at the fabrication shop or observation/testing of shop welded connections.

We will issue field and testing reports for each site visit. Our project manager will review the field reports and test results before these documents are issued as final documents and will also be available for consultation at your request. The actual scope of services may vary from the proposed scope of services based on the project schedule, budget constraints, and other issues that we do not control. Please keep in mind that our testing is a sampling of the construction materials and does not guarantee the quality of the entire work product. Our representatives will notify you and the contractor of any portions of the work we observe which do not meet the project specifications. We do not have the authority to stop the contractor's work.

We will issue a final special inspection report stamped by a licensed professional engineer at job completion. Our special inspection services are limited to those aspects of the Special Inspection Schedule that are assigned to us. Additionally, we are not the Special Inspector for the entire project, and our services and reports will not address the special inspections of architectural, mechanical, electrical, plumbing, or other systems, if any are required.

Please provide copies of the full construction documents (plans, specifications, and submittals), at the beginning of the project. As project conditions change or are modified by Requests for Information (RFIs), we will need to be copied on the RFIs and responses. Additionally, we are not responsible for the safety of persons other than TTL personnel. Job-site safety is the sole responsibility of the general contractor.

SCHEDULING

A TTL representative will be on-site on a full-time (continuous) and/or part-time (periodic) basis, depending on the activity and level of inspection required. Our on-site representative(s) or Project Manager will be available to communicate with the general contractor's project manager or designated representative to discuss construction schedules. Scheduling of our activities will be the sole responsibility of the contractor. We require at least 24 hours' notice to assist with scheduling our services for periodic observations.

COMPENSATION

Based on our understanding of the scope of work described within this proposal, we recommend a budget of **\$118,881** be established for services outlined above and on the appended sheets. Our estimate is based on our experience with similar projects and the assumed work schedule which is shown on the detailed cost estimate included with this proposal. We will provide our services on a time and materials basis. We request that any additional documents related to materials testing and inspections be provided when available so that we may revise our scope and/or estimate, if necessary. Our fees will depend on the quality of the work and rate of progress achieved by the contractor, weather conditions, and other factors beyond our control. We will monitor and keep you apprised of the budget status and items requiring re-inspection. Our estimate does not include project delays and/or re-inspections.

AUTHORIZATION

To formerly authorize our services, please sign in the space below and return the signed task order to Mark Herrmann (mherrmann@ttlusa.com). Unless otherwise requested, TTL will return an electronic copy of the fully executed agreement to the Client's Project Manager. This task order will be performed under the terms and conditions of the Master Services Agreement between the City of Murfreesboro and TTL.

CLOSING

We appreciate the opportunity to provide professional services on this important project. If you have questions, or need additional information, please contact our office at your convenience.

Sincerely,
TTL, Inc.



Daven G. Rogers
Project Manager



Mark Herrmann, PE
Principal Engineer

Attachments: Construction Testing Estimate
Schedule of Fees

Authorized By:

Client (Signature and Date)

Signed by:

 Adam F. Tucker

43A2035E51F9401...
Approved to as form
City Attorney

Client: City of Murfreesboro
Project Name: Veterans Park CMT
Address: 4908 Veterans Parkway
City, State: Murfreesboro, TN
TTL Proposal No.: 250800506



SERVICE	PROJECTED SCHEDULE			UNIT COST	SUBTOTAL	SECTION SUBTOTAL
EARTHWORK	No. Days	hrs/day	Total	Rate	Subtotal	\$52,687
	Subgrade Review / Proofrolling	4	4	\$66.00	\$1,056.00	
	Monitoring Cut/Fill Activities & Density Testing	70	8	\$66.00	\$36,960.00	
	Technician Overtime		0	\$85.80	\$0.00	
	Special Inspector (Bearing Eval / Fill Monitoring / etc)		0	\$92.00	\$0.00	
	Project Manager / Engineer Review	74	1	\$182.00	\$13,468.00	
	PM Support Services	74	0.25	\$65.00	\$1,202.50	
RIGID / FLEXIBLE PAVEMENTS	No. Days	hrs/day	Total	Rate	Subtotal	\$17,101
	Subgrade Review / Proofrolling	15	4	\$66.00	\$3,960.00	
	Monitoring Cut/Fill Activities & Density Testing		0	\$66.00	\$0.00	
	Monitoring Basestone Placement		0	\$66.00	\$0.00	
	Monitoring & Testing Pavement Placement	14	8	\$66.00	\$7,392.00	
	Concrete Pavement Placement		0	\$66.00	\$0.00	
	Technician Overtime		0	\$85.80	\$0.00	
FOUNDATIONS	Test Specimen Pick-Up		0	\$66.00	\$0.00	\$9,020
	Shallow Foundations (Spread / Continuous Footings)	8	4	\$66.00	\$2,112.00	
	Deep Foundations (Drilled Piers / Micropiles / etc.)		0	\$92.00	\$0.00	
	Technician Overtime		0	\$85.80	\$0.00	
	Test Specimen Pick-Up	8	1.5	\$66.00	\$792.00	
	Special Inspector (Bearing Eval / Reinforcement Insp. / etc)	8	4	\$92.00	\$2,944.00	
	Project Manager / Engineer Review	16	1	\$182.00	\$2,912.00	
CONCRETE	PM Support Services	16	0.25	\$65.00	\$260.00	\$13,457
	Columns / Retaining Walls / Shear Walls		0	\$66.00	\$0.00	
	Slab-On-Grade / Slab-On-Deck / Beams	4	6	\$66.00	\$1,584.00	
	Post-Tension / Tilt-Up / Precast / etc.		0	\$66.00	\$0.00	
	Misc. Placements (Sidewalks / Stairwells / Curbs)	15	4	\$66.00	\$3,960.00	
	Technician Overtime		0	\$85.80	\$0.00	
	Special Inspector (Post Tension / Reinforcement Insp. / etc)	4	4	\$92.00	\$1,472.00	
STRUCTURAL STEEL	Test Specimen Pick-Up	19	1.5	\$66.00	\$1,881.00	\$5,266
	Project Manager / Engineer Review	23	1	\$182.00	\$1,486.00	
	PM Support Services	23	0.25	\$65.00	\$130.00	
MASONRY / MORTAR	No. Days	hrs/day	Total	Rate	Subtotal	\$6,602
	Masonry Monitoring / Masonry Sampling	8	8	\$66.00	\$4,224.00	
	Technician Overtime		0	\$85.80	\$0.00	
	Special Inspector (Reinforcement Insp. / Cleanliness / etc)		0	\$92.00	\$0.00	
	Test Specimen Pick-Up	8	1.5	\$66.00	\$792.00	
	Project Manager / Engineer Review	8	1	\$182.00	\$1,456.00	
	PM Support Services	8	0.25	\$65.00	\$130.00	
MATERIALS / LAB TESTING / ADDITIONAL SERVICES	Number	Units	Total	Rate	Subtotal	\$14,749
	Proctor Density Testing - Basestone	1	1	\$140.00	\$140.00	
	Proctor Density Testing w/ Atterberg Limits - Soil	3	1	\$235.00	\$705.00	
	Concrete Specimens (Foundation)	8	5	\$15.00	\$600.00	
	Concrete Specimens (Slabs, Sidewalks, Stairs, etc.)	19	5	\$15.00	\$1,425.00	
	Masonry Grout / Mortar Specimens	8	10	\$25.00	\$2,000.00	
	Progress Meeting / PM Site Visit / Kick-Off Meetings	5	4	\$182.00	\$3,640.00	
DIRECT COSTS	Engineer Site Visits	5	4	\$217.00	\$4,340.00	\$0
	Engineer Review of Concrete Cylinder Breaks	35	0.25	\$217.00	\$1,898.75	
PROJECT ESTIMATE / BUDGET					\$118,881	

Note: This is a good faith estimate based on our understanding of the project. The actual schedule may vary and billing will be based on the unit rates shown on the attached fee schedule for actual hours worked.



Schedule of Fees (Labor)

Project Technician IV	\$ 66.00 / hr
Senior Project Technician II	\$ 92.00 / hr
Project Manager V	\$ 182.00 / hr
Senior Project Professional II	\$ 217.00 / hr
Project Administrator I	\$ 65.00 / hr

Technician rates to be multiplied by 1.3 for time in excess of 8 hours per day, and all hours on Saturdays, Sundays, and Holidays.

Direct Expenses.....Cost + 15%

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Construction Contract for the Rutherford Adaptive Signal Control Technology Project

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

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

Summary

Consider agreement for construction of the Rutherford Adaptive Signal Control Technology (ASCT) project.

Staff Recommendation

Approve the construction agreement with the lowest responsive and responsible bidder and reallocation of CIP funds from Gateway Blvd for the 5% contingency.

Background Information

In 2017, Council approved the design contract for the Rutherford ASCT project. This project is for the development and implementation of adaptive signal technologies for signalized intersections on Rutherford Blvd. and Northfield Blvd. This new technology is aimed at improving traffic flow along this major corridor.

On February 11th, 2025, staff conducted a bid opening and determined that S&W Contracting Co, LLC was the lowest responsible bid in the amount of \$5,106,752. In addition, we recommend awarding the contract with an allowance of an additional 5% contingency to accommodate any unforeseen requirements and ensure the project's successful completion in a timely manner.

Council Priorities Served

Expand Infrastructure

Improvements to these intersections will help traffic flow to alleviate congestion in this highly traveled area.

Fiscal Impact

The estimated cost of this project is \$5,357,752 including a 5% contingency. This expenditure is funded by federal funds in the amount of \$4,864,915 and local funds in the amount of \$536,127. The local portion is funded by the CIP budget and reallocated FY22 CIP funds.

Attachments

1. CIP Transfer Form
2. Consultant Letter of Recommendation
3. Construction Contract

LETTER OF RECOMMENDATION

March 11, 2025

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

RE: Rutherford/Northfield Adaptive Signal Control System (ASCT)

The city of Murfreesboro received two bid packages on February 11th, 2025, at 2:00 pm for the Rutherford Boulevard ASCT Project (PIN 125505.00). After reviewing bid tabulations and contractor submittals, Neel-Schaffer advises awarding the bid for this project to the lowest responsible bidder. The following page includes the overall bid tabulation. It should be noted that the Tennessee Department of Transportation similarly provided bid award concurrence on March 4, 2025.

After reviewing the bid tabulations, Neel-Schaffer recognizes **S&W Contracting Company, LLC** as the responsive low bidder with an amount of **\$5,106,752.00**. The final Engineer's Estimate for the project was \$5,071,772.75

Please do not hesitate to contact us at 615-217-0500 or greg.judy@neel-schaffer.com should you have any questions or concerns.

Sincerely,



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

engineers | planners | surveyors | environmental scientists | landscape architects

Rutherford/Northfield Adaptive Signal Control System

PROJECT NO.: 75LPLM-F3-062

Bid Date: 02/11/2025		PROJECT DESCRIPTION 75LPLM-F3-062 (Federal) PIN: 125505.00		S&W Contracting Co, LLC 952 New Salem Road Murfreesboro, TN 37129		Stansell Electric Co, Inc. 860 Visco Drive Nashville, TN 37210	
ITEM NO.	DESCRIPTION	QNTY.	UNIT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	105-01 CONSTRUCTION STAKES, LINES AND GRADES	1	LS	\$15,000.00	\$15,000.00	\$66,700.00	\$66,700.00
2	201-05.31 VEGETATION REMOVAL	1	LS	\$17,000.00	\$17,000.00	\$8,400.00	\$8,400.00
3	202-03 REMOVAL OF RIGID PAVEMENT, SIDEWALK, ETC.	451	S.Y.	\$24.00	\$10,824.00	\$95.00	\$42,845.00
4	209-09.43 CURB INLET PROTECTION (TYPE 4)	20	EACH	\$540.00	\$10,800.00	\$155.00	\$3,100.00
5	303-01.09 MINERAL AGGREGATE, TYPE A BASE, GRADING D LIMESTONE	80	TON	\$60.00	\$4,800.00	\$150.00	\$12,000.00
6	602-10.28 PEDESTRIAN SIDEWALK REPAIRS	1	LS	\$63,250.00	\$63,250.00	\$43,170.00	\$43,170.00
7	701-01.01 CONCRETE SIDEWALK (4")	2,655	S.F.	\$24.00	\$63,720.00	\$15.00	\$39,825.00
8	701-02.01 CONCRETE CURB RAMP (RETROFIT)	950	S.F.	\$36.00	\$34,200.00	\$35.00	\$33,250.00
9	701-02.03 CONCRETE CURB RAMP	1,560	S.F.	\$30.00	\$46,800.00	\$37.00	\$57,720.00
10	701-03 CONCRETE MEDIAN PAVEMENT	95	C.Y.	\$690.00	\$65,550.00	\$570.00	\$54,150.00
11	702-03 CONCRETE COMBINED CURB & GUTTER	71	C.Y.	\$805.00	\$57,155.00	\$655.00	\$46,505.00
12	712-01 TRAFFIC CONTROL	1	LS	\$80,000.00	\$80,000.00	\$168,760.00	\$168,760.00
13	712-04.01 FLEXIBLE DRUMS (CHANNELIZING)	75	EACH	\$150.00	\$11,250.00	\$65.00	\$4,875.00
14	712-06 SIGNS (CONSTRUCTION)	297	S.F.	\$10.00	\$2,970.00	\$10.00	\$2,970.00
15	712-08.01 UNIFORMED POLICE OFFICER	2500	DOLL	\$1.00	\$2,500.00	\$1.00	\$2,500.00
16	712-08.03 ARROW BOARD (TYPE C)	4	EACH	\$2,000.00	\$8,000.00	\$1,700.00	\$6,800.00
17	712-09.08 REMOVABLE PAVEMENT MARKING (6" LINE)	5,745	L.F.	\$2.70	\$15,511.50	\$5.00	\$28,725.00
18	713-14.22 STREET NAME SIGN (SUSPENDED 0.100IN THICK)	80	S.F.	\$32.00	\$2,560.00	\$70.00	\$5,600.00
19	713-16.20 SIGNS (R10-12A)	43	EACH	\$500.00	\$21,500.00	\$550.00	\$23,650.00
20	713-20.30 SIGN ADJUSTMENTS	15	EACH	\$125.00	\$1,875.00	\$210.00	\$3,150.00
21	714-09.09 LUMINAIRES (SIGNAL POLE MOUNTED)	1	EACH	\$4,200.00	\$4,200.00	\$1,650.00	\$1,650.00
22	716-02.03 PLASTIC PAVEMENT MARKING (CROSS-WALK)	1,305	L.F.	\$30.00	\$39,150.00	\$23.00	\$30,015.00
23	716-02.05 PLASTIC PAVEMENT MARKING (STOP LINE)	540	L.F.	\$21.60	\$11,664.00	\$25.00	\$13,500.00
24	716-02.06 PLASTIC PAVEMENT MARKING (TURN LANE ARROW)	23	EACH	\$189.75	\$4,364.25	\$275.00	\$6,325.00
25	716-08.03 REMOVAL OF PAVEMENT MARKING (CROSS-WALK)	105	L.F.	\$1.80	\$189.00	\$10.00	\$1,050.00
26	716-08.05 REMOVAL OF PAVEMENT MARKING (STOP LINE)	535	L.F.	\$2.40	\$1,284.00	\$12.00	\$6,420.00
27	716-08.30 HYDROBLAST REMOVAL OF PAVEMENT MARKING (LINE)	0.340	L.M.	\$6,000.00	\$2,040.00	\$22,000.00	\$7,480.00
28	716-13.02 SPRAY THERMO PAVEMENT MRKNG (60 mil) (6IN LINE)	0.131	L.M.	\$6,000.00	\$786.00	\$29,000.00	\$3,799.00
29	717-01 MOBILIZATION	1	LS	\$45,000.00	\$45,000.00	\$255,370.00	\$255,370.00
30	725-02.23 SPARE PARTS	1	LS	\$25,000.00	\$25,000.00	\$42,300.00	\$42,300.00
31	725-02.41 FIBER OPTIC TERMINATION SPLICING UNIT	27	EACH	\$1,000.00	\$27,000.00	\$1,530.00	\$41,310.00
32	725-02.79 FIBER SPLICE ENCLOSURE (AERIAL)	20	EACH	\$1,260.00	\$25,200.00	\$2,360.00	\$47,200.00
33	725-03.01 CLOSED CIRCUIT TELEVISION (CCTV) EQUIPMENT	12	EACH	\$6,200.00	\$74,400.00	\$9,900.00	\$118,800.00
34	725-03.09 ETHERNET SWITCH	15	EACH	\$8,300.00	\$124,500.00	\$12,800.00	\$192,000.00
35	725-03.24 CCTV POLE AND FOUNDATION (50FT POLE HEIGHT)	8	EACH	\$22,160.00	\$177,280.00	\$22,700.00	\$181,600.00
36	725-03.34 BURN-IN PERIOD	1	LS	\$20,000.00	\$20,000.00	\$15,700.00	\$15,700.00
37	725-03.36 AS-BUILT PLANS	1	LS	\$20,000.00	\$20,000.00	\$4,900.00	\$4,900.00
38	725-05.06 FUSION SPLICE	84	EACH	\$60.00	\$5,040.00	\$115.00	\$9,660.00
39	725-23.01 ITS CABLE MARKER	10	EACH	\$350.00	\$3,500.00	\$150.00	\$1,500.00
40	725-23.12 FIBER OPTIC CABLE (48F)	60235	L.F.	\$3.50	\$210,822.50	\$4.40	\$265,034.00
41	725-23.21 FIBER OPTIC DROP CABLE (12F)	3760	L.F.	\$2.20	\$8,272.00	\$5.50	\$20,680.00
42	725-28.01 ROAD SIDE UNIT (RSU)	15	EACH	\$14,250.00	\$213,750.00	\$13,900.00	\$208,500.00
43	725-28.02 CONNECTED VEHICLE (CV) MODULE FOR CONTROLLER (ATC)	15	EACH	\$3,000.00	\$45,000.00	\$3,100.00	\$46,500.00
44	725-28.04 MODIFY CABINET (RSU)	15	EACH	\$4,000.00	\$60,000.00	\$550.00	\$8,250.00
45	730-01.02 REMOVAL OF SIGNAL EQUIPMENT	15	EACH	\$1,000.00	\$15,000.00	\$1,690.00	\$25,350.00
46	730-01.03 MODIFICATION OF EXISTING TRAFFIC SIGNAL EQUIPMENT	5	EACH	\$1,500.00	\$7,500.00	\$630.00	\$3,150.00
47	730-01.07 REMOVAL OF CONCRETE BASE	3	EACH	\$1,500.00	\$4,500.00	\$1,100.00	\$3,300.00
48	730-01.13 CONCRETE FOUNDATION REMOVAL	1	EACH	\$1,500.00	\$1,500.00	\$1,400.00	\$1,400.00
49	730-02.09 SIGNAL HEAD ASSEMBLY (130 WITH BACKPLATE)	38	EACH	\$1,300.00	\$49,400.00	\$1,300.00	\$49,400.00
50	730-02.30 SIGNAL HEAD ASSEMBLY (140A4F WITH BACKPLATE)	43	EACH	\$1,550.00	\$66,650.00	\$1,600.00	\$68,800.00
51	730-03.21 INSTALL PULL BOX (TYPE B)	103	EACH	\$900.00	\$92,700.00	\$1,220.00	\$125,660.00
52	730-03.23 INSTALL PULL BOX (FIBER OPTIC-TYPE A)	30	EACH	\$1,500.00	\$45,000.00	\$3,310.00	\$99,300.00
53	730-05.01 ELECTRICAL SERVICE CONNECTION	5	EACH	\$8,000.00	\$40,000.00	\$2,220.00	\$11,100.00
54	730-05.04 MODIFY EXISTING ELECTRICAL SERVICE CONNECTION	12	EACH	\$1,500.00	\$18,000.00	\$640.00	\$7,680.00
55	730-08.02 SIGNAL CABLE - 5 CONDUCTOR	12,405	L.F.	\$2.00	\$24,810.00	\$1.80	\$22,329.00
56	730-08.03 SIGNAL CABLE - 7 CONDUCTOR	8,255	L.F.	\$2.25	\$18,573.75	\$2.00	\$16,510.00
57	730-08.04 SIGNAL CABLE - 9 CONDUCTOR	1,095	L.F.	\$2.50	\$2,737.50	\$2.20	\$2,409.00
58	730-09.20 SPAN WIRE ASSEMBLY	500	L.F.	\$2.75	\$1,375.00	\$5.00	\$2,500.00
59	730-10.01 TETHER WIRE ASSEMBLY - 1/4" DIAMETER	500	L.F.	\$2.50	\$1,250.00	\$4.00	\$2,000.00
60	730-11.10 RISER ASSEMBLY (2" FOR FIBER OPTIC)	17	EACH	\$800.00	\$13,600.00	\$1,180.00	\$20,060.00
61	730-12.02 CONDUIT 2" DIAMETER (PVC SCHEDULE 40)	12910	L.F.	\$18.00	\$232,380.00	\$17.00	\$219,470.00
62	730-12.23 CONDUIT 2" DIAMETER (DIRECTIONAL BORE)	7,030	L.F.	\$90.00	\$632,700.00	\$44.00	\$309,320.00
63	730-13.12 VEHICLE DETECTOR (ADVANCED RADAR)	35	EACH	\$14,000.00	\$490,000.00	\$13,800.00	\$483,000.00
64	730-13.13 VEHICLE DETECTOR (RADAR)	58	EACH	\$10,400.00	\$603,200.00	\$8,500.00	\$493,000.00
65	730-14.01 SHIELDED DETECTOR CABLE	1000	L.F.	\$2.00	\$2,000.00	\$2.00	\$2,000.00
66	730-14.02 SAW SLOT	895	L.F.	\$5.00	\$4,475.00	\$11.00	\$9,845.00
67	730-14.03 LOOP WIRE	2060	L.F.	\$1.50	\$3,090.00	\$1.50	\$3,090.00
68	730-15.11 MODIFY CABINET (MMU V2 SOFTWARE)	3	EACH	\$2,000.00	\$6,000.00	\$1,870.00	\$5,610.00
69	730-15.12 MODIFY CABINET (INTEGRATE RADAR DETECTION AND CONTROLLER)	3	EACH	\$2,000.00	\$6,000.00	\$480.00	\$1,440.00
70	730-15.13 MODIFY CABINET (INTEGRATE AND IMPLEMENT FLASHING YELLOW ARROW)	3	EACH	\$1,000.00	\$3,000.00	\$320.00	\$960.00
71	730-15.14 MODIFY CABINET (INSTALL METER BASE/DISCONNECT FOR POWER SERVICE)	7	EACH	\$5,000.00</			

City of Murfreesboro, TENNESSEE

CONTRACT NO. 75LPLM-F3-062, CM-9311 (22)

This agreement is made and executed in three (3) originals, between the City of Murfreesboro, and _____ hereinafter referred to as the "Contractor."

WITNESSETH

The City of Murfreesboro did advertise for, receive and accept a bid from the Contractor for work on the above identified contract.

In consideration of the agreements herein contained, to be performed by the parties hereto and of the payments hereafter agreed to be made, it is mutually agreed by both parties that:

1. The contract between the parties consists of the following "Contract Documents" all of which constitute one instrument:
 - (a) the Instructions to Bidders
 - (b) the Proposal
 - (c) all conditions and terms of this Contract form
 - (d) the Contract Payment & Performance Bond and/or Letter of Credit, where applicable
 - (e) the most current version of the *Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction* (herein referred to as *TDOT Standard Specifications*)
 - (f) Supplemental Specifications
 - (g) Revisions and Additions
 - (h) Special Provisions
 - (i) Addenda
 - (j) The most current version of the TDOT Standard Drawings
 - (k) The Contract Plans,
 - (l) The Work Order
 - (m) Construction Changes
 - (n) Supplemental Agreements

All of the provisions contained in the listed Contract Documents are incorporated herein by reference with the same force and effect as though set out in full.

2. The Contract Documents are intended to be complementary and to describe and provide for a complete work. Requirements in one of these are as binding as if occurring in all of them. In case of discrepancy, Supplemental Specifications will govern over the TDOT Standard Specifications; the TDOT Standard Specifications will govern over the local government standard specifications; the Contract Plans will govern over both Supplemental and Standard Specifications, and Special Provisions will govern over both Plans and Specifications. In interpreting Plans, calculated dimensions will govern over scaled dimensions. Contract Plans, typical cross sections and approved working drawings will govern over Standard Drawings.
3. The Contractor agrees to furnish all materials, equipment, machinery, tools and labor and to perform the work required to complete the project in a thorough and

workmanlike manner, to the satisfaction of the appropriate official of the City of Murfreesboro.

4. The City of Murfreesboro agrees to pay to the Contractor such unit prices for the work actually done as are set out in the accompanying proposal, in the manner provided for in the TDOT Standard Specifications, Supplemental Specifications and applicable Special Provisions.
5. The Contractor shall, at all times, observe and comply with all applicable federal, state and local laws, ordinances and regulations and shall indemnify and hold harmless the City of Murfreesboro and all of its officers, agents and servants against any claim of liability or assessment of fines or penalties arising from or based upon the Contractor's and/or its employees' violations of any such law ordinance or regulation. The Contractor shall maintain documentation for all charges against the City of Murfreesboro under this Contract. The books, records and documents of the Contractor insofar as they relate to the work performed or money received under this contract shall be maintained for a period of seven (7) 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 City of Murfreesboro, the State, the Comptroller of the Treasury, the Tennessee Department of Transportation, or their duly appointed representatives.
6. The Contractor shall be responsible for any and all injury or damage to persons or to property arising from the prosecution of the work and due to any act, omission, neglect or misconduct in its manner or method of prosecuting the work or due to its non-execution of the work or due to defective work or materials. The Contractor shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than \$1 million dollars per occurrence and \$300,000 per claimant, naming the City of Murfreesboro as an additional insured.
7. The Contractor shall indemnify and hold harmless the City of Murfreesboro and all of its officers, agents and employees from all suits, actions or claims of any character arising from the Contractor's acts or omissions in the prosecution of the work, use of unacceptable materials in constructing the work, infringement of patent, trade mark or copyright, or claims for Workers' Compensation. If any such suit, action or claim is filed, the City of Murfreesboro may retain from the monies due to the Contractor under this Contract a sum deemed sufficient by the City of Murfreesboro to protect the City of Murfreesboro from loss therefrom. Upon resolution of the suit, action or claim, any remaining retained funds will be released.
8. Upon execution of this Contract, the Contractor shall be prepared to begin the work to be performed under the Contract, but will not proceed until it has received official "Notice to Proceed". This official notice will stipulate the date upon which it is expected that the Contractor will begin his work, and from which date the working days tabulated against its time limit will begin. All other requirements in regard to the beginning of construction set forth in the Proposal and Special Provisions will date from the official notice.

IN WITNESS WHEREOF, the parties hereto have cause this Contract to be signed and executed by their respective authorized agents or officials.

Contractor 1

Contractor 2*

By: _____

By: _____

Print Name and Title

Print Name and Title

Date

Date

City of Murfreesboro, TENNESSEE

This Contract is accepted _____ day of _____, _____
this _____

and is effective on the _____ day of _____, _____

[CITY/COUNTY Official]

Approved:

City of Murfreesboro Attorney

***NOTE: The signature and information for Contractor 2 is to be provided when there is a joint venture.**

CONTRACT PAYMENT AND PERFORMANCE BOND

Note: to be filled out post-award

CONTRACT NO. 75LPLM-F3-062, CM-9311 (22)

Be it known that _____, as Principal, and _____, as Surety(ies), all authorized to do business in the State of Tennessee, hereby bind themselves to the City of Murfreesboro, and other potential claimants, for all obligations incurred by the Principal under its contract with City of Murfreesboro, for the construction of the above identified contract; in the full contract amount of _____ (\$ _____).

The obligations of the Principal and Surety(ies) under these payment and performance bonds shall continue in full force and effect until all materials, equipment and labor have been provided AND all requirements contained in the contract, plans and specifications have been completed in a timely, thorough and workmanlike manner. The parties agree that these bonds are statutory in nature and are governed by the provisions contained in Title 12, chapter 4 and Title 54, chapter 5 of the Tennessee Code Annotated relating to bonds required of contractors and that those provisions constitute a part of this bond.

By this instrument, the Principal and Surety(ies) specifically bind themselves, their heirs, successors, and assigns, *in solido*, under the following bonds:

Payment Bond. To the City of Murfreesboro and all "Claimants," as contemplated by T.C.A. Title 54, chapter 5, in the full contract amount of

_____ (\$ _____), in order to secure the payment in full of all timely claims under the project.

Performance Bond. To the City of Murfreesboro in the full contract amount of

_____ (\$ _____), in order to secure the full and faithful performance and timely completion of the project according to its plans and specifications, inclusive of overpayments to the contractor and liquidated damages as assessed.

Upon receipt of notice that the Principal is in default under the contract, the Surety(ies) shall undertake to complete performance, without regard to cost. If the Surety(ies) fail or refuse to complete performance of the contract, the City of Murfreesboro may then proceed with the work in any lawful manner that it may elect until it is finally completed. When the work is thus finally completed, the total cost of the same will be computed. All costs and charges incurred by the City of Murfreesboro in completing the Work will be deducted from any monies due or which may become due to the Principal. If the total costs of completion exceeds the sum which would have been payable under the Contract, then the Principal and the Surety(ies), *in solido*, shall be liable for and shall pay to the City of Murfreesboro the amount of such excess.

In witness whereof we have signed this instrument as dated.

Principal/Contractor 1:

By: _____ Date: _____

Printed Name and Title

(For Joint Venture)
Principal/Contractor 2:

By: _____ Date: _____

Printed Name and Title

Surety 1:

By: _____ Attorney-in-Fact _____

Printed Name

Printed Name

Agency Name

Agency Name

Street Address

Street Address

City/State/Zip

City/State/Zip

(Seal)

(Seal)

Subsequent correspondence/communication from City of Murfreesboro with respect to monthly progress reports and/or the contract bonds should be directed to:

For Surety 1:

Name _____

Address _____

City _____

State/Zip _____

Phone Number _____

Fax Number _____

For Surety 2:

Name _____

Address _____

City _____

State/Zip _____

Phone Number _____

Fax Number _____

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Addendum #2 for Construction Administration of the Rutherford Adaptive Signal Control Technologies Project

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

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

Summary

Consider Addendum #2 for the engineering services for construction of the Rutherford Adaptive Signal Control Technologies (ASCT) Project.

Staff Recommendation

Approve Addendum #2 with Neel-Schaffer, Inc.

Background Information

Neel-Schaffer, Inc. will perform construction administration services for the Rutherford ASCT project. These services, which are retained on most large construction projects, include development of a variety of signal timing plans as well as assist the City with administrative duties associated with the construction of the project. The estimate for professional services for this project is \$357,323 and is 100% funded.

Council Priorities Served

Expand Infrastructure

Improvements to these intersections will help traffic flow to alleviate congestion in this highly traveled area.

Fiscal Impact

The expense, \$357,323 is funded 100% by federal funds.

Attachments

1. Addendum #2
2. Addendum #1
3. Original Contract



March 19, 2025
NSI Project Number: NS.14279.000

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

**RE: Professional Engineering Services - Addendum #2
CEI Services - Rutherford Blvd ASCT Project
PIN 125505.00; 75LPLM-F1-060; CM-9311(22)**

Dear Jim:

Per your request, please accept this correspondence as documentation of the addendum for additional services regarding the referenced project. During preparation of initial contract scoping, the City of Murfreesboro identified construction inspection and administration (CEI) services as required tasks for the referenced project. The original contract stated that CEI services would be included and formalized at such time that the subject project obtained approval from the Tennessee Department of Transportation to proceed with its construction phase. As such, this addendum serves to document the scope of services and professional services fee for project CEI services (Task D). As shown in Attachment A, the enclosed documentation shows the scope tasks and fee estimate for the addendum request.

Based on the documented scope and fee estimate, Addendum 2 presents the additional services in the amount of \$357,323.00. With the current professional services ceiling set at \$441,420.00, the addendum request would establish the revised fee ceiling as \$798,743.00. Neel-Schaffer will invoice labor and expenses as costs are incurred up to contract ceiling. The terms and conditions of the requested addendum will follow and remain the same as 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.

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



landscape architects
environmental scientists
surveyors
planners
engineers

March 19, 2025
Professional Engineering Services – Addendum 2
Rutherford Blvd ASCT Project
Page 2

Signature Page

ISSUED AND AUTHORIZED BY:

CITY OF MURFREESBORO
Mayor

Date Signed: _____

ACCEPTED AND AGREED TO BY:

NEEL-SCHAFFER, INC.



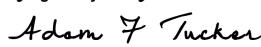
Title: Engineer Manager-Vice President

Date Signed: March 19, 2025

APPROVED AS TO FORM:

CITY OF MURFREESBORO

City Attorney



Date Signed: 3/20/2025

Signed by:

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ATTACHMENT A

RUTHERFORD BLVD ASCT PROJECT -- ADDENDUM #2 – TASK D

Scope of Work for Engineer-of-Record and CEI Support Services PIN 125505.00; CM-9311(22); 75LPLM-F2-061

Project Description

The proposed project provides for the construction and implementation of the City's adaptive traffic signal system along S Rutherford Blvd. The signal system infrastructure includes, but is not limited to, CCTV surveillance cameras, traffic signal controllers, traffic signal cabinets, ADA modifications, fiber optic cable network, network communication hardware, and required vendor software necessary to complete a fully functioning system. The project will be administered by the City of Murfreesboro as a TDOT locally managed contract.

Project Understanding

Based on discussions with the City of Murfreesboro (City), Neel-Schaffer, Inc. (N-S) has the following project understanding. The scope of services for construction phase assistance and administration tasks to be provided by N-S assumes the following:

- All construction activities will occur within existing ROW and/or easements.
- The contracted period for construction will be fifteen (15) months.
- Proposed services, as shown in scope, will be provided on part-time basis and in support of city inspection and management staff. City of Murfreesboro will complete required full-time construction inspection and administrative duties.
- All utility make-ready work required for installation of fiber optic cable will be completed prior to issuance of contractor notice-to-proceed.
- Utility adjustments will be performed by the affected utility owners and not included in the construction contract.
- Construction Engineering & Inspection (CEI) tasks will follow requirements of the Tennessee Department of Transportation.

Construction Administration

- Pre-Construction Meeting:
N-S will assist and participate in the project's Pre-Construction meeting:
 - Coordination support for pre-construction meeting
 - Assistance with preparation of agenda
 - Assistance with recording and documenting of meeting minutes
- Construction Progress Meetings (one per month):
An N-S representative will attend and assist by leading scheduled monthly progress meetings. Preparation of meeting minutes for City review. Assistance includes preparation of draft TDOT Monthly Report as required for TDOT documentation for review by city officials.
- Respond to Requests for Information (RFIs):
N-S will prepare and issue responses to RFIs submitted by the Contractor. This will include interpretation of information shown in construction plans and opinions of guidance. Responses provided by N-S will be shared and coordinated with City staff.

ATTACHMENT A
RUTHERFORD BLVD ASCT PROJECT -- ADDENDUM #2 – TASK D

Review of Material Submittals:

N-S will assist the City by reviewing material submittals and shop drawings, which the Contractor is required to submit, but only for conformance with the design concept of the project as a functioning whole as indicated in the Contract Documents and compliance with the information provided in the Contract Documents. The Contractor is required to submit shop drawings, certifications and all other product and material information for all items and in the format required by TDOT guidelines. Any items submitted improperly or incomplete will be rejected without further review; the submitter will be requested to re-submit item information in the appropriate format before it is reviewed for technical suitability. Approvals, clarifications, rejections, or requests for additional information will be issued and submitted to the City for distribution to the Contractor. N-S will document results of material submittal reviews and will communicate questions and points-of-clarifications to City staff for discussion and final determinations.

- Part-Time Field Observation Assistance (up to two days per week)
An N-S representative/inspector will be available as requested by the City to provide field observation assistance during active construction. The N-S inspector will join city inspector staff in the field to review contractor activities and participate in discussions. The scope provides for up to two site visits per week and assumes an overall 15-month duration for the observation assistance. City inspectors will have primary inspection authority and responsibility.
- Contractor Pay Request Assistance:
N-S will assist the City with review of pay requests submitted by the Contractor. The City will have primary responsibility for documenting field quantities and construction tasks completed.
- Substantial Completion Services:
Following notice from Contractor that the project is substantially complete, N-S and City representatives, accompanied by Contractor, will conduct a site visit to determine if the work is substantially complete and compile a respective punch list for further attention by the Contractor. N-S will also provide assistance with project close-out documentation.
- ASCT Instrumentation Integration Assistance:
Although the city's ASCT vendor has primary responsibility of product integration and system initialization, N-S will provide limited support services during configuration and onboarding of field components. N-S staff may assist city officials with confirmation and troubleshooting during system integration with the central traffic signal software. Scope provides up to 80 hours of system integration support services.
- Traffic signal timing development:
N-S staff will assist city officials with the development of foundational traffic signal system timing plans. Basic service will include up to eight (8) unique timing plans. Functionally, the ASCT central software will dynamically operate timing plans as selected by the system's protocol. Programming, downloading and testing of system timing plans is

ATTACHMENT A

RUTHERFORD BLVD ASCT PROJECT -- ADDENDUM #2 – TASK D

excluded. Basic signal timings will originate from existing traffic signal settings. Collection of intersection turning movement counts is not included at this time.

- Concrete field inspection and acceptance records

N-S staff will provide concrete field-testing assistance. Services included standard field tests (air content, slump, etc.) per TDOT Local Program requirements. N-S will provide coordination and oversight with contractor during concrete pour activities and cylinder pours. The project contractor will be responsible for providing concrete cylinder molds. N-S will not be responsible for or conduct concrete strength break tests. The scope assumes that cylinder strength tests will be conducted and reported by TDOT Material and Testing office. Any fees charged by TDOT or others for lab testing, such as cylinder break test, lab fees will be invoiced to the City as part of reoccurring project invoices and not included in N-S professional services fee. Material testing and inspection assistance is limited to concrete used for project as shown in the construction plans.

Services not included in this Scope of Work

- Material lab test and material field testing (excluding concrete acceptance testing per TDOT Local Program requirements)
- Surveying and construction staking
- Public Involvement
- Permit/Application fees
- Utility Inspections
- Geotechnical Investigation
- Design services during construction
- Full-time, daily construction inspections
- Labor compliance
- TDOT-required project documentation other than that specifically stated above
- Miscellaneous fees, such as newspaper ads
- Programming/Downloading of traffic signal timings

ATTACHMENT A
ADDENDUM #2 - TASK D

NEEL-SCHAFFER, INC. FEE ESTIMATE FOR CEI SERVICES
CONSTRUCTION ENGINEERING AND INSPECTION SCOPE OF SERVICES
RUTHERFORD BOULEVARD ADAPTIVE SIGNAL CONTROL TECHNOLOGY PROJECT
CITY OF MURFREESBORO, TN

Task	<i>Labor in Hours</i>				
	Engineer Manager	Project Manager	Senior ITS Engineer	EngineerTech	Technician/ Inspector
Construction Engineering and Inspection Services					
1. Project Management and Administration	65	130	0	0	0
2. Pre-construction, Material Submittals, RFIs	4	30	16	48	4
3. Observation, Inspection, Pay Requests Assistance	16	80	16	64	1056
4. Documentation and Reporting	0	78	8	73	46
5. Instrumentation Integration Assistance	12	0	80	0	0
6. Traffic Signal Timing Development	32	0	0	160	0
7. Final Inspection and Acceptance, Contingency	0	40	8	8	56
8. Concrete Inspection & Acceptance Services	0	30	0	0	120
Total CEI Hours	129	388	128	353	1282
Hourly Rate	\$255.00	\$230.00	\$230.00	\$160.00	\$110.00
<i>Subtotal CEI Labor</i>	<i>\$32,895</i>	<i>\$89,240</i>	<i>\$29,440</i>	<i>\$56,480</i>	<i>\$141,020</i>
Subtotal CEI Services Labor (A)					\$349,075.00
Subtotal CEI Subconsultant Fees (B)					\$0.00
					\$0.00
Subtotal CEI Direct Expenses (C)					\$ 8,248.00
			Mileage	\$ 6,448.00	
			Printing	\$ 1,050.00	
			Miscellaneous	\$ 750.00	
Total CEI Fee (A + B + C)					\$357,323.00



July 18, 2022
NSI Project Number: NS.14279.000

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

**RE: Professional Engineering Services - Addendum #1
Rutherford Blvd ASCT Project
PIN 125505.00; 75LPLM-F1-060; CM-9311(22)**

Dear Jim:

Per recent discussion, please accept this correspondence as documentation and request for addendum of additional services under the referenced contract. During the TDOT Final Design Phase, various circumstances arose necessitating work to address plan development needs not anticipated. Services provided beyond original scope of work include the following tasks:

- Additional field survey by subconsultant (Wiser Consultants) at intersection of Rutherford Blvd and Greenland Dr
- Design services for additional traffic signal modifications at Rutherford Blvd and Greenland Dr
- Revisions to utility make-ready plans related to MTE purchase and ownership of MED facilities
- NEPA Re-evaluation tasks by subconsultant (Griggs & Maloney)

Based on the quotes of services from our subconsultant partners and additional tasks performed by Neel-Schaffer, we request a fee addendum of \$30,000 for the identified tasks. With the original professional services ceiling set at \$411,420.00, the addendum request would establish the revised fee ceiling as \$441,420.00. Neel-Schaffer will invoice labor and expenses as costs are 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.

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

Attachments



July 18, 2022
Professional Engineering Services – Addendum 1
Rutherford Blvd ASCT Project
Page 2

Signature Page

ISSUED AND AUTHORIZED BY:

CITY OF MURFREESBORO

Mayor

DocuSigned by:



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Date Signed: 8/19/2022

ACCEPTED AND AGREED TO BY:

NEEL-SCHAFFER, INC.



Title: Engineer Manager-Vice President

Date Signed: July 18, 2022

APPROVED AS TO FORM:

CITY OF MURFREESBORO

City Attorney

DocuSigned by:



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Date Signed: 8/4/2022





Invoice No.

11071

June 3, 2019

Neel-Schaffer, Inc.
 Attn: Greg Judy
 201 East Main Street, Suite 325
 Murfreesboro, TN 37130

Project: 19-04-0608 Survey Master Service
 Greenland/Rutherford Survey

Professional Services from 4/18/19 to 5/31/19

Fee

Original Work Order Amount:	N/A
Additional Services / Supplement:	\$8,097.50
Work Order Ceiling	N/A
Total Invoiced	\$8,097.50
Amount Previously Invoiced	\$0.00

AMOUNT DUE THIS INVOICE **\$8,097.50**

Outstanding	Invoice Number	Invoice Date	Amount	Days Outstanding			
				31-60	61-90	91-120	Over 120



P.O. Box 2968
Murfreesboro, TN 37133-2968
(615) 895-8221
Fax: (615) 895-0632

February 10, 2021

Mr. Gregory D. Judy, P.E., PTOE
Vice President/Engineer Manager
201 East Main Street, Suite 325
Murfreesboro, Tennessee 37130

**RE: RE-EVALUATION : CITY OF MURFREESBORO ASCT RUTHERFORD BOULEVARD PROJECT
RUTHERFORD COUNTY, TENNESSEE**

Dear Greg:

It is our understanding that the project timing of Murfreesboro's ASCT Rutherford Boulevard project is expected to exceed the three-year period since the initial project's approval, and as such, will require a formal re-evaluation.

Griggs & Maloney, Inc. can provide the Re-evaluation to re-validate the findings of the previous environmental document. The fee is to be based on a Cost Plus basis, using standard overhead rate markup, net fee and direct costs, not to exceed of \$5,000. You stated that the work order would be handled by an addendum to the original subcontract agreement.

If you have any questions or need additional information, please advise.

Thanks for considering us,
GRIGGS & MALONEY, INC.

A handwritten signature in black ink, appearing to read 'Steve Maloney'. It is a cursive script with a large, flowing 'S' at the beginning.

Steve Maloney

AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), made and entered into by and between NEEL-SCHAFFER, INC., a Mississippi Corporation, with its main office located at 125 South Congress Street, Jackson, Mississippi 39201, hereinafter referred to as "ENGINEER", and CITY OF MURFREESBORO, TENNESSEE, 111 West Vine Street, Murfreesboro, Tennessee 37130, hereinafter referred to as "CITY", who mutually agree as follows:

DECLARATIONS. CITY desires to retain ENGINEER to provide engineering, related technical, and other services in connection with City's project hereinafter referenced as Project. The Project is described as follows: Rutherford Boulevard Adaptive Signal Control Technology (ASCT) project.

1. SCOPE OF SERVICES. Engineer shall provide PE-NEPA, Preliminary Engineering, ROW and Final Engineering Design Services, including bidding and Construction Engineering & Inspection (CE&I), for the Project. THE SCOPE OF SERVICES as found in Attachment A shall be considered as an integral part hereof.
2. ENGINEER shall be paid on a *Cost Plus Net Fee Basis* as detailed herein, in the Amount Not To Exceed \$411,420.00.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The Mayor and City Council approved this Agreement on the 30th Day of November, 2017.

IN WITNESS WHEREOF the parties have executed this Agreement through their duly authorized officers.

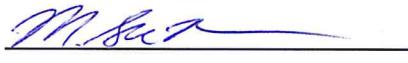
NEEL-SCHAFFER, INC.

CITY OF MURFREESBORO, TENNESSEE

By: 

Title: Senior Vice President

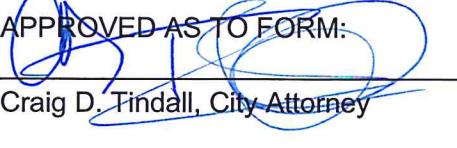
Date: 11/07/2017

By: 

Title: Mayor

Date: 11-30-17

APPROVED AS TO FORM:


Craig D. Tindall, City Attorney

TERMS AND CONDITIONS

SECTION I: GENERAL RECITALS

WHEREAS, the CITY requires PE-NEPA, Preliminary Engineering, ROW and Final Engineering Design Services, including bidding and Construction Engineering & Inspection (CE&I), for the Rutherford Boulevard Adaptive Signal Control Technology (ASCT) project; and,

WHEREAS, the CITY proposes under the authority of this Agreement to employ the ENGINEER, a firm adjudged by the CITY upon representations of Engineer to be qualified, for the performance of Professional Services described herein on the proposed project as identified herein; and,

WHEREAS, the CITY is authorized under its charter and state laws to enter into this Agreement.

NOW, THEREFORE, in consideration of these premises and mutual covenants herein set forth, it is agreed by and between the parties hereto as follows:

SECTION II: SERVICES OF THE ENGINEER

- A. PROJECT'S LOCATION AND GENERAL STATEMENT OF ENGINEER'S ASSIGNMENT. The ENGINEER shall provide the engineering design services, bidding, and CE&I, in cooperation with the CITY for the Rutherford Boulevard Adaptive Signal Control Technology ("ASCT") project.
- B. GENERAL PROJECT CRITERIA. The ENGINEER'S efforts shall include, but not be limited to the Scope of Work and Tasks set forth in the Request for Proposal issued by CITY on June 26, 2017 ("RFP") and Proposal of NEEL-SCHAFFER dated July 19, 2017, both of which are incorporated herein as if copied verbatim.
 - 1) Criteria needed to supplement the foregoing shall be as directed by the CITY. Throughout the entire work the ENGINEER will endeavor to obtain the most feasible plan with appropriate weight and consideration given to minimizing the cost of the project.
 - 2) Note: In accordance with the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction, Sections 107.14 and 107.18, the Contractor is responsible for project site safety. The ENGINEER'S employees are responsible for their personal safety. The ENGINEER is not charged with the role of safety inspector per Section 105.10 and Section 105.11 of Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction.
- C. SCHEDULES. The ENGINEER agrees to begin work immediately after receiving authorization to proceed with the work. Any time limitations herein stated are to be conditional upon timely receipt of various information to be supplied by the CITY and upon prompt review and approval by the CITY of the ENGINEER'S work and directly related work performed by other as requested by the ENGINEER during the term of this agreement.

D. EXPERT WITNESS SERVICES: It is understood and agreed that ENGINEER'S services under this Agreement do not include any participation whatsoever in any litigation. Should such services be required, a Professional Service Agreement Addendum may be negotiated between the CITY and ENGINEER describing the services desired and providing a basis for compensation to ENGINEER. This provision does not apply to any litigation between the CITY and the ENGINEER.

SECTION III: CITY'S SERVICES

The CITY agrees to provide to the ENGINEER, without delay, or as they become available, the following:

- A. Copies of all requested material available regarding and indicating policies of the CITY with reference to geometrics, standards, specifications and methods, and other memoranda and directives pertaining to any part or phase of the work.
- B. Access to and use of all reports, data, or information in the possession of the CITY which might prove pertinent to the work set forth herein. No warranty is made as to the sufficiency of such data furnished by the CITY.
- C. Right-of-Entry onto the Project site for ENGINEER'S necessary field studies and surveys. ENGINEER shall endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- D. All information furnished the ENGINEER by the CITY, electronically or otherwise, is provided solely for the specific purpose set forth in this Agreement. Should the ENGINEER use such information for any other purpose, it shall do so at its own risk, and shall assume full responsibility for such action.
- E. The CITY shall provide a project supervisor to oversee and coordinate with the ENGINEER'S project supervisor.

Contact Person Jim Kerr, Transportation Director
Phone (615) 893-6441
Email jkerr@murfreesborotn.gov

The "Contact Person" designated above shall have the complete authority to communicate on behalf of the CITY with respect to project scope, instructions, and to receive information. Changes in Professional Services, negotiation of fees, and other substantial changes under this Agreement may require approval of the City Council.

F. The CITY, with the assistance of ENGINEER upon request by the CITY and as outlined in the

project scope, shall provide public information/relations for project development.

SECTION IV: TDOT STANDARD TERMS AND CONDITIONS

- A. GOVERNING LAW: This Agreement shall be governed by the laws of the State of Tennessee. ENGINEER agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The ENGINEER acknowledges and agrees that any rights or claims against the CITY or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all applicable laws.
- B. GENERAL COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:
 - 1) The ENGINEER is assumed to be familiar with and observe and comply with those Federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the state and Federal Government regarding fortifications, military and naval establishments and other areas. The ENGINEER shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
 - 2) The parties agree that failure of the ENGINEER to comply with this provision shall constitute a material breach of this Agreement and subject the ENGINEER to repayment of all damages by the CITY as a result of said breach.
- C. STATE LAW: Nothing in this Agreement shall require the CITY to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided that if any of the provisions of this Agreement violate any applicable state law, the ENGINEER will at once notify the CITY in writing in order that appropriate changes and modifications may be made by the CITY and ENGINEER to the end that the CITY and ENGINEER may proceed or terminate this Agreement as soon as possible with the Project.
- D. SUBMISSION OF THE PROCEEDINGS, AGREEMENTS, AND OTHER DOCUMENTS: The ENGINEER shall submit to the CITY such data, reports, records, agreements, and other documents relating to the Project as the CITY, TDOT and the Federal Highway Administration may require.
- E. APPROPRIATION OF FUNDS: This Agreement is subject to the appropriation and availability of CITY, 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 Agreement upon thirty (30) days written notice to the ENGINEER. Said termination shall not be deemed a breach of contract by the CITY. Upon receipt of the written notice, the ENGINEER shall cease all work

associated with the Agreement. Should such an event occur, the ENGINEER shall be entitled to compensation for all satisfactory and authorized services completed as of the notice of termination date. Upon such termination, the ENGINEER shall have no right to recover from the CITY any actual, general, special, incidental, consequential or any other damages whatsoever of any description or amount.

- F. **RIGHTS AND REMEDIES NOT WAIVED:** In no event shall the making by the CITY of any payment to the ENGINEER constitute or be construed as a waiver by the CITY of any breach of covenant or any default which may then exist on the part of the ENGINEER and the making of such payment by the CITY while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the CITY with respect to such breach or default. Any invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- G. **CITY NOT OBLIGATED TO THIRD PARTIES:** The CITY shall not be obligated or liable hereunder to any party other than the ENGINEER.
- H. **INDEPENDENT CONTRACTOR:** The parties hereto, in the performance of this agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- I. **DEBARMENT AND SUSPENSION:** In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the ENGINEER certifies that it is not suspended or debarred and agrees that it shall not permit any debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subcontractor.
- J. **EMPLOYMENT COMPLIANCE.**
 - 1) **EQUAL EMPLOYMENT OPPORTUNITY:**
 - a. In connection with the performance of any Project, the ENGINEER shall not discriminate against any employee or applicant because race, age, color, religion, gender, pregnancy, marital status, military status, disability or national

origin. The ENGINEER will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, gender, pregnancy, marital status, military status, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. The ENGINEER shall insert the foregoing provision in all agreements modified only to show the particular relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such subcontractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the ENGINEER shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the CITY or TDOT setting forth the provisions of the nondiscrimination clause.

2) TITLE VI, CIVIL RIGHTS ACT OF 1964. During the performance of this contract, the ENGINEER, for itself, its assignees, and successors in interest (hereinafter referred to as the "ENGINEER") agrees as follows:

a. Compliance with Regulations: The ENGINEER shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710.405(b), as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The ENGINEER, with regard to the work performed by itself during the contract, shall not discriminate on the grounds of race, age, color, religion, gender, pregnancy, military status, disability or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The ENGINEER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations. (<http://www.tdot.state.tn.us/civil-rights/titlevi/>)

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations

made by the ENGINEER for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the ENGINEER of the ENGINEER'S obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, age, color, religion, gender, pregnancy, military status, disability or national origin.

d. INFORMATION AND REPORTS: The ENGINEER shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY or other parties participating in the funding of this agreement to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the ENGINEER is in the exclusive possession of another who fails or refuses to furnish this information, the ENGINEER shall so certify to the CITY and shall set forth what efforts it has made to obtain the information.

e. EXECUTIVE ORDERS 11246 AND 11375: During the performance of work under this Agreement the ENGINEER agrees to comply with the policies set forth in Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

f. TITLE VI ADDITIONAL ASSURANCES: ENGINEER incorporates by reference Tennessee Department of Transportation Title VI Assurances-Appendix A by reference as if copied verbatim herein. (<http://www.tdot.state.tn.us/civil-rights/titlevi/>)

g. SANCTIONS FOR NONCOMPLIANCE: In the event of the ENGINEER'S noncompliance with the nondiscrimination provisions of this contract, the CITY shall impose such contract sanctions as it may determine to be appropriate, including, but not necessarily limited to:

- i. withholding of payments to the ENGINEER under the contract until the ENGINEER complies, and/or
- ii. cancellation, termination, or suspension of the contract in whole or in part.

3. AMERICANS WITH DISABILITIES ACT: ENGINEER will comply with all the requirements as imposed by the Americans with Disabilities Act and the regulations of the federal government issued thereunder. The ENGINEER shall comply with the Vocational Rehabilitation Act of 1973 as approved by Congress on September 26, 1973, herein incorporated by reference, which prohibits employment discriminations

against physically handicapped persons.

4. VIETNAM ERA VETERANS READJUSTMENT ACT OF 1974: The ENGINEER shall comply with Section 2012 of the Vietnam Era Veterans Readjustment Act of 1974 which requires the ENGINEER to take affirmative action to employ and advance in employment qualified veterans of the Vietnam Era.

K. CONFLICTS OF INTEREST:

1. ENGINEER warrants that no amount shall be paid directly or indirectly to an employee or official of the CITY, the State or the Federal government as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to ENGINEER in connection with any work contemplated or performed relative to this Agreement.
2. The ENGINEER shall insert in all agreements entered into in connection with the Project and shall require its subcontractors to insert in each of its subcontracts, the following provision:

"No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the ENGINEER in connection with any work contemplated or performed relative to this Agreement."

L. CONFLICT OF INTEREST: No member of or delegate of the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

M. LOBBYING: With respect to project involving federal aid, the ENGINEER certifies, by signing this Agreement to the best of its knowledge and belief, that:

- 1) No federally appropriated funds have been paid or will be paid, by or on behalf of the ENGINEER, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of this Agreement, or any Federal contract, grant, loan, or cooperative agreement.
- 2) 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 federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan or cooperative agreement, the ENGINEER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- 3) The ENGINEER will require that the language of this certification be included in all subcontracts at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly. The ENGINEER understands that this certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.
- 4) The ENGINEER agrees that during the period of performance of this agreement it and its sub-recipients must file a disclosure form at the end of each calendar year quarter in which there occurs any event that requires disclosure or materially affects the accuracy of the information contained in any previously filed disclosure form. Events that are considered to materially affect the accuracy of information reported are described in Subpart A, Section 1230.110(c) of the Office of Management and Budget interim final guidance pertaining to Federal government-wide restrictions on lobbying established by Section 319 of Public Law 101-121.

N. RECORDS:

- 1) The ENGINEER shall maintain documentation for all charges against the CITY under this Agreement. All costs charged to the Project, including any approved services contributed by the ENGINEER or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the CITY and TDOT the nature and propriety of the charges. The books, records, and documents of the ENGINEER, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the CITY at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- 2) Copies of these documents and records shall be furnished to the CITY, TDOT or their duly appointed representatives, upon request. Records of costs incurred includes the ENGINEER'S general accounting records and the Project records, together with supporting documents and records, of the ENGINEER and all subcontractors considered necessary by the CITY for a proper audit of costs. If any litigation, claim or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit finding involving the records have been resolved.
- 3) The aforesaid requirements to make records available to the CITY and TDOT shall be a continuing obligation of the ENGINEER and shall survive a termination of the Agreement.
- 4) ENGINEER shall consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the CITY.

- 5) Inspection: The ENGINEER shall permit, and shall require its subcontractor or materials vendor to permit, the CITY's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project. The CITY reserves the right to terminate this Agreement for refusal by the ENGINEER or any subcontractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

P. TERMINATION FOR CONVENIENCE: The CITY may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the CITY. The CITY shall give the ENGINEER at least thirty (30) days written notice before the effective termination date. The ENGINEER shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the notice of termination date, but in no event shall the CITY be liable to the ENGINEER 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 ENGINEER shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Q. TERMINATION FOR CAUSE: If the ENGINEER fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the ENGINEER violates any terms of this Agreement, the CITY shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the ENGINEER shall not be relieved of liability to the CITY for damages sustained by virtue of any breach of this Agreement by the ENGINEER.

R. SEVERABILITY: If any provision of this Agreement is held invalid, to the extent reasonable, the invalid provision shall be severed and the remainder of this Agreement shall not be affected. In such an instance, the parties shall continue to conform to the remaining terms of this Agreement; provided, however, in the event that any section granting the CITY a right of termination is severed, this Agreement shall immediately terminate.

S. AGREEMENT FORMAT: All words used herein in the singular form shall extend to and include all plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

T. THIRD PARTY BENEFICIARIES AND SUBCONTRACTORS:

- 1) The ENGINEER certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- 2) The ENGINEER further certifies by its signature hereunder that it will not enter into any subcontract that relates to this project or to any work funded under this Agreement

without prior approval of such proposed contract to the CITY.

3) The ENGINEER hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the ENGINEER to the repayment of funds received from or through the CITY under this Agreement and to the payment of all damages suffered by the CITY as a result of said breach.

U. AMENDMENT: This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

V. CITY LIABILITY: The CITY shall have no liability except as specifically provided in this Agreement.

X. FORCE MAJEURE: The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

Y. REQUIRED APPROVALS: The CITY is not bound by this Agreement until it is approved by the appropriate CITY officials in accordance with its charter, applicable Tennessee State laws and regulations.

SECTION V: PAYMENTS

For the satisfactory performance of all services as set forth herein, the CITY agrees to compensate the ENGINEER as hereinafter provided, subject to final approval of the CITY:

A. ACTUAL COST OF PERFORMING SAID SERVICES PLUS A FIXED AMOUNT: As the extent of the ENGINEER'S efforts cannot be predetermined with exactness at this time, it is not feasible to establish payment on a lump sum amount or unit-of-work basis; therefore, it is mutually agreed by and between the parties hereto that compensation to the ENGINEER will be on the basis of the ENGINEER'S actual cost of performing said services plus a fixed amount to cover net fee only, as is qualified hereinafter. All costs incurred under the terms of this agreement shall be subject to the requirements of the Federal-aid Policy Guide, 23 CFR 172 and the provisions of Chapter 1, Section 31.2, Title 48 of the Federal Acquisition Regulations System. Actual costs eligible for reimbursement are those directly attributable and properly allocable to the accomplishment of the specific work for which the ENGINEER'S services have been retained under the agreement. These may include:

1) LABOR: Actual basic salaries for productive technical personnel and other employees for work-time directly connected with and essential to performance of work chargeable to the project, also salaries of principals for time they are productively engaged in work or activities that are necessary to fulfill the provisions and conditions of the contract, are allowable project charges; plus,

2) PAYROLL ADDITIVES AND GENERAL OVERHEAD:

- a. State Funded Projects - Payroll additive and general overhead costs eligible for reimbursement shall be as recognized and accepted for use as defined by this agreement or by the state's Finance Office following an audit of the ENGINEER'S total overhead costs. It is agreed that under this agreement those combined costs shall be invoiced at the lesser rate of (1) actual audited rate adjusted for the TDOT's "Standard Procurement Policy for Consultant and Technical Services" or (2) the maximum allowable rate of One Hundred Forty-Five and 00/100 (145%) percent of direct labor. It is agreed that the appropriate percentage shall be used for invoicing purposes for combined payroll additive and general operating overhead costs. The 145% rate cap (for state funded projects) shall also apply to subcontracted work. Subcontractors with an unlimited status shall also invoice at the lesser rate of (1) the actual audited rate or (2) the maximum allowable rate of One Hundred Forty-Five and 00/100 (145.00%) percent of direct labor. Subcontractors with limited status shall invoice at a self-certified rate with a maximum rate of One Hundred Twenty-Five and 00/100 (125.00%). It is further agreed that the ENGINEER'S payments to any individual owning more than 2% of the company as a bonus or under an executive management incentive plan shall not be considered as eligible costs pursuant to determination of said overhead rates. The maximum indirect salary for any employee shall be capped at \$150,000.00 per year.
- b. Federally Funded Projects – Payroll additive and general overhead costs eligible for reimbursement shall be as recognized and accepted for use as defined by this agreement or by the state's Finance Office following an audit of the ENGINEER'S total overhead costs. It is agreed that the appropriate percentage shall be used for invoicing purposes for combined payroll additive and general operating overhead costs. Subcontractors (for federally funded projects) with unlimited status shall invoice at the actual audited rate as approved by the External Audit. Subcontractors with limited status shall invoice at a self-certified rate with a maximum rate of One Hundred Twenty-Five and 00/100 (125%) percent.

3) OUT-OF-POCKET DIRECT PROJECT EXPENSE: Any non-salary cost, including non-salary sub-contracted work, identified specifically with the project is a direct charge to the project, and similar costs which are identified specifically with other work of the ENGINEER are direct costs of that work and are not to be charged directly or indirectly to this project. Accordingly, any direct project non-salary costs under this agreement not included in the ENGINEER'S general operating overhead or payroll additives in conformance with its normal accounting practices, as is justified, will be eligible for reimbursement at the ENGINEER'S actual cost. Vehicle mileage (use of the ENGINEER'S own equipment) shall be supported by the date, time, origin, and

destination of each trip. Vehicle costs will be reimbursed in accordance with the vehicle reimbursement schedule included in the TDOT's "Standard Procurement of Engineering and Technical Services Policy." As the rates in this schedule are subject to be revised periodically, the reimbursement will be based on the rates applicable for the billing period. Auto rental will be actual costs but shall not exceed local commercial rates. Billings for any actual out-of-pocket expense directly identifiable with the project shall be supportable by a listing of numbered original bills, invoices, expense accounts, and miscellaneous supporting materials which shall be retained for review and audit by CITY representatives. The ENGINEER'S costs for lodging, meals, and other involved travel-related costs shall be governed by the rates set forth in the latest edition of the state's Comprehensive Travel Regulations.

- 4) ENGINEER'S NET FEE: For the performance of the work and in consideration of the complexities and responsibilities involved, it is agreed that ENGINEER shall receive a net fee based on the formula set forth below herein. The "net fee" for purposes of this Agreement is ENGINEER'S profit. Due to the uncertainty of (1) the ENGINEER'S schedule, and (2) the number of work crews needed for the project, it is agreed by the CITY and the ENGINEER to base the payment of the agreed net fee on the actual labor costs rather than the estimated labor costs as used for the basis of this agreement. The net fee for each progress billing shall be determined using the ENGINEER'S actual direct labor for the billing period multiplied by 2.35 times the agreed upon net fee of Eleven and 00/100 percent (11.00%) (Fee = Direct Labor x 2.35 x .11).
- 5) ENGINEER'S FEE FOR SERVICES: For the performance of all services of the ENGINEER, as prescribed herein, the CITY agrees to reimburse the ENGINEER its actual cost (to be determined as herein provided) and its aforesaid net fee. For the completion of its total work assignment. The compensation ceiling of this agreement is hereby established at FOUR HUNDRED ELEVEN THOUSAND FOUR HUNDRED TWENTY 00/100 Dollars (\$411,420.00), which compensation ceiling shall not be exceeded without a prior supplemental agreement between the parties hereto for the purpose of increasing said top-side amount. The ENGINEER'S proposal for services shall be incorporated into the supporting documentation for services included herein. It is agreed that said ceiling is subject to change through supplemental agreement. It is also agreed that if it appears that due to underestimation of man-hour or increase in salary rates the top-side limiting amounts for the ENGINEER'S services may be exceeded, the same will be subject to adjustment by mutual agreement to absorb the ENGINEER'S additional costs that will be incurred by reason of said underestimation of man-hours or increase in salary rates upon written request by the ENGINEER prior to the limiting amount being exceeded. Except in unusual cases deemed justifiable and prearranged in writing with the CITY, any request from the ENGINEER for ceiling adjustments to cover PAST incurred costs beyond the ceiling for incurred costs not yet covered by an approved Supplemental Agreement will be denied, and the expense

of said costs shall be borne by the ENGINEER. The ENGINEER shall maintain a constant familiarity of the relationship between its gross earnings and the ceiling of this agreement.

- B. ADDITIONAL WORK: In the event that the CITY, in writing, requests the ENGINEER to perform additional services on the project not covered by Section II of this agreement, the ENGINEER agrees to perform the same; payment therefor shall be made by the CITY under Paragraph A, sub-paragraphs 1, 2 and 3 of this section after a written agreement between the CITY and the ENGINEER has been entered into and approved. At the discretion of the CITY, said agreement may provide for an appropriate increase(s) in the ENGINEER'S net fee for the performance of said Additional Work. It is understood and agreed that no work relative to Additional Work or Change of Work (see paragraph C immediately below) shall be performed by the ENGINEER prior to the CITY'S issuance of a work order for such Additional Work or Change of Work except in those cases when the CITY deems it to be in the public interest to issue a written order prior to the origination of a supplemental agreement. In such instances, the City will consider an early issuance of a work order upon its prior ascertainment of the necessity for the work and upon its assurance that additional compensation is warranted.
- C. CHANGE OF WORK: In the event the CITY should decide during the course of this work that there exists the need to change any work performed by the ENGINEER under this Agreement after some element of work has been approved by the CITY, the CITY shall notify the ENGINEER, in writing, to make the change, and the ENGINEER shall make the change as directed. Payment therefor is to be made by the CITY after a written agreement is entered into between the CITY and the ENGINEER providing for appropriate adjustment in the compensation ceiling inclusive of appropriate adjustment in the ENGINEER'S net fee, which amounts shall be as negotiated.
- D. MODE OF PAYMENT: The ENGINEER'S billings are to be segregated in accordance with the TDOT project numbers assigned to the work. Progress invoices with status of work shall be submitted by the ENGINEER to the CITY at a frequency of one per month in an amount equal to one hundred percent (100%) of the earned fee for the time period in question, the earned fee being defined as the amount determined under Paragraph A, sub-paragraphs 1, 2, 3 and 4 of this section based upon a mutually acceptable invoice of payroll and direct project out-of-pocket expense for the ENGINEER'S work performed as of the date of this Statement plus a part of the ENGINEER'S net fee. The net fee for each progress billing shall be determined using the ENGINEER'S actual direct labor for the billing period multiplied by 2.35 times the agreed upon net fee of Eleven and 00/100 percent (11.00%) (Fee = Direct Labor x 2.35 x .11). The ENGINEER'S records and backup data on all items of cost entering into the billings for the professional services rendered under this agreement are subject to audit by representatives of the CITY, and copies thereof shall be furnished, if requested, as required under Paragraphs P and Q of Section IV of this Agreement. Payments on all subsequent supplemental agreements shall also be reported in his same manner.

- F. TRAVEL EXPENSES: If the Project includes travel compensation, reimbursement to the ENGINEER for travel, meals, or lodging shall be subject to amounts and limitations specified in the State Comprehensive Travel Regulations," as they are amended from time to time.
- G. FINAL SETTLEMENT: Final settlement shall be made by the CITY to the ENGINEER within thirty (30) days following the completion and approval of all the ENGINEER'S work as set out in Section II and mutual approval of the CITY'S post-work audit report. ENGINEER must submit the final invoice on the project to the CITY within sixty (60) days after the completion of the Project. Invoices submitted after the sixty (60) day time period may not be paid.

SECTION VI: MISCELLANEOUS PROVISIONS

The ENGINEER and the CITY mutually agree as follows:

- A. OWNERSHIP OF ENGINEERING DOCUMENTS: Tracings, plans, specifications, any maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the CITY. Basic design notes and sketches, charts, computations, all original drawings, and other data prepared or obtained under this Agreement shall be made available, upon request, to the CITY without restriction or limitation of their use. CITY may use such items as it determines, however, ENGINEER shall incur no liability for CITY's use of such items other than in connection with the Project. ENGINEER shall have the right to re-use any product(s) of the Services and shall retain its rights in its standard drawing details, designs, specifications, CADD files, databases, computer software and other proprietary information.
- B. DELAYS AND EXTENSIONS: Time is of the essence with this Agreement. Reasonable extensions of promised times shall be mutually arrived at by the parties in the event of unavoidable delays.
- C. PROGRESS: The ENGINEER shall prepare detailed progress schedules for the several phases or items of the work and shall submit daily progress reports based on such schedules to the CITY as set forth in the NEEL-SCHAFFER Proposal dated July 19, 2017. Each report shall provide an identification of work accomplished since the previous report. ENGINEER estimates the work to be completed approximately March 2021.
- D. SUBLetting, ASSIGNMENT, OR TRANSFER: Subletting, assignment, or transfer of all or part of the interest of the ENGINEER is prohibited unless by written consent of the CITY and all agencies participating in the funding of this Agreement.
- E. EMPLOYMENT OF CITY WORKERS: The ENGINEER shall not engage, on a full, part-time, or other basis during the period of the Agreement, any professional or technical personnel who are or have been at any time during the period of the Agreement in the employ of the CITY or the State of Tennessee, except regularly retired employees, without the written consent of the CITY.
- F. COVENANT AGAINST CONTINGENT FEES: The ENGINEER warrants that it has not

employed or retained any company or person other than a bona fide employee working solely for the ENGINEER to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

- G. **ENGINEER'S ENDORSEMENT:** The ENGINEER'S endorsement shall be placed on the final maps of the survey, on preliminary and final construction plans, specifications, estimates, also other engineering data and documents furnished by the ENGINEER to the CITY, as applicable.
- H. **CONTROL:** To the extent applicable, all work by the ENGINEER is to be performed in a manner satisfactory to the CITY and in accordance with the established customs, practices, and procedures of the Tennessee Department of Transportation ("TDOT") and in conformity with the standards adopted by the American Association of State Highway and Transportation Officials and approved by the Secretary of Transportation as provided in Title 23 U.S.C., Sec. 109(b) as amended. The decision of the CITY is to control in all questions regarding locations, type of design, dimension of design, and similar questions. The ENGINEER is to periodically request sufficient conferences to insure that the work is being done by the ENGINEER in a satisfactory manner and that all locations and designs are made in accordance with the wishes of the CITY.
- I. **COST ESTIMATES:** The CITY hereby acknowledges that ENGINEER cannot warrant that opinions or estimates of costs provided by ENGINEER will not vary from actual cost incurred by the CITY.
- J. **EFFECT OF EXISTING DATA ON AMOUNTS PAYABLE:** The ENGINEER hereby certifies that prior to Agreement of the parties to this Agreement on the amounts payable, as expressed in Section V, ENGINEER reviewed, considered, and evaluated existing engineering data, traffic counts, services and projections to be provided by the CITY, other materials and data to be furnished by the CITY, and determined the amounts payable in contemplation of the effect of said data and materials upon its undertaking under this Agreement. Existing engineering data so reviewed, considered, and evaluated includes, but is not necessarily limited to, those set out in Section III.
- K. **EQUIPMENT AND INSTRUMENTATIONS:** It is understood and agreed that if any additional equipment is needed for the project, the CITY must be notified prior to any action. If necessary, said equipment shall be purchased by the CITY in compliance with the CITY'S low bid procedures. Said equipment shall be considered as the CITY'S property unless other means pertaining to the disposition of same are provided elsewhere within this Agreement.

- L. ENVIRONMENTAL PROTECTION REGULATIONS: Under this Agreement the ENGINEER shall give due consideration to and, as applicable, comply with the standards, orders, or requirements set forth under Section 306 of the Clean Air Act (42 U.S.C. 1857 h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- M. ENERGY POLICY AND CONSERVATION ACT: Under this Agreement the ENGINEER shall give due consideration to and, as applicable, comply with the standards, orders, and requirements relating to energy efficiency contained in the TDOT energy conservation plans issued in compliance with the Energy Policy and Conservation Act (P.L. 94-165).
- N. STANDARD OF CARE: The ENGINEER shall assume full responsibility for the quality of the ENGINEER'S work and its conformance with all applicable laws, rules, regulations and orders governing said work. The ENGINEER shall perform its duties in conformance with the reasonable standard of care as applicable to members of its profession within the State of Tennessee practicing under similar conditions. There is no warranty, express or implied, by way of illustration and not limitation, warranty for fitness of particular purpose, or warranties of merchantability.
- O. COPYRIGHTING: The ENGINEER shall be prohibited from copyrighting any papers, reports, forms or other material which is a part of any work under this Agreement without written approval from the CITY. Publication rights to any documents produced are reserved by the CITY.
- P. NOTICES: Any notice required hereunder shall be sufficiently given when sent to the signatories hereunder or to the above-named contact person via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.
- Q. PROHIBITION OF ILLEGAL IMMIGRANTS: The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Agreement to supply goods or services to the state of Tennessee, shall be a material provision of this Agreement, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Agreement.
 - 1) The ENGINEER hereby attests, certifies, warrants, and assures that the ENGINEER shall not knowingly utilize the services of an illegal immigrant in the performance of this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Agreement. The ENGINEER shall reaffirm this attestation, in writing, by submitting to the CITY a completed and signed copy of the document as Attachment C, hereto, semi-annually during the period of this Agreement. Such attestations shall be maintained by the ENGINEER and made available to CITY officials upon request.

- 2) Prior to the use of any subcontractor in the performance of this Agreement, and semi-annually thereafter, during the period of this Agreement, the ENGINEER shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Agreement. Attestations obtained from such subcontractors shall be maintained by the ENGINEER and made available to CITY officials upon request.
- 3) The ENGINEER shall maintain records for all personnel used in the performance of this Agreement. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the CITY.
- 4) The ENGINEER understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit the ENGINEER from contracting with, or submitting an offer, proposal, or bid to contract with the state of Tennessee to supply goods or services for a period of one year after the ENGINEER is discovered to have knowingly used the services of illegal immigrants during the performance of this Agreement.
- 5) For purposes of this Agreement, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Agreement.

R. IRAN DIVESTMENT ACT: It is the intent of the Tennessee General Assembly to fully implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195). The ENGINEER and each party hereto certifies under penalty of perjury, that to the best of its knowledge and belief that each party is not a person included within the list created pursuant to T.C.A. §12-12-106. The ENGINEER shall reaffirm this attestation, in writing, by submitting to the CITY a completed and signed copy of the document as Attachment D, attached hereto.

S. ELECTRONIC FORMAT: ENGINEER deliverables may include database design, electronic computer-aided design and drafting (CADD) files, or other electronic documents or deliverables. Unless specifically directed otherwise by the CITY prior to execution of this Agreement, databases and electronic files shall be developed based on ENGINEER'S standard practice and procedure. ENGINEER shall not be liable for any erroneous information supplied by the CITY or third party that ENGINEER relies upon and incorporates into an electronic file or other documents.

T. **WARRANTY:** Due to the easily alterable nature of electronic media, files, documents, and other deliverables, ENGINEER makes no warranties, either expressed or implied, with respect to the accuracy, completeness, merchantability, or fitness for any particular purpose, including, but not limited to, performance in any software used by the CITY or any other consultant or contractor.

U. **INSURANCE:**

- 1) During the performance of the Services under this Agreement, ENGINEER shall maintain the following minimum insurance:
 - a. General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b. Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c. Worker's Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
 - d. Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 2) ENGINEER shall have endorsed the CITY as an additional insured on the General Liability Insurance, Automobile Liability Insurance, and Worker's Compensation Insurance policies and as a certificate holder on the Professional Liability Insurance policy.
- 3) ENGINEER shall, upon execution of this Agreement, furnish CITY certificates of insurance in a form(s) as is agreeable to the CITY, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to CITY.
- 4) No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. CITY agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as CITY deems adequate to indemnify CITY, ENGINEER, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

V. **ENTIRETY OF THE AGREEMENT**

1. This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with

reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto, except that all terms and conditions contained in a CITY purchase order or other standard or preprinted work authorization issued by the CITY shall be null and void, even if such document is of later date

2. This Agreement includes this document and, by this reference, incorporates the following as if fully set forth herein:
 - a. Attachment A — Scope of Services
 - b. Attachment B — Schedule of Hourly Fees of NEEL-SCHAFFER/Cost Proposal
 - c. Attachment C — Immigration Attestation
 - d. Attachment D — Iran Divestment Act Attestation

ATTACHMENT A — Scope of Services

ATTACHMENT A – SCOPE OF SERVICES

TECHNICAL DESCRIPTION OF BASIC PROFESSIONAL SERVICES RUTHERFORD BLVD ADAPTIVE SIGNAL CONTROL TECHNOLOGY (ASCT) PROJECT

This is an Exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, 2017, between the City of Murfreesboro, Tennessee, (OWNER) and Neel-Schaffer, Inc. (ENGINEER), for providing professional engineering services. The Basic Services of ENGINEER and the responsibility of the OWNER as described in the Agreement are amended or supplemented as indicated below, and the estimated time periods for the completion of certain project phases are as indicated below.

A. PRELIMINARY DESIGN AND NEPA PHASE - As part of the Preliminary Design phase, the ENGINEER shall only undertake those tasks of the design development that is sufficient to identify existing and proposed conditions to the extent that will allow formulation of initial documentation as required by the Tennessee Department of Transportation (TDOT) and the Federal Highway Administration (FHWA). This includes the Systems Engineering Analysis Report (SEAR) and environmental reporting in accordance with the National Environmental Policy Act (NEPA) requirements.

The Basic Services relating to the Preliminary Design Phase and included in the Basic Services fee shall include relevant design and activities, including but not limited to:

Project Management and General Coordination with City Officials
TDOT and FHWA Coordination
Initial Traffic Data Collection
SEAR Documentation
Preliminary Signal Design
Preliminary Pedestrian Accommodation Design
Preliminary Fiber Optic Communication Design
Initial Utility Coordination
Preparation of Draft Utility-Make Ready Information
NEPA Environmental Documentation
ASCT Vendor Selection Assistance
Initial Opinion of Probable Cost

A.1. Project Management and General Coordination with City Officials

This task will consist of general project management, administrative, and accounting activities for the project. It will further comprise the following throughout the life of the project: a project kickoff meeting, project status and invoicing documentation, preparing and distributing meeting minutes, scheduling of review meetings or activities, and discussion of project issues. Project invoicing will occur no more frequently than one per month and be accompanied by a brief synopsis of project activities undertaken during the respective billing period.

A.2. TDOT and FHWA Coordination

This task accounts for the communication and input needed with state and federal officials during procurement of the required preliminary design documentation. Preparation of SEAR and NEPA reporting will require close coordination with TDOT and/or FHWA-Tennessee Division officials (SEAR only). The task includes seeking input and advisory information during the preparation of the required documentation. Coordination will include submission of intermediate information to confirm desired intent, draft documentation, updates and revisions to documentation based on review comments and interaction with involved third-parties.

A.3. Initial Traffic Data Collection

The preliminary design phase includes effort to collect limited traffic data along the project corridor. The project will conduct 24-hour, 7-day bi-directional vehicle counts at strategic locations between key intersections. This information will supplement the necessary existing conditions observations and information required by the SEAR, and provide insight into the preferred type of ASCT operating parameters.

The following identifies planned locations for the ADT counts along Rutherford Blvd:

- Between S Church Street and SE Broad Street
- Between SE Broad Street and Bradyville Pike
- Between Bradyville Pike and John Bragg Hwy/Mercury Blvd
- Between John Bragg Hwy/Mercury Blvd and Greenland Drive/Halls Hill Pike, and
- Between Greenland Drive/Halls Hill Pike and Lascassas Pike

A.4. Development and Compilation of SEAR Documentation

Federal requirements prescribe that a systems engineering analysis, culminating in a SEAR, be conducted for all ITS and ASCT projects using federal transportation funding. The SEAR outlines an orderly process for considering needs, constraints and requirements for a successful implementation and deployment of ASCT systems. The SEAR will follow the FHWA's Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems. The SEAR will include the following elements:

- Concept of Operations (ConsOps)
- System Requirements
- Verification Plan
- Validation

The ENGINEER shall prepare a SEAR for the ASCT for the identified corridor and project limits stated in Task A.5. The SEAR shall contain detail pertaining to the planned ASCT deployment within the selected corridor limits. The ENGINEER shall follow the FHWA Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems draft guidance document, as applicable, in the development of the SEAR.

All stakeholders in the ASCT and its integration and operation of each corridor shall be included in the review and input of the ASCT SEAR. The SEAR shall include the Concept of Operations for the ASCT, an ASCT system requirements section, and a verification and validation section. The SEAR shall identify the needs, goals, objectives and constraints in the Concept of Operations section of the SEAR.

Concept of Operations

The Concept of Operations (ConOps) will be prepared through detailed discussions with OWNER staff, TDOT, FHWA and other key stakeholders, as identified by the OWNER. A one-day workshop will be held in which the stakeholders will document the goals and objectives of the adaptive project, based on the maintaining agency's aspirations and expectations of the respective operation and their available resources. The objectives will be compared and ranked using a structured pair-wise comparison to the FHWA model documents, providing the team with a basis on which to evaluate objectives against constraints.

Prior to the workshop, the ENGINEER will prepare a description of the network and traffic characteristics, and an initial description of limitations of the existing system that should be addressed by adaptive operation, and the data collected in Task A.3. These descriptions will be discussed in the operational objectives workshop, and further defined in the Con Ops workshop. In broad terms, the participants will agree on improvements that are desirable and reasonable in order to overcome the current limitations. The workshop participants will then agree on traffic control strategies that will be applied to pursue the operational objectives on the identified corridor.

The constraints that may be applied to the successful implementation of the project will be identified, such as limitations on budget, staff resources and capabilities, equipment and schedules. These constraints will be used for trade-off analysis, initially in reviewing the objectives and in a later task reviewing the system requirements. The trade-offs will identify those objectives that cannot be met without relaxing those constraints, and alternatively quantify the cost of relaxing the constraints in order to meet all objectives. Once the trade-off analysis is completed, the user needs will be confirmed. These needs will then drive the selection of system requirements.

Operational scenarios will then be prepared that will describe the situations under which adaptive control will be expected to operate, and the manner in which the system would be expected to respond to the described traffic conditions.

As part of this process, an initial procurement plan will be developed. Alternative procurement approaches, suitable for adaptive signal system procurement, that are consistent with OWNER and TDOT policies, procedures and funding source requirements will be considered. A recommendation for a procurement type will be defined during this process by the ENGINEER.

System Requirements

Based on the user needs documented in the ConOps, the ENGINEER will prepare draft system requirements. Each requirement will be directly related to a user need, which will keep the requirements focused on the operational objectives and thus prevent creep outside the approved scope. The user needs will be reviewed to ensure there are no “orphans”, therefore ensuring that each need will be supported by at least one requirement. This will avoid the risk of a fully compliant implementation not meeting the project’s objectives.

The draft requirements will be reviewed by the stakeholders, in which the applicability of each requirement will be confirmed and details missing from the draft will be added. Following the review, and based on subsequent completion of detection technology and budget analysis, the requirements will be finalized. While estimates may not be directly included in the SEAR document, they will be formulated, presented and discussed for moving forward after this stage of the SEAR.

Verification and Validation

Once the ConOps and System Requirements have been defined, the Validation and Verification sections of the SEAR can be developed. These sections shall outline the testing of the software for adherence to the requirements that have been defined in the document. These tests shall be conducted as part of a future task for this project, with the ASCT software vendor.

A validation plan will also be developed, describing the methods to be used to validate that each objective has been met by the implemented system. This plan will identify the method to be used to validate each objective, the timing of each validation test, the responsible parties, the required

budget, an overview of the test procedures to be used, and a proposed schedule for the validation report(s) and other activities measuring the long term goals of the ASCT.

The SEAR shall be submitted once as a draft format for review prior to the production of a final document. In the interest of meeting schedule requirements, ASCT Technical Specifications and project bid documentation, shall begin after the final SEAR has been submitted to TDOT and FHWA for final approval. At that stage, it is not anticipated to have major changes to the SEAR final document.

Deliverables:

- Draft SEAR Document
- Final SEAR Document

A.5. Preliminary Design Plans

Preparation of preliminary plans constitutes development of the initial design of the system within the physical environment. This considers the needs and issues related to the construction of the proposed system elements along the roadway network and modifications to the existing traffic signal control system. Preliminary plans will be prepared in accordance with TDOT Design Guidelines. Preliminary design plans will also follow the guidance presented in the SEAR. Project scope assumes all design and permanent improvements will occur within existing Right-of-Way.

Project Limits

The project area includes the Rutherford Boulevard / Northfield Boulevard corridor extending from SE Broad St to Memorial Blvd. This length of coverage will provide for connection of new FO trunk cable along the project corridor and connecting to existing and planned FO trunk cable. The project area also includes provision to install F.O. trunk cable between the Rutherford Blvd corridor and SE Broad St to allow connectivity with existing city communications cable. To make this link, new fiber optic cable will be installed along Mercury Blvd between Rutherford Blvd and SE Broad St. Signalized intersections along Rutherford Boulevard consist of

– SE Broad St (U.S. 41),	– Greenland Dr/Halls Hill Pk,
– Bradyville Pk (SR-99),	– Gold Valley Dr,
– Haven Dr (future),	– Norris Ln,
– Billy Blvd,	– Lascassas Pk (SR-96),
– Mercury Blvd (U.S. 70S),	– Pitts Ln,
– E Main St,	– N Tennessee Blvd,
– Alumni Dr,	– Highland Ave
– MTSU Blvd,	

Field Inventory and Base Drawing Preparation

This task will conduct necessary field visits and collect information necessary to prepare preliminary design and plan sheet development. Most notably, this includes initial assessment of traffic signal cabinet, traffic signal controller and local traffic signal detection. Plan preparation will utilize existing aerial orthophotography imagery and GIS-based planimetric data available from external parties to establish base mapping. Base map information will be provided by the city of Murfreesboro and other third-party utility sources as available. Also, this task includes acquisition of digital field mapping to document utility pole locations and attachment information. Mobile LIDAR technology will be deployed along project corridors to collect field data. This survey data will be processed to provide digital location of utility poles and estimate heights of pole attachments.

Preliminary Utility Make-Ready Assessment and Documentation

As part of the preliminary plan preparation, review and preparation of utility make-ready information will be undertaken. Preliminary plans will include draft documentation of utility poles and attachment heights of existing lines. Murfreesboro Electric Department (MED) has been identified as a key partner for this process. Preliminary plan preparation will include contributions and review from MED officials. The project scope envisions and will emphasize avoidance and minimizing the need for replacement of existing utility poles for installation of project F.O. cable. Information will be provided in the design plans to document existing pole information and attachment heights and proposed adjustments allowing for attachment of new city-owned fiber optic cable infrastructure.

Preliminary F.O. Trunk Cable and Traffic Signal Upgrade Layout Sheets

Layout sheets will be prepared illustrating corridor and intersection perspectives. Corridor sheets will provide layout of existing and proposed conditions for installation of F.O. trunk cable and related facilities. Intersection plan sheets will be used to show modifications at signalized intersections.

Preliminary Pedestrian Curb Ramp and Crosswalk Modifications (specific intersections)

Improvements to pedestrian accessibility and accommodations are planned at certain signalized study intersections. Modifications will include replacement of curb ramps and select sections of sidewalk. Pedestrian signal and pushbutton equipment will also be installed where deemed appropriate. Project scoping has identified the following Rutherford Blvd/Northfield Blvd intersections: E Main St, Halls Hill Pk, Lascassas Pk and Tennessee Blvd.

Preliminary ASCT Detection Locations

The preliminary plan phase will investigate and determine tentative installation locations for ASCT detection that will help operate the ASCT system. Stop bar and advance detection zones will be shown as estimated based on the SEAR requirements and in compliance with the general detection requirements of many ASCT systems. The detection technology and exact needs of the system detection will be based upon ASCT vendor selection and the criteria set forth by the winning ASCT vendor. The final detection technology and placement will be shown on the final design plans, in coordination with the winning ASCT vendor and their specifications.

Preliminary CCTV Camera Locations

Preliminary plan preparation will include initial investigation into the installation of new CCTV surveillance cameras. Project scope anticipates provision for up to nine CCTV cameras along the corridor. Camera positions may be a combination of mid-block and intersection locations. The project intends to maximize sharing of FO cable splice points and power service feeds with other field instrumentation.

Preliminary plans will be circulated for review and comment: Title Sheet, Present Layout Sheet, Proposed Layout Sheet and Utility Make-Ready information. Because no R.O.W. acquisition is expected, preparation of Property Map and ROW Detail sheets are excluded from the scope. Existing ROW lines will be delineated based on information from planimetric data showing property and parcel lines.

A.6. NEPA Documentation and Submittal

As part of the environmental review process, the project's scope of work includes preparation of NEPA documentation commensurate to the classification assigned to the project. The tasks required for this will follow procedures as outlined in the Tennessee Environmental Procedures Manual (TEPM) as maintained by TDOT. Project officials anticipate that the project will be classified as a "C"-List Categorical Exclusion. Based on this level of environmental documentation, the project

scope excludes preparation of custom technical studies and will not require direct FHWA oversight or review. Formal public engagement or outreach is also not included in development of the environmental document. It is anticipated that the level of coordination will include outreach to traditional third-party stakeholders as identified in the TEPM for purposes of confirming no impact or that outreach is not required based on the project characteristics. Documentation will follow standard template as shown in “Streamlined Documentation Checklist (SDC) for NEPA Programmatic or C-List Categorical Exclusion (CE)”. Submittal of NEPA documentation will follow completion of the SEAR and be prepared in conjunction with and in the latter stage of preliminary plan development. Substantial completion of preliminary plan development is needed to confirm information and inform preparation of the NEPA documentation.

A.7. ASCT Vendor Selection Process

The preliminary design phase will conclude with the solicitation and selection of the preferred ASCT vendor per the procurement method stated in the ConOps. Retention of the preferred vendor prior to development of final plans will allow the ASCT vendor to have a prominent role as advisor and technical resource in final plan and specification development. The ENGINEER will provide assistance in preparing the Vendor Bid Package for solicitation and advising city officials during the review of prospective vendor submittals. The ENGINEER will assist the OWNER in developing evaluation criteria for the selection process. Results of the ASCT Vendor evaluation will be based on the technical requirements and functionality desired of the preferred vendor and per the SEAR. The city of Murfreesboro will be responsible for solicitation, administration and contracting of the preferred vendor.

ASCT VENDOR SELECTION PHASE – The ENGINEER will assist the OWNER during the Selection Phase of the ASCT Vendor. It is anticipated that the selection of the ASCT Vendor will be separate and before the final design plans are created. The ENGINEER will assist the OWNER in the required advertisement/RFQ process, with the cost of such advertising to be borne by the OWNER. The ENGINEER will organize the ASCT Vendor selection meeting and assist in any necessary oral interviews or ASCT Vendor presentations with the Technical Review Committee (TRC) that consists of stakeholders as identified by the OWNER. The ENGINEER will assist the stakeholders in evaluating the ASCT Vendor qualifications packages by providing grading recommendations and criteria as set from the SEAR. Tasks and meetings include

ASCT Vendor RFQ Development Meeting
Addenda / Requests for Information during ASCT Vendor selection process
Assistance to TRC in technical review of the ASCT Vendor RFQ packages
ASCT Vendor Oral Presentations Meeting Coordination and Assistance

Subsequent to the approval of the environmental documentation, the ENGINEER will not proceed with development of construction plans until Notice-to-Proceed with Final Design is received from TDOT.

B. RIGHT-OF-WAY (UTILITIES ONLY) / FINAL DESIGN PHASE - Tasks related to Right-of-Way (Utilities Only) / Final Design Phase will only commence upon receipt of Notice-to-Proceed with Final Design from TDOT officials. The Basic Services relating to the Right-of-Way (Utilities Only) / Final Design Phase and included in the Basic Services fee shall include relevant required design and plans including but not limited to:

TDOT Coordination
Stakeholder Engagement for Final System Design
Final Signal Design
Final Pedestrian Accommodation Design
Final Fiber Optic Communication Design

Final Signal Detection Design
Utility Coordination
Final Documentation of Utility-Make Ready Information
Preliminary and Final Quantity Estimates
Opinion of Probable Cost
Traffic Control Plan
Standard and Special Notes
TMC Assessment and Upgrade Review
Project Special Provisions
Coordination with ASCT Vendor / Vendor Review and Participation
Preparation of Draft Contract Bid Proposal Documents

During the Final Design Phase, ENGINEER shall prepare construction documents. The ENGINEER will deliver to the OWNER a complete set of electronic original drawings, including digital plans and documents, to be properly coordinated, approved, and accepted by the OWNER.

The ENGINEER will prepare Right-of-Way (Utility-Only) and Final Construction Plans in accordance with TDOT Roadway Design Guidelines. Right-of-Way (Utility-Only) plans will be submitted to TDOT for review and comment. Upon incorporation of remarks from TDOT and utility stakeholders, the ENGINEER will submit final Right-of-Way (Utility-Only) plans to TDOT, including the project's preliminary estimate and opinion of probable cost. Based on the type and scope of the ASCT project, the scope of services excludes Right-of-Way services (as no right-of-way acquisition is expected), geotechnical services, right-of-way staking, and preparation of property exhibits and descriptions. The scope also excludes documentation and acquisition of permits. If it is subsequently determined that permits are required, submittal and acquisition of permits will be the responsibility of the OWNER or additional arrangements will be made to allow for assistance by the ENGINEER.

The ENGINEER will assist with the preparation of any Special Provision document. The Special Provision will serve as additional detail and specification information for materials and services to be provided by the project contractor. The ASCT Vendor will provide guidance and input relative to the content and needs in the Special Provisions Document. The Special Provisions document shall also specify any OWNER Traffic Management Center (TMC) equipment, hardware or software that is needed as part of the construction bid per the SEAR and ASCT Vendor requirements.

The ENGINEER will assist the OWNER in coordinating with utility stakeholders, specifically the electric utility pole owner, allowing for installation of fiber optic cable infrastructure to be attached to existing utility poles.

The ENGINEER will assist the OWNER with preparation of project bid documents. This comprises the construction plan set, special provisions, bid tab and contract bid manual documentation. The OWNER will provide standard contract bid provisions and inserts. A draft of the contract bid manual will be presented for review and approval by the OWNER and TDOT during the Final Design Phase.

C. PROJECT BIDDING PHASE – The ENGINEER will assist the OWNER during the Bidding Phase of the project. The ENGINEER will assist the OWNER in the required advertisement for bids, with the cost of such advertising to be borne by the OWNER. The ENGINEER will also attend the bid opening, tabulate the bids and assist the OWNER in evaluating the bids. Tasks include relevant documentation and activities:

Pre-bid Meeting
Addenda / Requests for Information during Bid Process
Bid Opening / Review

Bid Tabulation and Review
TDOT Coordination (TDOT Approval of Bid Documents)

D. CONSTRUCTION ENGINEERING AND INSPECTION PHASE – Per the consulting engineering solicitation, the OWNER anticipates retaining the ENGINEER for construction phase services. This would include construction engineering inspection (CEI) in accordance with TDOT Local Program and TDOT Construction Division guidelines. In addition, these services would include tasks related to fulfillment of recommendations documented in the project SEAR documentation.

NOTE: Final scoping of the PROJECT BIDDING PHASE and the CONSTRUCTION ENGINEERING AND INSPECTION PHASE (Scope Tasks C and D) will occur in advance and in anticipation of authorization of Notice-to-Proceed to Construction by TDOT. Details related to these project phases will be more formally defined at this stage of project development. For purposes of initial engagement and contracting of professional services, the scope of services and related professional fee estimate provides for ENGINEER services from Preliminary Design / NEPA Phase through Right-Of-Way (Utilities Only) / Final Design Phase, including preparation of draft contract bid documents (task items A and B).

ATTACHMENT B — Schedule of Hourly Fees NEEL-SCHAFFER

PROJECT: S.Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION: From SE Broad Street to Memorial Blvd
COUNTY: Rutherford
CONSULTANT: Neel-Schaffer
Prepared By: G.Judy
Date Prepared: 10/23/2017

PE-NEPA Phase	Manhours					
	Project Manager	Senior Engineer	Project Engineer	Engineer	Technician / Designer	Total Per Task
Coordination and Administration						
Project Management & Adminstration	36					36
Status Meetings	24	24	24			72
TDOT/FHWA Coordination	8	12				20
Coordination with NEPA Sub		4				4
Coordination with SEAR Consultant	24		24			48
Sub-Total Coordination/Admin Task	92	40	48	0	0	180
Initial Traffic Data Collection						
Coordinate Data Collection	2		2			4
Review and Assimilate Traffic Data			2	4		6
Sub-Total Traffic Data Task	2	0	4	4	0	10
Develop and Compile SEAR						
Develop Concept of Operations						0
Develop System Requirements						0
Develop Verification Plan						0
Develop Validation Plan						0
Stakeholder Coordination	24	12				36
Prepare Draft SEAR						0
Review SEAR with TDOT/FHWA						0
Prepare Final SEAR	8	4		8		20
Sub-Total SEAR Task	32	16	0	8	0	56
Develop Preliminary Plans						
Field Visits and Signal Equip Inventory			8	24		32
Base Map and Plan Sheet Preparation			16	40		56
Conduct Initial Utility Make Ready Inventory			Inventory Performed by Surveyor			0
Follow-Up Utility Make Ready Site Visits			4	24		28
Draft Make-Ready Recommendations-Tabular	4		20	40		64
Coordination with Utility Owner (MED)	4	4	16			24
Update/Revise Make-Ready Information			12	24		36
Prepare Prelim Make-Ready Plan Sheets	12		24	60		96
Review and Integrate SEAR into Prelim Design	12	4	16	24		56
Prepare Prelim FO Truck Cable Plan Sheets	4		12	24		40
Prepare Prelim Signal Modification Plan Sheets	8		36	72		116
Prelim Assessment of CCTV Cameras	4	4	8	16		32
Prelim Assessment of ASCT Detection	4	4	16	16		40
Review and Evaluate Curb Ramps/Ped Accomodations (4 ints)			8			8
Prepare Prelim Curb Ramp/Sidewalk Modifications (4ints)			24			24
Review Prelim Plans per TDOT Checklist	4	8				12
Internal QA Plan review	4	12	8			24
Address Comments from Plan Review			8	24		32
Sub-Total Prelim Plans Tasks	60	68	204	388	0	720
Prepare Environmental (NEPA) Document						
Contact/Coordination with Technical Agencies						
Prepare Draft NEPA Documentation (Streamline)						
Coordination with TDOT						
Prepare Final NEPA Documentation (Streamline)						
Sub-Total NEPA Tasks						
Request / Receive NTP to Final Plans from TDOT						
ASCT Vendor Selection						
Coordination and Stakeholder Involvement	20					20
Assist with Vendor RFQ Package	12	8				20
Assist with RFI / Addenda Prep	6	8				14
Assist with Review and Selection of Vendor	8	4				12
Sub-Total Vendor Selection Tasks	46	20	0	0	0	66
TOTAL	Hours	232	144	256	400	0 1032
	Mandays	29.00	18.00	32.00	50.00	0.00 129.00
	% of Total Project	22.48%	13.95%	24.81%	38.76%	0.00% 100.00%

PROJECT: S.Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION: From SE Broad Street to Memorial Blvd
COUNTY: Rutherford
CONSULTANT: Neel-Schaffer
Prepared By: G.Judy
Date Prepared: 10/23/2017

PERSONNEL	MANDAY RATE	MANDAYS	DIRECT LABOR COST
PROJECT MANAGER / ENGINEER MANAGER	\$496.00	29.00	\$14,384.00
SR PROJECT ENGINEER / PROFFESIONAL III	\$420.00	18.00	\$7,560.00
PROJECT ENGINEER / PROFFESIONAL II	\$328.00	32.00	\$10,496.00
ENGINEER / PROFFESIONAL I	\$240.00	50.00	\$12,000.00
TECHNICIAN / DESIGNER	\$192.00	0.00	\$0.00
TOTAL NUMBER OF MANDAYS		129.00	\$44,440.00

FEE SUMMARY	
Direct Labor	\$44,440.00
Overhead	156.70%
	\$69,637.48
Net Fee (Direct labor X 2.35 X 11%)	\$11,487.74
Total (Direct Labor+Overhead+Net Fee)	\$125,565.22
Direct Cost (Subs, See Page 2 for Details)	\$103,510.09
TOTAL	\$229,075.31

PE-NEPA PHASE DIRECT EXPENSES

PROJECT:	S Rutherford Blvd ASCT Project (PIN 125505.00)				
DESCRIPTION:	From SE Broad Street to Memorial Blvd				
COUNTY:	Rutherford				
CONSULTANT:	Neel-Schaffer				
Prepared By:	G Judy				
Date Prepared:	10/23/17				
Reproduction Costs:					
	Item Description	Number / Unit	Unit Price	Item Subtotal	Item Total Cost
	Photo-copies	250	\$ 0.20	\$ 50.00	
	Full size bond		\$ 2.00	\$ -	
	Half size bond	500	\$ 1.00	\$ 500.00	
	Full size vellum		\$ -	\$ -	
	Half size vellum		\$ -	\$ -	
	Full size mylar		\$ -	\$ 550.00	
Travel:					
	Number of Trips	No. of Miles/No. of People			
Per Diem (75%)			\$ 22.50 Per Day	\$ -	
Per Diem			\$ 30.00 Per Day	\$ -	
Transportation	15.00 Round Trips	X 25.00 Miles X	\$ 0.47 Per Mile	= \$ 176.25	
Lodging			\$ -	\$ 176.25	
* 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		
	NEPA Sub (Griggs & Maloney)	1	\$ 7,324.03	\$ 7,324.03	
	Traffic Count (7-day ADT)	1	\$ 5,000.00	\$ 5,000.00	
	SEAR Sub (C2S)	1	\$ 63,313.33	\$ 63,313.33	
	Wiser, Inc.	1	\$ 27,146.48	\$ 27,146.48	
			\$ -	\$ -	
			\$ -	\$ -	
			\$ -	\$ 102,783.84	
TOTAL DESIGN DIRECT EXPENSES					\$ 103,510.09

PROJECT: S Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION: From SE Broad Street to Memorial Blvd
COUNTY: Rutherford
CONSULTANT: Neel-Schaffer
Prepared By: G Judy
Date Prepared: 10/23/2017

ROW-FINAL DESIGN		Manhours				
TASK	Project Manager	Senior Engineer	Project Engineer	Engineer	Technician / Designer	Total Per Task
Coordination and Administration						
Project Management & Adminstration	40					40
Status Meetings	20	10	20			50
City Coordination	8	12				20
TDOT Coordination	8	12				20
Utility Coordination	4	4	16			24
ROW Field Review Meeting & Memo	4		12			16
Const Field Review Meeting & Memo	4		12			16
Coordination with SEAR Consultant	24		24			48
Sub-Total Coordination/Admin Task	112	38	84	0	0	234
Develop ROW (Utility Only) / Const Plans						
Coordination with ASCT Vendor	40	40	24			104
Coordination with SEAR Vendor	24		24			48
Draft Final Traffic Signal Upgrades	4		16	90		110
Draft Final FO Trunk Cable Design	8		16	40		64
Draft Final ASCT Vehicle Detection Design	4		4	36		44
Draft Final Utility Make-Ready Documentation			4	24		28
Draft Final Pedestrian Accomodation Design (4 ints)		16		16		32
Draft EPSC Plans (Up to 2 Phases)		8				8
Prepare Preliminary Estimate & Opinion of Prob Cost	4	10	8	12		34
Review ROW Plans per TDOT Checklist		8	4	8		20
Internal QA/QC	8	16	8	16		48
Address Comments from ROW Field Review	4		4	24		32
TMC Assessment and Upgrade Review	12	4		16		32
Draft Comm Assignment & FO Cable Splice Details	4		4	24		32
Draft Special Provisions Document	24	16	100			140
Title Sheet / Index Sheet / General Notes			4	8		12
Special Notes	2		4	4		10
Traffic Control (Typical Only)				4		4
Prepare Draft Final Const Plans			4	8		12
Review Const. Plans per TDOT Checklist	4	8				12
Internal QA/QC		20	4	16		40
Address Comments from Const Field Review	4		4	36		44
Final Construction Plan Assimilation	8	4	8			20
Final Estimate and Opinion of Prob Cost	4	4	12	12		32
Final Special Provisions Document	8		16			24
Sub-Total ROW/Const Plans Task	166	154	272	394	0	986
Develop Bid Manual & Const Documents						
Prepare Draft Contract Manual	2	16	4			22
Submit and Coordinate with TDOT	4	4				8
Address Bid Manual Review Comment		4	8			12
Request / Receive NTP to Construction from TDOT	4	4				8
Sub-Total Bid Manual Task	10	28	12	0	0	50
TOTAL	Hours	288	220	368	394	0
	Mandays	36.00	27.50	46.00	49.25	0.00
	% of Total Project	22.68%	17.32%	28.98%	31.02%	0.00%
						100.00%

PROJECT: S Rutherford Blvd ASCT Project (PIN 125505.00)DESCRIPTION: From SE Broad Street to Memorial BlvdCOUNTY: RutherfordCONSULTANT: Neel-SchafferPrepared By: G JudyDate Prepared: 10/23/2017

PERSONNEL	MANDAY RATE	MANDAYS	DIRECT LABOR COST
PROJECT MANAGER / ENGINEER MANAGER	\$496.00	36.00	\$17,856.00
SR PROJECT ENGINEER / PROFFESIONAL III	\$400.00	27.50	\$11,000.00
PROJECT ENGINEER / PROFFESIONAL II	\$328.00	46.00	\$15,088.00
ENGINEER / PROFFESIONAL I	\$224.00	49.25	\$11,032.00
TECHNICIAN / DESIGNER	\$192.00	0.00	\$0.00
TOTAL NUMBER OF MANDAYS		158.75	\$54,976.00

FEE SUMMARY	
Direct Labor	\$54,976.00
Overhead	156.70%
	\$86,147.39
Net Fee (Direct labor X 2.35 X 11%)	\$14,211.30
Total (Direct Labor+Overhead+Net Fee)	\$155,334.69
Direct Cost (Subs, See Page 4 for Details)	\$27,006.11
TOTAL	\$182,340.80

ROW-FINAL DESIGN DIRECT EXPENSES

PROJECT:	S Rutherford Blvd ASCT Project (PIN 125505.00)					
DESCRIPTION:	From SE Broad Street to Memorial Blvd					
COUNTY:	Rutherford					
CONSULTANT:	Neel-Schaffer					
Prepared By:	G Judy					
Date Prepared:	10/23/17					
					Item Subtotal	Item Total Cost
Reproduction Costs:						
	Item Description	Number / Unit	Unit Price			
	Photo-copies	150	\$ 0.20	\$ 30.00		
	Full size bond		\$ 2.00	\$ -		
	Half size bond	750	\$ 1.00	\$ 750.00		
	Full size vellum			\$ -		
	Half size vellum			\$ -		
	Full size mylar			\$ -	\$ 780.00	
Travel:						
	Number of Trips	No. of Miles/No. of People				
Per Diem (75%)			\$ 22.50 Per Day	\$ -		
Per Diem			\$ 30.00 Per Day			
Transportation	8.00 Round Trips	X 25.00 Miles	X \$ 0.47 Per Mile	= \$ 94.00		
Lodging				\$ -	\$ 94.00	
* 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			
	SEAR Sub (C2S)	1	\$ 26,132.11	\$ 26,132.11		
				\$ -		
				\$ -		
				\$ -		
				\$ -		
				\$ -	\$ 26,132.11	
TOTAL DESIGN DIRECT EXPENSES					\$ 27,006.11	

Proposal Summary
S Rutherford Blvd ASCT Project - PIN 125505.00

Breakdown by Phase*

Phase	Neel-Schaffer	Neel-Schaffer Directs	Wiser (Survey)	G&M (Env. Doc)	QC (Traffic Data)	C2S (SEAR/Support)	Total By Phase
PE-NEPA	\$125,565.22	\$726.25	\$27,146.48	\$7,324.03	\$5,000.00	\$63,313.33	\$229,075.31
ROW/Final	\$155,334.69	\$874.00				\$26,132.11	\$182,340.80
Bidding	\$0.00	\$0.00				\$0.00	\$0.00
CEI Services	\$0.00	\$0.00				\$0.00	\$0.00
						Total Fee	\$411,416.11
						Total Estimated Fee (Rounded)	\$411,420.00

Breakdown by Prime & Sub-Consultants*

Firm	Responsibility	OH Rate	% Net Fee	Prime Fee	Sub Fees
Neel-Schaffer	Prime	156.70%	11.00%	\$282,500.16	
Wiser	Survey	124.34%	10.00%		\$27,146.48
Griggs & Malone	Env. Documents	125.00%	9.00%		\$7,324.03
Quality Counts	Traffic Counts	n/a	n/a		\$5,000.00
C2S	SEAR / ITS	140.58%	10.00%		\$89,445.44
				Sub-Totals	\$282,500.16 \$128,915.95
				Total Fee	\$411,416.11
				Total Estimated Fee (Rounded)	\$411,420.00

* Initial professional services contract provides for tasks thru final plans and NTP for Construction by TDOT. Bidding and CEI phase services will be determined prior to project bidding.

ATTACHMENT C

ATTESTATION REGARDING PERSONNEL USED IN CONTRACT/AGREEMENT PERFORMANCE

SUBJECT CONTRACT/ AGREEMENT NUMBER:	City of Murfreesboro Rutherford Boulevard Adaptive Signal Control Technology (ASCT); Federal Project Number: CM-9311(22) PIN Number: 125505.00
ENGINEER/ CONTRACTOR LEGAL ENTITY NAME:	Neel-Schaffer, Inc.
FEDERAL IDENTIFICATION NUMBER: (or Social Security Number)	64-0671634

The Engineer/ Contractor, identified above, does hereby attest, certify, warrant, and assure that the Engineer/Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract/ Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of the Contract/ Agreement.

SIGNATURE: 

DATE: 11/7/2017

NOTICE: This attestation **MUST** be signed by an individual empowered to contractually bind the Engineer/ Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Engineer/ Contractor.

Compliance and non-compliance procedures will be as specified in the Tennessee Department of Finance and Administration's Policy on "Ensuring Compliance with Federal Immigration Laws by State Contractors and Subcontractors."

ATTACHMENT D

Iran Divestment Act

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not a person included within the list created pursuant to T.C.A. §12-12-106.

Signature:



Date: 11/7/2017

Title:

Tennessee Operations Manager

COUNCIL COMMUNICATION

Meeting Date: 3/27/2025

Item Title: Contract with Dynamic Security for Security Services

Department: Transportation (Transit)

Presented by: Russ Brashear, Assistant Transportation Director

Requested Council Action:

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

Summary

Consider contract with Dynamic Security to provide unarmed security services at the Murfreesboro Transit Center.

Staff Recommendation

Approve Contract with Dynamic Security.

Background Information

The Murfreesboro Transit Center will be substantially complete and ready for administrative personnel in May. Passenger operations will begin later toward the end of June. An Invitation to Bid for security services was released in January. Several bids were received and after reviewing, the lowest responsible bid was Dynamic Security with a regular hourly rate of \$24.05 and an extended hourly rate of \$36.08.

Council Priorities Served

Maintain Public Safety

Safety and security are the top priorities for users of Public Transportation. Having uniformed security onsite will help maintain these priorities.

Fiscal Impacts

The base contract cost, \$98,750, is budgeted in the department operating budget.

Attachments:

Agreement for Transit Center Security Services

Agreement for Transit Center Security Services

This Agreement is entered into and effective as of the _____ by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Dynamic Security, Inc.**, a Corporation of the State of Alabama ("Contractor").

This Agreement consists of the following documents:

- This document
- Invitation to Bid ITB-21-2025, issued January 14, 2025 (the "Solicitation");
- Contractor's Bid Proposal, dated February 3, 2025 ("Contractor's Proposal");
- Exhibit A- Federal and State Required Clauses
- Any properly executed amendments to this Agreement.

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

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the Invitation to Bid and Bid Specifications; and
- Fourth, Exhibit A- Federal and State Required Clauses
- Lastly, Contractor's Proposal.

1. Duties and Responsibilities of Contractor.

Contractor agrees to provide Transit Center Security Services based on "ITB-21-2025 – Transit Center Security Services" listed under the "Specifications" of the Invitation to Bid.

2. Term.

- A. The contract shall be in effect commencing on the Effective Date for one (1) year from the Effective date of the contract with four (4) one-year optional renewals upon mutual written agreement by the Contractor and City with the entire contract not exceeding five (5) years. Renewals shall not be effective until approved by the City Council, if applicable.
- B. Contractor's services may be terminated in whole or in part:
 - 1) Upon 30-day prior notice, for the convenience of the City.
 - 2) For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - 3) For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
 - 4) Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the

right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

3. Price; Compensation; Method of Payment.

The price for the goods to be provided under the Agreement is set forth in the Contractor's Proposal and Bid Form response, which reflects an hourly rate of \$24.05 per hour during regular business hours (Monday-Friday 5:00am to 7:00pm and Saturdays 8:00am-5:00pm), with additional hours outside of regular business hours billed as needed at \$36.08 per hour. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Payment shall be made to Contractor on terms of 100% net 30 days from the date of shipment or at the time of start-up, whichever occurs first. Invoices will be sent to: Accounts Payable at: accountspayable@murfreesborotn.gov.

4. **Tax Exempt.** The City of Murfreesboro is exempt from federal and state taxes. Upon request, the City will provide a sales tax exemption certificate to the awarded firm. Contractors doing business with the City shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations to the City, nor shall any vendor be authorized to use the City's Tax Exemption Number in securing such materials.
5. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
6. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.
7. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
8. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and

upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

9. **Modification.** This contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required. Minor modifications to the contract may be approved by the City Manager.
10. **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.
11. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
12. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
13. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
14. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a

subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City.

15. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
16. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
17. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
18. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee, or the Middle District of Tennessee, as applicable.
19. **Indemnification and Hold Harmless.**
 - a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
 - c. **Copyright, Trademark, Service Mark, or Patent Infringement.**
 - i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim

and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

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

1. Procure for the City the right to continue using the products or services.
2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.

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

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

If to the City of Murfreesboro: If to the Contractor:

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

Dynamic Security, Inc
Attn: Gail Arrington
1102 Woodward Avenue
Muscle Shoals, AL 35661
garrington@dynamicsecurity.org
lhutchison@dynamicsecurity.org

21. Insurance. During the term of this Agreement, Contractor must maintain comprehensive general liability insurance and auto liability insurance both with limits of not less than \$1,000,000 per occurrence, as well workers' compensation insurance as required by the

State of Tennessee. Both the general liability and auto liability policies must be endorsed or written to name as additional insureds the following: "the City of Murfreesboro, Tennessee and its elected officials, officers, employees, representatives, and agents." Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee and its elected officials, officers, employees, representatives, and agents."

22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
23. **Entire Contract.** This contract, invitation to bid, bid specifications, and Contractor's bid response 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.
24. **Federal Certifications and Assurances.** The City of Murfreesboro's purchasing procedures are governed by the State of Tennessee, the City of Murfreesboro, and various federal statutes, executive orders, and regulations, including without limitation: Executive Order 11246 – Equal Employment Opportunity; Executive Order 12612 – Federalism; 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor; Office of Management and Budget Circular A-102; and Federal Transit Administration Circular 4220.1F "Third Party Contracting Requirements." Contractor shall comply with all applicable federal certifications and assurances, including the Federal and State clauses set forth in **Exhibit A**.
25. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
26. **Iran Divestment Act of Tennessee.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
27. **Non-Boycott of Israel.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.
28. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date first set forth above.

{signatures next page}

CITY OF MURFREESBORO

By: _____

Shane McFarland, Mayor

Approved as to form:

Signed by:

Adam F. Tucker

43A2035E51F9401...

Adam Tucker, City Attorney

DYNAMIC SECURITY, INC

Signed by:

Gail Arrington

F763A958E750455...

Gail Arrington, Chief Financial Officer

EXHIBIT A **FEDERAL AND STATE REQUIRED CLAUSES**

The City of Murfreesboro's (the "City," "Owner," or "Agency" as appropriate) purchasing procedures are governed by the State of Tennessee, the City of Murfreesboro, and various Federal laws, executive orders, and regulations, by Office of Management and Budget Circular A-102, Executive Order 12612, Federalism and Federal Transit Administration Circular 4220.1F "Third Party Contracting Requirements". These require, among other things, that purchases (including purchases for fixed assets, materials and supplies, construction, and/or services) utilizing federal grant funds be made according to approved plans and specifications, including the Federal and State clauses set forth below:

Federal Transit Administration Clauses

1. Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

2. Federal Changes

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

3. Civil Rights Laws and Regulations

The following Federal Civil Rights laws and regulations apply to all contracts.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing

regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

4. Disadvantaged Business Enterprise (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

The contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

5. No Government Obligation to Third Parties

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6. Program Fraud and False or Fraudulent Statements and Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

7. Prompt Payment

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

8. Access to Records and Reports

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts

and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

9. 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.

10. Safe Operation of Motor Vehicles

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 Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

11. Termination

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Cause (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency

setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Cause (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for cause. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the failure. In this event, the Agency may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within seven (7) days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

12. Debarment and Suspension

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

13. Notification to FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient

is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

14. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

15. Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

16. Buy America Requirements

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

17. Violation and Breach of Contract

Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Agency's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

Rights and Remedies

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

18. Simplified Acquisition Threshold

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

19. Davis Bacon Act and Copeland Anti-Kickback Act

- a) In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b) The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

“Compliance with the Copeland Anti-Kickback” Act.

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

20. Contract Work Hours and Safety Standards Act

- a) Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b) Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c) Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e) The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

21. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

22. Special DOL EEO Clause

Applies to construction contracts > \$10,000; This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

23. Veterans Hiring Preference

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

24. Bond Requirements

Bid Guarantee. Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Agency. The amount of such guaranty shall be equal to the value or a percentage of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the Agency reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the undersigned bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee. A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.

5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds. A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

25. Cargo Preference Requirements

The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities
- b) pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- c) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- d) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

26. Fly America

- a) Definitions. As used in this clause—
 - 1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - 2) "United States" means the 50 States, the District of Columbia, and outlying areas.
 - 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencys, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. – Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

27. Procurement of Recovered Materials

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

28. Conformance with its National Architecture

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

29. Prohibition on certain telecommunications and video surveillance services or equipment

Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

30. Federal Tax Liability and Recent Felony Convictions

Contractor shall furnish to the City certification that Contractor does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and that Contractor was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

31. Trafficking in Persons

Pursuant to Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g) and section 103 of the TVPA, as amended, 22 U.S.C. § 7102, Contractor agrees that it and its employees that participate in employment with the City, may not: Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect, Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.

32. Substance Abuse

Contractor agrees to (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; (2) Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

Contractor further agrees to comply with: (1) Federal transit laws, specifically 49 U.S.C. § 5331; (2) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655; and (3) Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR Part 40.

Tennessee State Contract Clauses

To the extent they do not conflict with the above FTA Terms, the following clauses also form a part of the Contract Documents and, in the event of a conflict, will control over A101-2017, A201-2017, and any other Supplemental Conditions related thereto, as follows:

33. Conflicts of Interest.

The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Contract.

34. 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 undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

35. Nondiscrimination.

The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

36. Public Accountability.

If the City is subject to Tenn. Code Ann. § 8-4-401 et seq., or if this Contract involves the provision of services to citizens by the City on behalf of the State, the City agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The City shall also display in a prominent place, located near the passageway through which the public enters in order to

receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Tennessee Department of Transportation (Grantor State Agency) shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the City, provide City with any necessary signs.

37. Public Notice.

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the City and/or Contractor in relation to this Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee, Department of Transportation." All notices by the City and/or Contractor in relation to this Contract shall be approved by the State.

38. Records.

The Contractor and any approved subcontractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor and any approved subcontractor, insofar as they relate to work performed or money received under this Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Contractor's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

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

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

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

The Contractor shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

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

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

39. Environmental Tobacco Smoke.

Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn Code Ann. §§39-17-1601 through 1606, the City and 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 City and/or 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.

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

It is the responsibility of the Vender to ensure that all clauses applicable to the Work of this Agreement are adhered to by the Contractor and its Sub -contractors when applicable.

Sec.	Contract Clause	Applicability to Type of Contract
1	Fly America Requirements	When Transportation Paid By FTA Funds
2	Buy America Requirements	Value > 100K for Construction, Goods, Rolling Stock
3	Charter Bus Requirements	Operational Service
4	School Bus Requirements	Operational Service
5	Cargo Preference Requirements	Equipment/Material/Commodities Transported By Ocean
6	Seismic Safety Requirements	New Construction/Additions
7	Special Department of Labor (DOL) Equal Employment Clause	Value > 10K for Construction
8	Energy Conservation Requirements	All
9	Clean Water Requirements	Value > 100K
10	Bus Testing	Rolling Stock Acquisition
11	Pre-Award and Post Delivery Audit Requirements	Rolling Stock Acquisition
12	Lobbying	All
13	Access to Records and Reports	All
14	Federal Changes	All
15	Bonding Requirements	Construction > 100K
16	Clean Air	Value > 100K
17	Recycled Products	Value > 10K In Fiscal Year
18	Davis-Bacon and Copeland Anti-Kickback Acts	Construction > \$2000
19	Contract Work Hours and Safety Standards Act	Construction > \$2000, Rolling Stock, Operational > \$2,500
20	No Government Obligation to Third Parties	All
21	Program Fraud and False or Fraudulent Statements and Related Acts	All
22	Termination	Value > 10K
23	Government-Wide Debarment and Suspension (Non-procurement)	Value > 25K
24	Privacy Act	All
25	Civil Rights Requirements	All
26	ADA Access Requirements	All
27	Breaches and Dispute Resolution	Value > 100K
28	Patent and Rights in Data	Research Projects Only
29	Transit Employee Protective Agreements	Transit Operations
30	Disadvantaged Business Enterprise (DBE)	All
31	Incorporation of FTA Terms	All
32	Drug and Alcohol Testing	Operational Service/Safety Sensitive
33	Transit Vehicle Manufacturer (TVM) Certifications	Rolling Stock, All Vehicle Procurements
34	Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction
35	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
36	Corridor Preservation	Right of Way Development
37	Veterans Employment	Capital Projects
38	Federal Tax Liability and Recent Felony Convictions	All
39	Trafficking in Persons	All

1. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118
41 CFR Part 301-10.131 - 301-10.143

Applicability to Contracts: The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow down Requirements: The Fly America requirements flow down from City of Murfreesboro, TN to first tier Contractors, who are responsible for ensuring that lower tier Contractors and sub-Contractors are in compliance.

Fly America - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)
49 U.S.C. 5323(h)
49 CFR Part 661

Applicability to Contracts: The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow down Requirements: The Buy America requirements flow down from City of Murfreesboro, TN to first tier Contractor, who are responsible for ensuring that lower tier Contractors and sub-Contractors are in compliance.

Buy America - The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94). Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

General waivers for small purchases do not apply to Contractors equipment purchases when Contractor's contract value exceeds \$150,000 in value. Contractor must submit to City of Murfreesboro, TN the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier sub-Contractors.

3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts: The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow down Requirements: The Charter Bus requirements flow down from City of Murfreesboro, TN to first tier service Contractors.

Charter Service Operations - The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

4. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts: The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow down Requirements: The School Bus requirements flow down from City of Murfreesboro, TN to first tier service Contractors.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

5. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 55305

Applicability to Contracts: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow down Requirements: The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Cargoes Procured, Furnished, or Financed by the United States Government - (a) Definition.- In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a

foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.

(b) Minimum Tonnage.-When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) Waivers.-The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by-

- (1) Declaring the existence of an emergency justifying a waiver; and
- (2) Notifying the appropriate agencies of the waiver. (d

) Programs of Other Agencies.-

(1) Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.

(2) The Secretary-

(A) shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;

(B) may direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;

(C) may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and

(D) may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

(e) Security of Government-Impelled Cargo.-

(1) In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.

(2) The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.

(3) In this subsection, the term "high-risk waters" means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110-417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112-213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

6. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq.

49 CFR Part 41

Applicability to Contracts: The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow down Requirements: The Seismic Safety requirements flow down from City of Murfreesboro, TN to first tier Contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all sub-Contractors.

Seismic Safety - The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a sub-Contractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The Contractor will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally -Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

7. SPECIAL DOL EQUAL EMPLOYMENT CLAUSE

41 CFR Part 60

See Section 25 – Contract Clause Civil Rights Requirements

8. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 622

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Flow down Requirements: The Energy Conservation requirements extend to all third party Contractors and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

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. The Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

9. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251 - 1377

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow down Requirements: The Clean Water Act requirements flow down to N City of Murfreesboro, TN CTD third party Contractors and their contracts at every tier, and sub-recipients and their sub-agreements at City of Murfreesboro, TN every tier.

Clean Water - (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The Contractor agrees to report each violation to City of Murfreesboro, TN and understands and agrees that City of Murfreesboro, TN will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

(d) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

10. BUS TESTING

49 U.S.C. 5318(e)

49 U.S.C. 5323(c)

49 CFR Part 665

Applicability to Contracts: The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow down Requirements: The Bus Testing requirements should not flow down, except to the turnkey Contractor as stated in the most current FTA Master Agreement.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- a) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- b) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- c) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- d) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

11. PRE-AWARD AND POST-DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 C.F.R. 661.12

49 CFR Part 663

Applicability to Contracts: These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow down Requirements: These requirements should not flow down, except to the turnkey Contractor as stated in Master Agreement

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

A Buy America certification under this part shall be issued in addition to any certification which may be required by part 661 of this title. Nothing in this part precludes FTA from conducting a Buy America investigation under part 661 of this title "**Pre-Award and Post-Delivery Audit Requirements**" - The Contractor agrees to comply with "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- (1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Firm certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; 2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit a) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or b) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

12. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down Requirements The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to City of Murfreesboro, TN.

13. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36(i)
49 CFR 633.17

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section.

Flow down Requirements FTA does not require the inclusion of these requirements in subcontracts.

Access to Records - The following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide City of Murfreesboro, TN, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>Non State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/ Capital Projects	Yes ¹ Yes ¹	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where City of Murfreesboro, TN or a sub-grantee of City of Murfreesboro, TN in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)

1) through other than competitive bidding, the Contractor shall make available records related to the contract to City of Murfreesboro, TN, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of 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 Contractor agrees to maintain same until City of Murfreesboro, TN, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

(5) FTA does not require the inclusion of these requirements in subcontracts.

(6) Requirements for Access to Records and Reports by Types of Contract

Sources of Authority: ¹ 18 CFR 18.36 (i)

14. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Flow down Requirements: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City of Murfreesboro, TN and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15. BONDING REQUIREMENTS

This section applies only to construction or facility improvement contracts exceeding \$100,000.

16. CLEAN AIR

42 U.S.C. 7401 – 7601(q)

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow down Requirements: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) *et seq.* The Contractor agrees to report each violation to City of Murfreesboro, TN and understands and agrees that City of Murfreesboro, TN, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

17. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

Flow down Requirements: These requirements flow down to all Contractor and sub-Contractor tiers.

Recovered Materials - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

18. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

49 U.S.C. 5333

40 U.S.C. 3141 – 3144

40 U.S.C. 3146 – 3147

18 U.S.C. 874

40 U.S.C. 3145

Applicability to Contracts: The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Flow down Requirements: Applies to third party Contractors and sub-Contractors

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without

subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than Monthly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its sub-Contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

¶ Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit

as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - City of Murfreesboro, TN shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any sub-Contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, City of Murfreesboro, TN may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall

contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to City of Murfreesboro, TN for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3)

(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all sub -Contractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or sub-Contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or sub-Contractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or sub-Contractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or sub-Contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the

program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the

U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The Contractor or sub-Contractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-Contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any sub-Contractor or lower tier sub-Contractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds

for termination of the contract, and for debarment as a Contractor and a sub-Contractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its sub-Contractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the Contractor's Contractor is a person or Contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

¶ No part of this contract shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

¶ The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or sub-Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any sub-Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and sub-Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or sub-Contractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or sub-Contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The Contractor or sub-Contractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the sub-Contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any

sub-Contractor or lower tier sub-Contractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the Contractor or sub-Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or sub-Contractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the Contractor or sub-Contractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number
(a)(1)(ii)(B) 1215-0140
(a)(1)(ii)(C) 1215-0140
(a)(1)(iv) 1215-0140
(a)(3)(i) 1215-0140,
1215-0017
(a)(3)(ii)(A) 1215-0149
(c) 1215-0140,
1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

29 CFR Part 5
40 U.S.C. 3701 et seq.
40 U.S.C. 3702

Applicability to Contracts: The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work” with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12)

Flow down Requirements: Applies to third party Contractors and sub-Contractors.

(1) **Overtime requirements** - No Contractor or sub-Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any sub-Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and sub-Contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - City of Murfreesboro, TN shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or sub-Contractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or sub-Contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The Contractor or sub-Contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-Contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any sub-Contractor or lower tier sub-Contractor with the clauses set forth in paragraphs (1) through (4) of this section.

20. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

(1) City of Murfreesboro, TN and the 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 City of Murfreesboro, TN, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-Contractor who will be subject to its provisions.

21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31
18 U.S.C. 1001
49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

Flow down Requirements: These requirements flow down to Contractors and sub-Contractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts

(1) 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 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.

(2) 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two (2) 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 sub-Contractor who will be subject to the provisions.

22. TERMINATION

**49 CFR Part 18
FTA Circular 4220.1F**

See Section 16 of the Purchase Order Terms & Conditions

23. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

**49 CFR 18
2 CFR 1200
2 CFR 180
Executive Orders 12549 and 12689
31 U.S.C. 6101**

Background and Applicability: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a Contractor, sub-Contractor, supplier, Contractor, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all City of Murfreesboro, TN contracts and subcontracts at any level expected to equal or exceed

\$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, Contractors, and sub-Contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, Contractors, and sub-Contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow down Requirements: These requirements flow down to Contractors and sub-Contractors at all levels.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the Contractor is required to verify that none of the Contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The Contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Firm certifies as follows:

The certification in this clause is a material representation of fact relied upon by City of Murfreesboro, TN. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to City of Murfreesboro, TN, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

24. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts: When City of Murfreesboro, TN maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow down Requirements: The Federal Privacy Act requirements flow down to each third party Contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

25. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

1. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
 - i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135
 - ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996
 - iii. 49 U.S.C. § 5325 (k).
 - iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
2. The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.
3. The following requirements apply to a contract awarded as a result of this solicitation:

- i. Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to City of Murfreesboro, TN programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.
- ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
 - a) Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, California Government Code Sections 12900 - 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.
 - b) Sex – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
 - c) Age - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.

- d) Disabilities - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, "Americans with Disabilities Act: Guidance". In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.

4. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

26. ADA ACCESS REQUIREMENTS

49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

Applicability to Contracts: The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

27. BREACHES AND DISPUTE RESOLUTION

**49 CFR Part 18
FTA Circular 4220.1F**

Applicability to Contracts: All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down Requirements: The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City of Murfreesboro, TN. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City of Murfreesboro, TN. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of City of Murfreesboro, TN shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by City of Murfreesboro, TN, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Murfreesboro, TN and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Murfreesboro, TN is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City of Murfreesboro, TN or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such

action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

28. PATENT AND RIGHTS IN DATA

37 CFR Part 401
49 CFR Parts 18 and 19

Applicability to Contracts: Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow down Requirements: The Patent and Rights in Data requirements apply to all Contractors and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, City of Murfreesboro, TN or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may City of Murfreesboro, TN or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by City of Murfreesboro, TN or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, City of Murfreesboro, TN and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This

subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for City of Murfreesboro, TN or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, City of Murfreesboro, TN and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by City of Murfreesboro, TN or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither CITY OF MURFREESBORO, TN nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by CITY OF MURFREESBORO, TN or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that CITY OF MURFREESBORO, TN or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), CITY OF MURFREESBORO, TN and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, CITY OF MURFREESBORO, TN and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), CITY OF MURFREESBORO, TN and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

29. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

**49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215**

Applicability to Contracts: The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow down Requirements: These provisions are applicable to all contracts and subcontracts at every tier.

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to CITY OF MURFREESBORO, TN 's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U. S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

30. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)

1. CITY OF MURFREESBORO, TN encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor's sub-contractor, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, CITY OF MURFREESBORO, TN must comply, and insure that it's Contractor(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act).
2. DBE Requirements/DBE Obligation:

- i. The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between CITY OF MURFREESBORO, TN and the U.S. DOT, CITY OF MURFREESBORO, TN has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- ii. The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between CITY OF MURFREESBORO, TN and the U.S. DOT, CITY OF MURFREESBORO, TN has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- iii. Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation* and the FTA's Guidance (Docket No. FTA-2006-24063; dated March 23, 2006), CITY OF MURFREESBORO, TN will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.
- iv. The Contractor, and any of its sub-contractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of CITY OF MURFREESBORO, TN contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities to compete for and are awarded contracts. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT- assisted contract. Each subcontract the Contractor signs with a sub-contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- v. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. CITY OF MURFREESBORO, TN and sub- recipients (Contractor and its sub-contractors) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, CITY OF MURFREESBORO, TN and sub-recipients (Contractor and its sub-contractors) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

3. DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-contractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

4. DBE Reporting and Certification

- i. Monthly reporting requires the submittal of a "Monthly Sub-contractor Payment Report", which is used by CITY OF MURFREESBORO, TN to verify payments to DBE and non-DBE sub- contractors. When completing this form, the Contractor must designate DBE sub-contractors by placing an asterisk in front of their name. As Federal law requires that CITY OF MURFREESBORO, TN have proof of payment to a DBE sub-contractor, the sub-contractor must initial the form and verify payment received. Failure to submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.
- ii. In order for the Contractor to submit a properly executed "Monthly Sub-contractor Payment Report," the Contractor must verify that Sub-contractors DBE certification is current at time of payment.

- iii. Certified Contractors can be found at the State of California web site: http://www.dot.ca.gov/hq/bep/find_certified.htm
- 5. DBE Contract Assurance (49 CFR 26.13)
 - i. CITY OF MURFREESBORO, TN does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. CITY OF MURFREESBORO, TN takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. CITY OF MURFREESBORO, TN's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.
 - ii. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - a. Withholding monthly progress payments;
 - b. Assessing sanctions;
 - c. Liquidated damages; and/or
 - d. Disqualifying the Contractor from future bidding as non-responsible.
- 6. DBE Prompt Payment (49 CFR 26.29)
 - i. Not later than ten (10) days after receipt of each progress payment from CITY OF MURFREESBORO, TN, the successful Offeror shall pay to any sub-Contractor performing any work, the respective amounts allowed to the successful Offeror for work performed by the sub-Contractor, to the extent of each sub-Contractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Offerors receipt of released retention from CITY OF MURFREESBORO, TN upon completion of the project as defined in California Public Contract Code section 7107 the successful Offeror shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by CITY OF MURFREESBORO, TN, the successful Offeror shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-Contractors.
 - ii. Failure to comply with these provisions or delay in payment without prior written approval from CITY OF MURFREESBORO, TN will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

31. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

Flow Down Requirements The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY OF MURFREESBORO, TN requests which would cause CITY OF MURFREESBORO, TN to be in violation of the FTA terms and conditions.

32. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Part 655

49 CFR Part 382

Applicability to Contracts: The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow down Requirements: Anyone who performs a safety-sensitive function for the recipient or sub- recipient is required to comply with 49 CFR 655 as amended by MAP-21, with certain exceptions for contracts involving maintenance services. Maintenance CONTRACTORs for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance sub-Contractors.

Drug and Alcohol Testing: The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 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 State Oversight Agency of California, or CITY OF MURFREESBORO, TN , to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to CITY OF MURFREESBORO, TN . 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.

33. TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATIONS

49 CFR Part 26

49 CFR §26.49 Contractor must submit to CITY OF MURFREESBORO, TN a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49. CITY OF MURFREESBORO, TN may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal- setting procedures.

34. METRIC REQUIREMENTS

15 U.S.C. §§205

2007-Pub. L. 110-69

As required by U.S. DOT or FTA, CITY OF MURFREESBORO, TN agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the CITY OF MURFREESBORO, TN agrees to accept products and services with dimensions expressed in the metric system of measurement.

35. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS

23 U.S.C. Section 517(d)
23 U.S.C. §502

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

36. CORRIDOR PRESERVATION

49 U.S.C. 5323(q)

The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

37. VETERANS EMPLOYMENT

49 U.S.C. 5325 (k)

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

a. To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

b. Contractor also assures that its sub-contractor will:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

38. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) *Transactions Prohibited.* (i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

39. TRAFFICKING IN PERSONS

22 U.S.C. § 7104(g)

(g) Termination of certain grants, contracts and cooperative agreements. The President shall ensure that any grant, contract, or cooperative agreement provided or entered into by a Federal department or agency under which funds are to be provided to a private entity, in whole or in part, shall include a condition that authorizes the department or agency to terminate the grant, contract, or cooperative agreement, or take any of the other remedial actions authorized under section 7104b(c) of this title, without penalty, if the grantee or any subgrantee, or the contractor or any subcontractor, engages in, or uses labor recruiters, brokers, or other agents who engage in—

(1) severe forms of trafficking in persons;

- (2) the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect;
- (3) the use of forced labor in the performance of the grant, contract, or cooperative agreement; or
- (4) acts that directly support or advance trafficking in persons, including the following acts:
 - (A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.
 - (B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless—
 - (i) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, contract, or cooperative agreement; or
 - (ii) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action.
 - (C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.
 - (D) Charging recruited employees placement or recruitment fees.
 - (E) Providing or arranging housing that fails to meet the host country housing and safety standards.

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Murfreesboro Major Transportation Plan Update – Task Order #11

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

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

Summary

Consider Task Order #11 with Neel-Schaffer, Inc. for updating the Major Transportation Plan.

Staff Recommendation

Approve task order with Neel-Schaffer, Inc.

Background Information

In 2018, the City Council approved the 2040 Major Transportation Plan, which evaluated current and future transportation conditions and outlined alternative roadways and facilities based on the 2035 Comprehensive study. These were organized into short-term, midterm, and long-term phases, based on analysis conducted using 2014 highway network data.

Given the City's significant growth over the past seven years, alongside a recent update to the land use plan and the uncertainty surrounding the impact of TDOT's Choice Lane Project, staff has recognized the need to update the Travel Demand Model. This update will integrate 2024 data and project a forecast year of 2050, ensuring the City's transportation infrastructure meets its evolving needs and anticipated growth. This will allow the City to address both immediate requirements and long-term growth with strategic foresight and efficiency.

Council Priorities Served

Expand infrastructure

Developing an updated plan with current data allows the City to develop an accurate needs assessment and allow staff to prioritize infrastructure projects.

Fiscal Impact

This expenditure, \$194,610, is funded by State Street Aid.

Attachments

1. Task Order #11
2. Master Services Agreement

This is Task Order No. 11,
Consisting of 8 pages

TASK ORDER

In accordance with the Master Agreement between the City of Murfreesboro (“CITY”) and Neel-Schaffer, Inc. (“NEEL-SCHAFFER”) for Professional Services dated December 17th, 2021 (“Agreement”), CITY hereby authorizes NEEL-SCHAFFER to perform services as specified in this Task Order.

Specific Project Data

1. Project Name: **Murfreesboro Transportation Plan Update**
2. Project Number: **N/A**
3. Site Location: **City-wide**
4. Description of Project: **The City of Murfreesboro (City) desires to update the Travel Demand Model that was created for the City nearly a decade ago in order to more appropriately forecast future demand. An update to the base model with 2024 data and a forecast year of 2050 will be used. Based on the analysis performed, new alternative roadways and transportation facilities will be considered in phases with short-term, mid-term, and long-term horizons. Beyond these technical parameters, qualitative parameters such as reasonableness of change in travel patterns will also be considered.**
5. Scope of Work: **See Exhibit A for more information**
6. Schedule: **Completion of the plan will be 3/31/2026. However, Neel-Schaffer will work with Ragan Smith and Kimley-Horn to provide the updated Travel Demand Model once it is available for their work on the Cherry Lane Master Plan.**
7. Compensation and Method of Payment and Pricing Schedule: **\$194,610.00 – Hourly-Not-To-Exceed, per Schedule in Exhibit B**
8. CITY Representative and Contact Information:
**Jim Kerr, Transportation Director
111 West Vine Street, Murfreesboro, TN 37130
615.893.6441**
9. This Task Order is subject to the Contract and special provisions as follows, if any: **N/A**
10. CITY Responsibilities and Services, if different from section 2.2: **N/A**
11. Subcontractors authorized by CITY: **N/A**
12. Documents Incorporated By Reference: **N/A**

NEEL-SCHAFFER is authorized to begin performance upon its receipt of a copy of this Task Order signed by CITY.

The Effective Date of this Task Order is _____, _____.

ISSUED AND AUTHORIZED BY:

CITY OF MURFREESBORO

Title: Mayor

Date Signed: _____

ACCEPTED AND AGREED TO BY:

NEEL-SCHAFFER, INC.

Title: Vice President/Engineer Manager

Date Signed: 03/12/2025

Signed by:
APPROVED AS TO FORM

Adam J. Tucker, City Attorney

Exhibit A

Transportation Plan City of Murfreesboro, TN

Scope of Services

The CONSULTANT shall provide an update to the comprehensive Transportation Plan for the City of Murfreesboro, Tennessee. The following lists the major outcomes and tasks:

1. Project Management and Project Meetings
2. Update Murfreesboro Travel Demand Model to the year 2050
3. Develop a long-range transportation plan
4. Project Specific Studies

The CONSULTANT shall complete the following specific tasks:

Task 1 - Project Management and Project Meetings

1.1 Project Management

The CONSULTANT shall perform the following project management tasks:

- Develop and monitor key milestone and critical path schedules.
- Prepare and submit monthly progress reports and invoices to the City of Murfreesboro.

1.2 Project Meetings

The CONSULTANT shall schedule, coordinate, conduct, and provide meeting minutes for the following project meetings:

- Project kick-off meeting with the study team and other attendees.
- Three project status conference calls; and
- Up to two (2) Stakeholder meetings to include the City of Murfreesboro

Schedule: to be ongoing through completion 3/31/2026

Task 2 – Update Murfreesboro Travel Demand Model

The CONSULTANT shall update the existing Travel Demand Model for the city of Murfreesboro. The base year model will be year 2024. Existing and forecast years for the model will be 2024 and 2050.

2.1 Data Collection

The CONSULTANT shall review and utilize available data from the city of Murfreesboro. Available data shall include but is not limited to GIS maps, aerial photography, previous roadway plans, pavement inventory, crash data, traffic counts, master plans, environmental documents, and future development. Available TDOT and local agency traffic counts will be gathered. New traffic data will not be collected.

2.2 Review and Revise Traffic Analysis Zone Boundaries

Exhibit A

The CONSULTANT will review the existing Traffic Analysis Zones (TAZ) and revise them based on based Census 2020 geography.

2.3 Revise Network to Year 2024

The CONSULTANT shall use the existing model network to update and develop a complete set of year 2024 highway network links accurately depicting the roadway system at a level of detail that is consistent with the density of the Study Area land use and roadway system in the Study Area.

2.4 Develop Year 2024 Demographic Data

The CONSULTANT shall be responsible for providing/compiling demographic data by TAZ in the Study Area. 2024 datasets will be developed using Census Datasets for Households and population and InfoUSA/Data Axe datasets for employment. InfoUSA dataset will be geocoded and adjusted as necessary to develop the 2024 TAZ level socio-economic data.

2.5 Refined Base Year Model

The base year travel-demand forecasting model components, developed in the previous tasks, will be calibrated until predicted travel aligns with observed travel demand levels in the region. Each individual modeling component, as well as the final network assignments, will be validated against known data sources. A critical part of this validation process is to demonstrate the sensitivity of the models to incremental changes in system conditions.

2.6 Preparation of Technical Memorandum 1

The procedures and results of Task 2.0 will be summarized in a technical memorandum and will be available for the city review and approval.

Schedule: by 9/30/2025

Task 3 – Develop Long Range Transportation Plan

Following calibration of the base year model, future travel will be projected for the Existing plus Committed (E+C) Network for the horizon year of 2050. Based on the E+C network analysis, roadway network alternatives will be recommended by the CONSULTANT and evaluated by a team effort of the CONSULTANT and the study team. Finally, a recommended long-range staged improvement plan will be developed.

3.1 Forecast Future Socio-demographic Data

Input from city staff, updated land use plan and available forecast data from other data sources such as Woods & Poole (control totals) and the GNRC Travel Demand Model Data will be used in forecasting the socio-economic data for the Study Area. The CONSULTANT will then analyze each TAZ for potential growth and then classify into specific growth rate patterns unique to the Study Area. Based on this analysis, the transportation planning variables used in the base year model will be developed for the forecast year.

3.2 Develop E+C Network

The first step in identification of roadway needs for the year 2050 is the development of the Existing plus Committed (E+C) Network. Committed network includes roadways which are committed for construction by the City of Murfreesboro, TDOT and other entities in the Study Area. The

Exhibit A

CONSULTANT shall develop the E+C network which contains information on the location and physical characteristics of existing and committed roadway improvements for the Study Area. The source of the information will be developed in coordination with the city of Murfreesboro and TDOT. The E+C network will be coded for analysis in the forecast model such that the analysis can be independently provided for the existing network as one set of projections as well as for the E+C network as a second set of projections.

Schedule: by 11/30/2025

3.3 Assign 2050 Traffic to E+C Network

The 2050 vehicle trips will be assigned to the E+C network to determine the future roadway needs. Sensitivity analysis of model results will be conducted via reasonableness checks of future traffic volumes in relation to E+C network, and modeling assumptions will be modified as needed. Finally, future roadway link Volume over Capacity (V/C) ratios will be developed to identify sections or locations that are projected to operate at unacceptable levels of service.

3.4 Formulate Alternative Networks

Based on the analysis performed in Task 3.3, new alternative roadways and transportation facilities will be considered. These alternatives will be analyzed based on regional vehicles miles traveled (VMT), and regional average network speed as well as VMT and speed by functional classification. Beyond these technical parameters, the qualitative parameters such as reasonableness of change in travel patterns will be considered.

3.5 Assign Future 2050 Traffic to Alternative Networks

Traffic assignments will be made to the alternative networks. The goal is to find a combination of alternatives that attempts to maximize the return on transportation investment.

3.6 Alternative Network Evaluation

The CONSULTANT will evaluate alternative networks by preparing a matrix that compares each alternative using quantitative measures based on functional classification in relation to traffic flow quality, arterial spacing, traffic operations, as well as comparability with existing and planned land use.

Based on this analysis using a matrix with quantitative measures which compares alternatives, a preferred 2050 network will be recommended by the CONSULTANT for review by the Study Team. After review and approval, the long-range transportation analysis for the Year 2050 will be finalized into the Recommended Plan Network.

3.7 Develop Staged Improvement Plan

The Recommended Plan Network and its elements will be analyzed and prioritized in terms of need for the following intervals:

Short-term: 2025-2030

Medium-term: 2031-2040

Long-term: 2041-2050

3.8 Development of Implementation Cost

The CONSULTANT will provide an order of magnitude estimates for implementing the Recommended Plan Network and its component elements. These estimates (in year 2024 constant dollars) will be based on typical cost as determined by the experience and documentation provided by the CONSULTANT and

Exhibit A

reviewed by the Study Team.

3.9 Preparation of Plan Report

A draft report will be prepared and submitted by the CONSULTANT to the Study Team for review and approval. Following the approval, a final report will be prepared and submitted in electronic format.

Schedule: by 3/31/2026

Task 4 – Project Specific Studies

4.1 Cherry Lane Master Plan Study

The CONSULTANT will work with city staff to identify the proposed master plan elements in terms of proposed land use plans and roadway network improvements to analyze using the TDM developed under Tasks 2 and 3. The results of this initial analysis will be used to develop alternative roadway improvements within the study area including the interchange options of Cherry Lane with I-24 that will meet the projected demand. Impacts of a potential new interchange and conversely a no-build option will be investigated in the analysis. The completed TDM model will be shared with Ragan Smith and Kimley-Horn for their work on the Cherry Lane Master Plan Study once Task 2 (above) is finalized.

Schedule: by 11/30/2025

EXHIBIT B
TRANSPORTATION PL
City of Murfreesboro,
Fee Estimate

Totals	16	44	102	240	96	72	552	16	1138
Rates	\$285.00	\$250.00	\$225.00	\$225.00	\$175.00	\$150.00	\$125.00	\$100.00	
Labor Cost	\$4,560.00	\$11,000.00	\$22,950.00	\$54,000.00	\$16,800.00	\$10,800.00	\$69,000.00	\$1,600.00	\$190,710.00

Direct Expenses

Direct Expenses

Employment Data	\$	2,700.00
Woods & Poole	\$	500.00
Mileage	\$	700.00

Direct Expenses

\$ 3,900.00

Total Not To Exceed Fee \$ 194,610.00

NEEL-SCHAFFER, INC.
2025 RATE SCHEDULE FOR PROFESSIONAL SERVICES

EMPLOYEE CLASSIFICATION	POSITION	HOURLY RATE
P-8, P-9	Officer, Senior Engineer Manager or Survey Manager	\$285.00
P-7	Engineer Manager/Professional IV	\$250.00
P-6	Senior Project Manager/Professional III	\$225.00
P-5	Project Manager/Professional II	\$175.00
P-4	Professional I	\$150.00
P-1, P-2, P-3	Professional Intern	\$125.00
T-6	Senior Certified Engineering Technician	\$165.00
T-5	Certified Engineering Technician/Supervisory Technician	\$150.00
T-4	Technician IV/ Inspector IV/ Surveyor IV	\$130.00
T-3	Technician III/Inspector III//Survey Crew Chief	\$110.00
T-2	Technician II/Inspector II/Survey Instrument Person	\$90.00
T-1	Technician I/Inspector I/Survey Assistant	\$80.00
T-1	Student Intern	\$45.00
A-4	Senior Administrative	\$100.00
A-3	Senior Clerical	\$90.00
A-2	Clerical	\$70.00
A-1	Assistant Clerical	\$60.00
	Three-Member Survey Party	\$250.00
	Two-Member Survey Party	\$185.00
	One-Member Survey Party	\$140.00

“Professional” positions include engineer, architect, geologist, scientist, landscape architect, and planner.

“Technician” positions include engineering, soil, architecture, planning, GIS and information technology.

REIMBURSABLE EXPENSE SCHEDULE

EXPENSE	COST
Vehicle Mileage	\$0.70/mile
Traffic Counter/Video Monitor	\$10.00/day

All other expenses, including contract reproduction/printing, travel and subsistence, parking, communications, equipment rental, postage and overnight mail, and supplies will be reimbursed at actual cost.
 Use State or Federal Rates for mileage, travel and subsistence where necessary and/or required.

The hourly rates as shown on this rate schedule shall be subject to equitable adjustment on an annual basis due to increased costs and the rate of inflation.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT, entered into as of this 16th day of December, 2021, between the City of Murfreesboro, Tennessee (“CITY”) and Neel-Schaffer, Inc., a Mississippi Corporation, with its main office at 125 South Congress Street, Jackson, Mississippi 39201 (“NEEL-SCHAFFER”). The Agreement shall take effect no earlier than January 1, 2022.

From time to time CITY intends to engage NEEL-SCHAFFER to provide professional engineering and planning services. This Agreement sets forth the general terms and conditions which shall govern the relationships and performance of CITY and NEEL-SCHAFFER, if and only if one or more Task Orders are agreed to under this Agreement. Each engagement will be documented by a Task Order. NEEL-SCHAFFER has a thorough knowledge of professional engineering and planning and is qualified to render such professional services.

CITY and NEEL-SCHAFFER in consideration of their mutual covenants as set forth herein agree as follows:

A. BASIC SERVICES

- i. The services to be provided by NEEL-SCHAFFER may include professional consultation, project management, studies, engineering, planning and other related services as authorized by CITY as provided herein. Services for each Specific Project will be detailed in a duly executed Task Order. Each Task Order will indicate the specific tasks and functions to be performed by CITY and deliverables to be provided. The general format of a Task Order is shown in Exhibit A.
- ii. This Agreement is not a commitment by CITY to NEEL-SCHAFFER to issue any Task Orders.
- iii. CITY and NEEL-SCHAFFER shall agree on the scope, time for performance, and fee terms within each Task Order. NEEL-SCHAFFER will commence performance as set forth and executed in the Task Order.

B. TERM

- i. This Agreement shall be effective and applicable to Task Orders issued hereunder for an unlimited period as mutually agreed upon by both parties. The primary Agreement or individual Task Orders may be terminated with advanced written notice.
- ii. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, NEEL-SCHAFFER will perform services and provide deliverables within a reasonable time. The time for a party’s performance will be extended to the extent performance was delayed by causes beyond the control and without the fault of the party seeking the extension. That party shall promptly notify the other party in writing when it is being delayed.
- iii. If CITY fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase under a Task Order, or if NEEL-SCHAFFER’s services are delayed through no fault of NEEL-SCHAFFER, NEEL-SCHAFFER’s time for performance shall be extended accordingly.
- iv. If NEEL-SCHAFFER’s services under a Task Order are delayed or suspended in whole or in part by CITY, or if NEEL-SCHAFFER’s services under a Task Order are extended by a Contractor’s actions or inactions for more than 90 days through no fault of NEEL-SCHAFFER, NEEL-SCHAFFER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect incremental costs incurred by NEEL-SCHAFFER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under the Task Order has been revised.

C. CONTENTS

- i. Exhibit A – Task Order Template
- ii. Exhibit B – Hourly Classification Schedule
- iii. Exhibit C – General Terms & Conditions

Signature Page

ISSUED AND AUTHORIZED BY:

CITY OF MURFREESBORO

DocuSigned by:



AZFB6A4BF7CD74E7...

Title: Mayor

Date Signed: 12/17/2021

ACCEPTED AND AGREED TO BY:

NEEL-SCHAFFER, INC.



Title: Engineer Manager-Vice President

Date Signed: December 14th, 2021

APPROVED AS TO FORM:

CITY OF MURFREESBORO

DocuSigned by:



43A2035E51F9401...

Title: City Attorney

City Attorney

Date Signed: 12/16/2021

EXHIBIT A

TASK ORDER

This is Task Order No. _____,
Consisting of _____ pages

In accordance with the Master Agreement between the City of Murfreesboro (“CITY”) and Neel-Schaffer, Inc. (“NEEL-SCHAFFER”) for Professional Services dated _____, (“Agreement”), CITY hereby authorizes NEEL-SCHAFFER to perform services as specified in this Task Order.

Specific Project Data

1. Project Name: TBD
2. Project Number:
3. Site Location:
4. Description of Project:
5. Scope of Work:
6. Schedule:
7. Compensation and Method of Payment and Pricing Schedule: Hourly, per Schedule in Exhibit B
8. CITY Representative and Contact Information:
Jim Kerr, Transportation Director
111 West Vine Street, Murfreesboro, TN 37130
615.893.6441
9. This Task Order is subject to the Contract and special provisions as follows, if any: N/A
10. CITY Responsibilities and Services, if different from section 2.2: N/A
11. Subcontractors authorized by CITY: N/A
12. Documents Incorporated By Reference: N/A

NEEL-SCHAFFER is authorized to begin performance upon its receipt of a copy of this Task Order signed by CITY.

The Effective Date of this Task Order is _____, _____.

ISSUED AND AUTHORIZED BY:

CITY OF MURFREESBORO

Title: _____

Date Signed: _____

ACCEPTED AND AGREED TO BY:

NEEL-SCHAFFER, INC.

Title: _____

Date Signed: _____

EXHIBIT B
NEEL-SCHAFFER, INC.
2022 SPECIAL RATE SCHEDULE FOR PROFESSIONAL SERVICES
FOR CITY OF MURFREESBORO, TENNESSEE

Employee Classification	Position Title	Hourly Rate
P-8	Senior Manager / Vice President	\$225.00
P-7	Engineer Manager/Professional IV/Survey Manager	\$200.00
P-6	Senior Project Manager/Assistant Engineer Manager/Professional III	\$170.00
P-5	Project Manager/Professional II	\$150.00
P-4	Professional I	\$125.00
P-1,P-2,P-3	Professional Intern III	\$102.00
T-6	Senior Certified Engineering Technician/Client Manager	\$140.00
T-5	Certified Engineering Technician/Supervisory Technician	\$125.00
T-4	Technician IV/Inspector IV/Surveyor IV *	\$120.00
T-3	Technician III/Inspector III/Survey Crew Chief *	\$100.00
T-2	Technician II/Inspector II/Survey Instrument Person *	\$95.00
T-1	Technician I/Inspector I/Survey Assistant *	\$85.00
T-1	Student Intern *	\$60.00
A-4	Senior Administrative	\$75.00
A-2,A-3	Clerical *	\$60.00
A-1	Assistant Clerical *	\$50.00

* Hourly rates indicated for these non-exempt classifications apply to regular time. If overtime work is required to meet client's schedule, Neel-Schaffer reserves the right to negotiate overtime rates.

"Professional" positions include engineer, architect, geologist, scientist, landscape architect, and planner.

"Technician" positions include engineering, soil, architecture, planning, GIS and information technology.

REIMBURSABLE EXPENSE SCHEDULE

EXPENSE	COST
Vehicle Mileage	\$0.47/mile
In-House Printing (8 1/2" x 11")	\$0.20/copy
In-House Printing (11" x 17")	\$1.00/copy

All other expenses, including outside reproduction/printing, travel and subsistence, parking, communications, equipment rental, postage and overnight mail, and supplies will be reimbursed at actual cost.
 Use State or Federal Rates for mileage, travel and subsistence where necessary and/or required.

Neel-Schaffer reserve ability to adjust hourly classification rates on an annual basis on or after respective contract anniversary date to then prevailing rates.

EXHIBIT C
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

1. **Relationship between Consultant and Client.** Neel Schaffer, Inc. (“Consultant”) shall serve as the Client's professional consultant in those phases of the Project to which this Agreement applies. 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. Consultant shall not be considered to be the agent or fiduciary of the Client.
2. **Responsibility of Consultant.** Consultant will perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions (the “Standard of Care”). No other representation, warranty or guarantee, express or implied, is included or intended in this Agreement or in any report, opinion, document, or otherwise.
3. **Responsibility of the Client.** Client shall provide all information and criteria as to its requirements for the Project, including budgetary limitations. Client shall arrange for Consultant to enter upon public and private property and obtain all necessary approvals required from all governmental authorities having jurisdiction over the Project. Client shall give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services.

The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that Consultant may take measures to minimize the consequences of such a defect. Should legal liability for the defects exist, failure by the Client to notify the Consultant shall relieve the Consultant of any liability for costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.
4. **Construction Phase Services.** If Consultant's scope of services includes the observation and monitoring of work performed by Client's separate contractors, Consultant shall provide personnel to observe and monitor the work in accordance with the Standard of Care in order to ascertain that it is being performed, in general, in accordance with the plans and specifications. Consultant shall not supervise, direct, or have control over the contractor's work. Consultant shall not have authority over or responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the contractor. Consultant does not guarantee the performance of the construction contract by the contractor and does not assume responsibility for the contractor's failure to furnish and perform its work in accordance with the plans and specifications.

In the event Consultant's scope of services does not include the observation and monitoring of work performed by Client's separate contractors, the Client assumes all responsibility for construction observation, and Client waives any claims against Consultant arising therefrom.
5. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority on its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.
6. **Ownership of Documents.** All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form prepared by Consultant are instruments of Consultant's service that shall remain Consultant's property. The Client agrees not to use Consultant generated documents for projects other than the project for which the documents were prepared by Consultant, or for future modifications to the Project, without Consultant's express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Consultant will be at the Client's sole risk and without liability to Consultant or its employees, subsidiaries, and subconsultants.
7. **Opinion of Costs.** When required as a part of its scope of services, Consultant will furnish opinions or estimates of construction cost on the basis of Consultant's experience and qualifications, but Consultant does not guarantee the accuracy of such estimates. The parties recognize that Consultant has no control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices.
8. **Changes or Delays.** In the event new developments or circumstances beyond the control of Consultant require a change in the scope of services or schedule, Consultant shall be entitled to an equitable adjustment to the fee and/or schedule. Such events include, but are not limited to, unreasonable delays caused by Client's failure to provide specified direction or information, delays caused by Client's other contractors or consultants, or if Consultant's failure to perform is due to any act of God, labor shortage, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of Consultant.

EXHIBIT C
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

9. **Suspension of Services.** Client may, at any time, by written notice, suspend further services by Consultant. Upon receipt of such notice, Consultant shall take all reasonable steps to mitigate costs allocable to the suspended services. Client, however, shall pay all reasonable and necessary costs associated with such suspension including the cost of assembling documents, personnel and equipment, rescheduling or reassignment costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension. Consultant will not be obligated to provide the same personnel in the event the period of any suspension exceeds 30 days.

10. **Termination.** This Agreement may be terminated by either party upon 30 days' written to the other party. Upon such termination, Client shall pay Consultant for all services performed up to the date of termination. If Client is the terminating party, Client shall pay Consultant all reasonable cost and expenses incurred by Consultant in effecting the termination, including but not limited to non-cancellable commitments and demobilization costs, if any.

11. **Indemnification.** Consultant shall indemnify and hold harmless Client from and against those damages and costs (including reasonable attorneys' fees) that Client incurs as a result of third party claims for personal injury or property damage to the extent caused by the negligent acts, errors or omissions of Consultant.

To the fullest extent permitted by law, Client shall indemnify and hold harmless Consultant from and against those damages and costs (including reasonable attorneys' fees) that Consultant incurs as a result of third party claims for personal injury or property damage to the extent caused by the negligent acts, errors or omissions of Client.

12. **Legal Proceedings.** In the event Consultant or its employees are required by Client to provide testimony, answer interrogatories, produce documents or otherwise provide information in relation to any litigation, arbitration, proceeding or other inquiry arising out of Consultant's services, where Consultant is not a party to such proceeding, Client will compensate Consultant for its services and reimburse Consultant for all related direct costs incurred in connection with providing such testimony or information. This provision shall not apply in the event Client engages Consultant to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.

13. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written consent of the other party.

14. **Insurance.** Consultant agrees to maintain the following insurance coverage with the following limits of insurance during the performance of Consultant's work hereunder:

- (a) Commercial General Liability insurance with standard ISO coverage and available limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate;
- (b) Automobile Liability insurance with standard ISO coverage and available combined single limits of \$1,000,000 per accident;
- (c) Worker's 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
- (d) Professional Liability insurance covering Consultant's negligent acts, errors, or omissions in the performance of professional services with available limits of \$1,000,000 per claim and annual aggregate.

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

15. **Information Provided by the Client.** Consultant shall be entitled to rely upon, without liability, the accuracy and completeness of any and all information provided by Client, without the obligation of independent verification.

16. **Consequential Damages.** Neither Client nor Consultant shall be liable to the other or shall make any claim for any special, incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, loss of business or diminution of property value and shall apply regardless of legal theory such damages are alleged including negligence, strict liability, breach of contract and breach of warranty.

17. **Payment.** Unless agreed to otherwise, Consultant shall submit monthly invoices to the Client. Payment in full

EXHIBIT C
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

shall be due upon receipt of the invoice. Payment of any invoices by the Client shall be taken to mean that the Client is satisfied with the Consultant's services to the date of the payment and is not aware of any deficiencies in those services. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month. If the Client fails to make payments; then Consultant, after giving seven (7) days written notice to the Client, may suspend services until the Client has paid in full all amounts due for services, expenses, and other related charges without recourse to the Client for loss or damage caused by such suspension. The Client waives any and all claims against the Consultant for any such suspension. Payment for Consultant's services is not contingent on any factor, except the Consultant's ability to provide services in a manner consistent with that Standard of Care. Payment of invoices shall not be subject to any discounts, set-offs or back-charges unless agreed to in writing by both parties. If the Client contests an invoice, the Client may withhold only that portion so contested and shall pay the undisputed portion, after the Client has notified Consultant in writing within 30 days of receiving the invoice and shall identify the specific cause of the disagreement and the amount in dispute.

18. **Force Majeure.** Neither Client nor Consultant shall be liable for any fault or delay caused by any contingency beyond their control, including but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. **Compliance with Laws.** To the extent they apply to its employees or its services, Consultant shall exercise due professional care to comply with all applicable laws, including ordinances of any political subdivisions or governing agencies.
20. **Invalid Terms.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding as if the unenforceable provisions were never included in the Agreement.
21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state where the services are performed.
22. **Dispute Resolution.** All disputes, controversies or claims, of 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 a court whose jurisdiction includes and encompasses Rutherford County, Tennessee.
23. **Additional Services.** Consultant shall be entitled to an equitable adjustment of its fee for services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, Client's schedule, construction schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or other 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 Consultant's control.
24. **Amendment.** This Agreement may only be amended in writing and where such amendment is executed by a duly authorized representatives of each party.
25. **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. Client and Consultant 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.
26. **Survival of Provisions.** The provisions of this Agreement shall continue to be binding upon the parties hereto notwithstanding termination of this Agreement for any reason.
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.
28. **Identity of Project Owner.** Within ten (10) days of the entry of this Agreement, Client, if Client is not the Project Owner, shall provide to Consultant the Project Owner's full legal name; Project Owner's physical address; Project Owner's mailing address; and the name, physical address and mailing address of the Client's point of contact with the Owner for the Project.
29. **Conflicting Terms.** In the event that there are multiple agreements with varying or conflicting terms and conditions between Client and Consultant, the terms and conditions contained in this Agreement shall supersede and have precedence over any other conflicting terms and conditions contained in any other written or oral agreement.
30. **Course of Dealing.** Client and Consultant agree that these General Terms and Conditions establish a course

EXHIBIT C
GENERAL TERMS AND CONDITIONS
PROFESSIONAL SERVICES

of dealing between them and shall apply to this and all other services, projects, agreements or dealings between the them, unless Client or Consultant 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.

31. **Professional Services in Florida.** ~~In the event any professional services are provided within the state of Florida, it is expressly agreed by the parties that an individual design professional who is an agent or employee of consultant may not be held personally or individually liable for any damages resulting from negligence arising out of consultant's performance of this agreement, as provided in Florida statutes section 558.0035, as amended.~~

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COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Cherry Lane Corridor Study Proposal (I-840 to I-24)

Department: Administration

Presented by: Darren Gore

Requested Council Action:

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

Summary

Consider professional services for the Cherry Lane corridor study between I-840 and I-24.

Staff Recommendation

Approve the professional services agreement with Ragan-Smith-Associates, subject to Legal review.

Background Information

At the Council's February 13, 2025 council workshop meeting, the council provided for a 9-month pause on development approvals on properties affected by the construction of Cherry Lane from I-840 to I-24 in order to allow staff to mitigate the potential loss of an interchange on I-24.

Several other constraints identified along the Cherry Lane corridor, including CSX railroad (R/R), Overall Creek and the West Fork Stones River floodways and floodplains, and the limited access to Broad St. (US41) & I-840 on several properties, also prompted the need to study this corridor.

The attached proposal for professional services is intended to capture key considerations for future development along this key east-west corridor. The study provided will give city leadership the option of adopting a formal area plan for policy advisement and inclusion as a revision to the Future Land Use map.

The scope of services include:

- Inventory and base map preparation along with utility infrastructure review and analysis for water, sanitary sewer, electric, and stormwater
- Natural resource and floodplain review and analysis.
- Transportation planning and analysis, including coordination with the City's Major Thoroughfare Plan update and conceptual geometric analysis.
- Development of Future Land Use patterns and recommendations, including a master plan use for 897 acres east of NW Broad St.

Council Priorities Served

Improve economic development

The Cherry Lane extension between I-840 and I-24 is a major infrastructure improvement that will assist in attracting significant economic development projects.

Expand infrastructure

Orderly and well-planned infrastructure for an area that will have a 50-yr impact on our community is paramount to ensure the most efficient and effective delivery of services is provided to this area of Murfreesboro.

Fiscal Impact

The expense, or \$515,745, is funded from the Planning Department's FY25 operating budget.

Attachments

Ragan Smith Cherry Lane Corridor / Area Plan professional services agreement.



RaganSmith
a Pape-Dawson company

March 20, 2025

VIA ELECTRONIC MAIL: shuttleston@murfreesborotn.gov

Mr. Sam Huddleston
City of Murfreesboro (Client)
111 West Vine Street
Murfreesboro, TN 37130

**RE: CHERRY LANE CORRIDOR / AREA PLAN
MURFREESBORO, TENNESSEE
RAGANSMITH JOB# 25-0064**

Dear Sam,

Ragan-Smith-Associates, LLC (RaganSmith) is pleased to offer the following professional services in accordance with this letter. Your acceptance of this proposal acknowledges that the attached *Contract Terms and Conditions* are agreeable and are incorporated by reference.

PROJECT

The Cherry Lane Corridor / Area Plan is a planning study covering the corridor that captures the extension of Cherry Lane Drive starting east of the 840 intersection and extending to the future I-24 intersection. It will include approximately 1,814 acres of area and will cross or intersect with N.W. Broad Street, Old Nashville Hwy and Florence Road. See attached area map and approximate Cherry Lane extension route (Exhibit A).

OBJECTIVE

The Cherry Lane Corridor / Area Plan is a planning study that captures key considerations for future development along this key east – west corridor. The extension of Cherry Lane will complete a much-needed transportation link from Interstate 840 to Interstate I-24 on the north side of Murfreesboro bringing with it continued development pressure and the need for thoughtful infrastructure and land use analysis. This corridor involves challenges with an existing rail line, impact from existing floodplain and interchange and intersection design considerations. It is an important gateway to Smyrna and the Nashville Metro area. The approval of property annexations, rezonings and development patterns along this corridor should be informed by a comprehensive plan. The planning study provided will give City leadership the option of adopting a formal area plan for policy advisement and inclusion as a revision to the Future Land Use map. It is understood that the goal for the completion of this corridor / area plan is to have a document prepared for potential adoption by City leadership in approximately nine months' time.

ANTICIPATED AUTHORITIES HAVING JURISDICTION (AHJ) *(for general planning reference only)*

- City of Murfreesboro

NASHVILLE
315 Woodland Street
P.O. Box 60070
Nashville, TN 37206

CHATTANOOGA
35 Station Street
Chattanooga, TN 37408

MURFREESBORO
1500 Medical Center Parkway
Suite 2 J
Murfreesboro, TN 37129

FRANKLIN
4068 Rural Plains Circle
Suite 290
Franklin, TN 37064



- TDEC
- TDOT
- CUD
- MTE

SCOPE OF SERVICES

I. Inventory and Base Map Preparation

RaganSmith will create inventory and background information maps and files to inform the land use and transportation scenarios for the study area. **RaganSmith** will utilize GIS, aerial mapping, and current proposed development and roadway improvement plans provided by **Client** to provide contextual background of existing conditions and near future development potential. Included in the review will be:

1. Existing property and parcel information
2. Existing zoning and future land use categories
3. Existing development patterns
4. Potential development and roadway projects currently under consideration that might impact existing development patterns
5. Aerial maps showing existing conditions in the area of study and surrounding area of context

II. Utility Infrastructure Review and Analysis (water, sanitary sewer, electric, stormwater)

RaganSmith will collect and analyze the utility infrastructure to provide background information and inform the land use and transportation scenarios for the study area. **RaganSmith** will utilize GIS, aerial mapping, water resources information and the planned sewer service area regulations as provided by the **Client**, Consolidated Utility District and State agencies. Included in the review will be:

1. Existing Sanitary Sewer system and area plan restrictions
2. Existing Water line system (**Client** and Consolidated Utility District)
3. Electric infrastructure as provided by Middle Tennessee Electric
4. Existing topography and general storm drainage patterns

III. Natural Resource and Floodplain Review and Analysis

RaganSmith will collect and analyze the natural resources and floodplain data to provide background information and inform the land use and transportation scenario's for the study area. **RaganSmith** will utilize GIS, aerial mapping, and floodplain (floodway) information as provided by **Client** and State agencies. Included in the review will be:

1. Slope analysis in increments of 0-5%, 5-10%, 10-25% and 25% or greater
2. Floodplain and floodway information
3. Environmentally sensitive areas on a high-level analysis (as provided by **Client** and State data)

IV. Transportation Planning and Analysis

Kimley-Horn will lead efforts in collaboration with **RaganSmith** for the Transportation Planning and Analysis phase of this project. **Client** will help provide access to the regional Travel Demand Model data provided through the Greater Nashville Regional Council (GNRC) and The Regional Integrated Transportation Information System (RITIS) data to inform the transportation planning and analysis efforts. **Client** will also provide the current Major Thoroughfare Plan (MTP) information and any previously generated transportation planning concepts or studies to inform the current planning efforts. Kimley-Horn will provide the following services as part of the Transportation Planning and Analysis Phase.



1. Transportation Data Compilation and Analysis

Kimley-Horn will gather relevant traffic data necessary to conduct the traffic analysis and overall transportation assessment. As a part of this task, data cleaning and mapping will be conducted, as necessary.

- A. Coordination and collection of traffic counts (assumes up to 20 intersection turning movement counts (TMCs) and up to 15 daily/24-hour tube counts, which may increase if a frontage road is considered)
- B. Review, cleaning, and summarization of the latest five (5)-year historic crash data analysis
- C. Gathering and review/mapping of RITIS bottleneck data
- D. High level review of existing plans, background information, and anticipation of future transportation trends

2. First Level Screen Traffic Analysis

Traffic evaluation of the alternatives will occur in two (2) phases – the first high level screening of up to four (4) scenarios will be conducted using the Travel Demand Model. In conjunction with the simultaneous geometric review of alternatives, the team will work with **Client** to narrow the scenarios for detailed operational analysis to two (2) scenarios.

A. Travel Demand Model Analysis

Kimley-Horn will work with GNRC and **Client** to obtain the most recent and available model at the time necessary to begin travel demand modeling. This may be the model currently in use, or if the timing is appropriate, the newly updated GNRC model with updated socioeconomic projections.

- 1) Development and calibration of the Travel Demand Model to appropriately represent current year conditions in the study area
- 2) Creation of a future No-build Travel Demand Model with a mutually selected horizon year (approximately 20 to 25 years)
- 3) Development of travel demand models that serve as a base for future land use scenarios including testing concepts for up to four (4) scenarios:
 - a. Full-service interchange at I-24
 - b. Flyover at I-24 to Blackman Road
 - c. Choice lane Interchange only at I-24
 - d. Full-service interchange at I-24 north of the Tune property
- 4) Building of traffic growth factor to apply to existing counts to represent future growth in traffic as well as traffic diversion resulting from travel pattern changes.

3. Second Level Screen Traffic Analysis

The second level screen will consist of three (3) types of detailed analysis: intersection operational analysis using Synchro, interstate evaluation using Freeval, and interchange evaluation using the Capacity Analysis for Planning of Junctions (CAP-X) tool. The Existing Conditions models will be built toward the beginning of the project (simultaneously with the travel demand modeling activities) while the No-Build and Build models will be developed following the narrowing of scenarios to two (2) options.



A. Operational Analysis

Building from the travel demand model analysis that will provide high level results on travel patterns and corridor volumes and congestion levels, an operational analysis is important to understand a finer grained detail at intersections and interchanges.

- 1) Use land use plan/development projections from RaganSmith to project trip generation rates (weekday AM peak, PM peak, and daily) for each of the three (3) land use scenarios. Select the maximum trip-generating land use scenario to carry forward for trip distribution and use in conjunction with the travel demand model for operational model development.
- 2) Conduct a Synchro analysis for only intersections that are signalized or stop controlled and not including system-to-system interchanges and limited access locations.
 - a. Existing Conditions: up to 15 relevant intersections
 - b. Future No-Build Conditions: up to 15 relevant intersections
 - c. Two (2) Future Build Scenarios: up to 25 relevant intersections assuming the proposed extensions
- 3) Interstate System FREEVAL Assessment. It is important to address proper interstate operations with the addition of new interchanges involving possible areas of merge, diverge, and weave sections. In order to do this without the use of a microsimulation tool such as VISSIM, the Kimley-Horn team recommends the use of FREEVAL software (Highway Capacity Manual based tool) to test link level corridor operations along the interstates and other limited access facilities for the following conditions:
 - a. Existing Conditions
 - b. Future No-Build Conditions
 - c. Two (2) Future Build Scenarios
- 4) CAP-X Analysis of freeway interchanges. Evaluating the interchanges at a planning level and without the use of a microsimulation model such as VISSIM is appropriate at this level of evaluation. The Kimley-Horn team recommends the Capacity Analysis for Planning of Junctions (CAP-X) tool to conduct these system-to-system interchanges that are freeflow movements/unsignalized. We will conduct analysis at up to five (5) locations under Existing and No-Build Conditions with an additional three (3) interchanges for the two (2) Build Condition scenarios.
 - a. Existing Conditions: up to five (5) interchanges
 - b. Future No-Build Conditions: up to five (5) interchanges
 - c. Two (2) Future Build Scenarios: up to eight (8) interchanges

V. Transportation Conceptual Geometric Analysis

Kimley-Horn will compile and review relevant study area data necessary to conduct the geometric analysis of the approximately 2.9-mile Cherry Lane Corridor that will connect I-24 to the Cherry Lane Phase 3 Tie-in at Northwest Broad Street.

1. Conceptual Design

- A. Kimley-Horn will perform an initial conceptual geometric analysis of up to nine (9) Future Build Scenario Alternatives and up to two (2) Cherry Lane Corridor Alignments (Horizontal and Vertical).
 - 1) Utilizing existing aerial, existing ground data (LiDAR), typical sections provided by City of Murfreesboro or as determined in the operational analysis and Bentley Concept Station to develop up to nine (9) Future Build Scenario



Alternatives and up to two (2) Cherry Lane Corridor Alignments (Horizontal and Vertical).

- 2) Future Build Scenario Alternatives will consist of:
 - a. Northwest Broad Street and CSX Transportation Railroad Crossing
 - At-Grade Intersection
 - Grade Separated Intersection
 - b. Old Nashville Highway
 - At-Grade Intersection
 - c. Florence Road
 - At-Grade Intersection
 - d. Private Development Connectivity
 - e. I-24 Connectivity
 - Full-Service Interchange at I-24
 - Flyover at I-24 to Blackman Road
 - Choice Lane Interchange
 - Full-Service Interchange at I-24 north of the Tune property
- 3) Review environmental features to identify potential constraints or fatal flaws with the Future Build Scenario Alignments. Features to be reviewed consist of those identified by **RaganSmith** during the Natural Resource and Floodplain Review and Analysis.

B. Kimley-Horn will revise the conceptual geometric analysis for up to two (2) Future Build Scenarios determined during the Second Level Screen Traffic Analysis.

2. Conceptual Design Exhibits
 - A. Kimley-Horn will prepare design exhibits for up to nine (9) Future Build Scenario Alternatives and two (2) Cherry Lane Corridor alignments in PDF format which will incorporate roadway alignments, vertical profiles, roadway and multimodal infrastructure, proposed right-of-way, existing right-of-way and parcel boundaries per GIS data provided by the **Client**, existing utilities per GIS data provided by the **Client**, and existing aerial imagery.
 - B. Kimley-Horn will revise conceptual design exhibits for up to two (2) Future Build Scenarios, determined during the Second Level Screen Traffic Analysis, in PDF format which will incorporate roadway alignments, vertical profiles, roadway and multimodal infrastructure, proposed right-of-way, existing right-of-way and parcel boundaries per GIS data provided by the **Client**, existing utilities per GIS data provided by the **Client**, and existing aerial imagery.
3. Conceptual Opinion of Probably Construction Cost (OPCC)
 - A. Kimley-Horn will prepare an opinion of probable construction cost for up to nine (9) Future Build Scenario Alternatives and two (2) Cherry Lane Corridor alignments. Kimley-Horn will utilize the current version of the Cost Estimate Tool provided by TDOT's Strategic Transportation Investments Division (STID) to prepare the OPCC.
 - B. Kimley-Horn will revise the opinion of probable construction cost for the two (2) Future Build Scenarios. Kimley-Horn will utilize the current version of the Cost Estimate Tool provided by TDOT's Strategic Transportation Investments Division (STID) to prepare the OPCC.

Because Kimley-Horn does not control the cost of labor, materials, equipment, or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent



its judgment as an experienced and qualified professional, familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost.

Deliverables

Documentation of the technical process will be particularly important to memorialize the methodology and analysis conducted and to be able to communicate to other partners of the efforts completed as a part of the study. The technical memorandum will incorporate key phases of the study and incorporate relevant graphics, charts, and figures both in the report and as an appendix.

1. Technical Memorandum
 - A. Existing Conditions
 - B. Land Use/Development Highlights
 - C. Traffic Analysis
 - D. Geometric Review
 - E. Recommended Transportation Improvements
 - F. Conceptual Design Exhibits
 - G. Opinion of Probable Cost for each alignment option
 - H. Action Plan
2. Project and Data Transfer to the Partners: at the completion of the study, the Kimley-Horn team will package all of the relevant data from the plan (model outputs, GIS data and maps, and any presentation slide decks) that may be valuable for **Client** to include in their records.

VI. Development of Future Land Use Patterns and Recommendations

RaganSmith will utilize the existing infrastructure, natural resource assessment, zoning and future land use mapping along with the potential future transportation network to inform the creation of a future land use map for the study area. The future land use assessment will include:

1. Evaluation of road network, interchange and intersection dynamics, access and grade separation considerations
2. Impact from floodplain and natural resource assessment
3. Greenway and multi-modal transportation connections
4. Impact on surrounding land use and development potential outside the study area
5. Highest and best use opportunities for land use alternatives including mixed use scenario's
6. Potential development of new and / or distinct land use categories to expand on the existing future land use map alternatives
7. Four different land use maps based on different transportation networks and I-24 interchange options
8. President images and examples provided to help explain categories of land use depicted in the future land use map(s)
9. Possible adjustments to the Future Land Use Map for areas within the study boundary

VII. Master Land Use Plan for 897 AC (Hord Property) east of N.W. Broad Street

RaganSmith will utilize the proposed transportation network alternatives and future land use categories and patterns to specifically inform the preparation of a master plan scenario for the 897 acres of property on the east side of N.W. Broad identified as the Hord properties. The master plan will be developed at a higher level of detail than the surrounding future land use patterns to help establish the following:

1. A specific mix of land use options that consider a high level of economic return and enhance the quality of life for residents and visitors along the Cherry Lane Corridor
2. Transportation access opportunities and limitations

3. Open space, parks and natural resource enhancement and development
4. General consideration of stormwater treatment and water resource considerations
5. A master plan depicted general building types and placement, road and pedestrian networks, parking considerations, streetscape and pocket park opportunities, general storm drainage considerations, general utility infrastructure considerations
6. President images and examples provided to help explain master plan development scenario's

VIII. Meetings, City Review and Engagement with Key Property Stakeholders

RaganSmith will coordinate and help facilitate project team meetings, review and input meetings with key property owners, monthly update meetings and meeting with city leadership to review and adopt the proposed Cherry Lane Corridor / Area Plan. Meetings will include:

1. Coordination and assisted facilitation of the project kick off meeting
2. Coordination, presentation and facilitation at meetings with key property and stakeholder groups to review plan concepts and to integrate feedback into planning documents (up to 3 meetings)
3. Coordination for monthly progress meetings with project team and city staff (up to 6 meetings anticipated)
4. Coordination with Kimley-Horn and project team to meet with TDOT (up to 2 meetings anticipated)
5. Review and presentation of the Cherry Lane Corridor / Area Plan recommendations with City leadership (Planning Commission and / or City Council meetings) as advised and requested by City staff.

EXCLUSIONS

Planning documents shall be used to govern proposed city policy and shall not include permitting, or architectural, engineering, geotechnical, environmental, structural design or construction details.

COMPENSATION

RaganSmith will provide the above Scope of Services for the following ***lump sum fee(s) (unless noted otherwise)***:

I. Inventory and Base Map Preparation	\$15,000.00
II. Utility Infrastructure Review and Analysis	\$20,000.00
III. Natural Resource and Floodplain Review and Analysis	\$20,000.00
IV. Transportation Planning and Analysis	\$172,880.00
V. Transportation Conceptual Geometric Analysis	\$138,865.00
VI. Development of Future Land Use Patterns and Recommendations	\$75,000.00
VII. Master Land Use Plan for 897 acres (Hord Property) east of N.W Broad	\$54,000.00
VIII. Meetings, City Review and Engagement with Key Property Stakeholders	<u>\$20,000.00</u>
	Total
	\$515,745.00

Should additional services be required or provided outside of the scope of services noted above, the said services will be performed and compensated for at an hourly rate in accordance with the attached *Contract Terms and Conditions*. Travel, shipping, printing, government fees and other such expenses directly related to the project will be billed at cost plus 10% and are in addition to the quoted service fee.



We appreciate the opportunity to provide this proposal and look forward to working with you. If you agree to the terms, please sign, and return a copy which will serve as authorization to proceed with the work.

Sincerely,

RAGAN-SMITH-ASSOCIATES, LLC



Kevin Guenther, P.L.A.
Vice President



Eric Parl, P.E.
Murfreesboro Civil Practice Leader

KDG / EMP: kal
Attachments

CLIENT ACCEPTANCE and AUTHORIZATION TO PROCEED:

By: _____ Date: _____

Printed / Typed Name: _____ Title: _____

TO WHOM SHOULD INVOICES BE DIRECTED:

Name: _____ Email: _____

CONTRACT TERMS AND CONDITIONS

SCHEDULE OF SERVICES AND EXPENSES - The below hourly billing rates are current and effective as of the date of this agreement. Hourly rates will be based on the most current RaganSmith rate sheet when services are provided and are therefore subject to change.

PROFESSIONAL SERVICES

Classification	Hourly Rate
Principal	\$350.00
Senior Project Manager	270.00
Senior Design Manager	260.00
Project Manager	225.00
Design Manager	225.00
Professional Engineer	210.00
• Civil Engineer	
• Traffic Engineer	
• Hydrology/Hydraulics Engineer	
• Environmental Engineer	
• Construction Engineer	
Professional Land Surveyor	\$185.00
Professional Landscape Architect	175.00
Planner	170.00

TECHNICAL SERVICES

Classification	Hourly Rate
Senior Designer	\$170.00
Senior Technician	170.00
Designer	145.00
Technician	140.00
Administrative Assistant	120.00

FIELD SURVEY SERVICES

Classification	Hourly Rate
Survey Manager	\$165.00
One Man Survey Crew	170.00
Two Man Survey Crew	230.00
Three Man Survey Crew	290.00
3-D Laser Scanning Survey Crew	315.00
Unmanned Aircraft Crew	340.00

CONSTRUCTION SERVICES

Classification	Hourly Rate
Construction Manager	\$210.00
CEI Resident Engineer	180.00
Asphalt/Concrete Plant Manager	155.00
Senior Inspector	150.00
CEI Contract Specialist	140.00
Inspector	125.00

EXPENSES

Expenses (not limited) are not included in the service fees of this agreement unless specifically stated.

Travel:	Cost + 10%
Travel and subsistence expenses (Lodging, meals, mileage, etc.)	
Subcontracts:	Cost +
Sundries / Review/Submittal Fees:	Cost + 10%
Printing/reproductions:	Commercial Rates

Review/submittal fees over \$200 are to be paid by the client directly to the jurisdictional agency

PARTIES, SERVICES, ASSIGNMENT AND ENTIRE AGREEMENT - Ragan-Smith-Associates, LLC, as an independent consultant, agrees to provide consulting services to the Client for the Client's sole benefit and exclusive use. No third party beneficiaries are intended by this agreement. The ordering of services from RaganSmith constitutes acceptance of the terms and conditions set out in this Agreement. This Agreement may not be assigned by either party without prior written permission of the other party. This Agreement constitutes the entire understanding of RaganSmith and the Client and there are no other warranties or representation made other than as set forth herein and specifically within the Agreement.

STANDARD OF CARE - RaganSmith agrees to perform consulting services in accordance with the degree of care and skill ordinarily exercised by other reputable members of our profession under similar circumstances. No warranty expressed or implied is made or intended by this Agreement relating to the services provided by RaganSmith.

CONCEALED OR UNKNOWN CONDITIONS - If conditions are encountered at the site that are concealed or unknown, then RaganSmith will be entitled to an equitable adjustment in the contract sum or contract time or both.

OPINIONS OF COST - When requested by the Client, RaganSmith will use its best efforts, experience, and judgment to offer an opinion of estimated construction costs. Such opinions are based on available historical data and are intended to provide an estimate of cost. No warranty of the actual construction cost is expressed or implied.

SITE ACCESS - Client will grant or obtain free access to the site for all equipment and personnel necessary for RaganSmith to perform the services set forth in this Agreement. Client will notify any and all tenants or possessors of the project site that Client has granted RaganSmith free access to the site.

JOB SITE SAFETY - Client agrees that, in accordance with the generally accepted construction practice, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the services, and with compliance with all OSHA regulations. Neither the professional activities of RaganSmith nor the presence of RaganSmith or its employees and sub-consultants on the job site shall relieve the General Contractor of its responsibilities.

INSURANCE - RaganSmith maintains insurance coverage including Workers' Compensation Insurance, Employer's Liability Insurance, Commercial General Liability Insurance, Automobile Liability Insurance and Professional Errors and Omission Insurance. Certificates of Insurance will be furnished upon request.

LIMITATION OF LIABILITY - In recognition of the relative risks and benefits of the project to both the Client and RaganSmith, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the total aggregate liability of RaganSmith and its sub-consultants to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, to \$100,000 or RaganSmith's total fee for services rendered on the project, whichever is greater. Such claims and causes include, but are not limited to, claims for negligence, professional errors or omissions, negligent misrepresentation, strict liability, breach of contract, breach of warranty.

WAIVER OF CONSEQUENTIAL DAMAGE - RaganSmith and Client waive their right to recover consequential damages against each other, and RaganSmith and Client do hereby release each other from consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages including damages resulting from the termination of this Agreement.

PAYMENT TERMS - Client will be invoiced once each month for services performed during the preceding period. The terms of this Agreement are not based upon Client's financing or loan terms. If payment is not received within thirty (30) days of the invoice date, the Client agrees to pay a service charge on the past due amount of one percent (1%) per month compounded monthly. Non-payment of invoices may result in work stoppage or delay.

DISPUTE RESOLUTION/MEDIATION - In an effort to resolve any disputes that arise during or subsequent to the performance of services outlined in this Agreement, the Client and RaganSmith agree to submit all such disputes to mediation prior to the commencement of litigation.

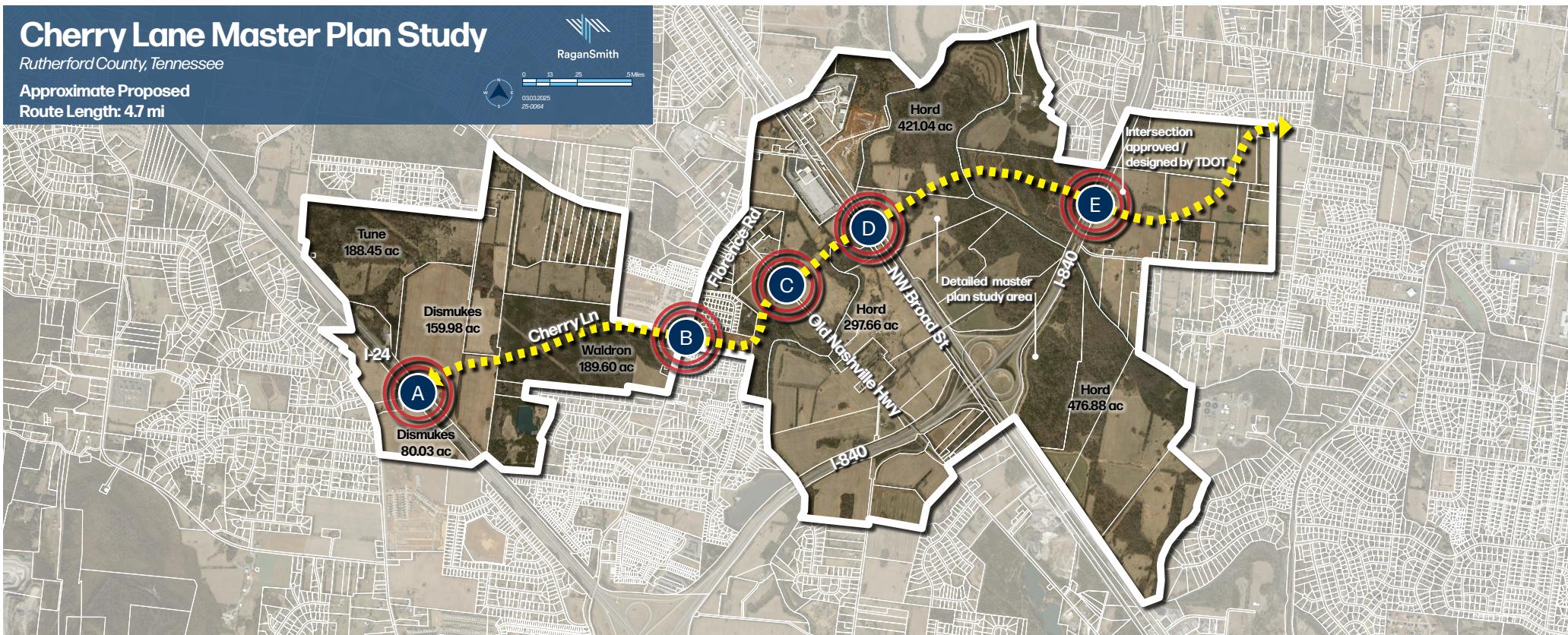
TERMINATION - The Agreement may be only terminated for cause upon seven (7) days of written notice. In the event of termination, RaganSmith will be entitled to compensation for all services provided and expenses incurred up to and including the termination date.

OWNERSHIP AND USE OF DOCUMENTS - If, in the pursuit and accomplishment of this work, RaganSmith's work product exists in electronic or computerized format, or is transferred in electronic or computerized format (CADD), the stamp, seal and signature shall be original and will not be a computer-generated copy, photocopy, or facsimile transmission of the original. Any use or reuse of original or altered CADD data/information by Client, agents of Client, or other parties without the prior review and written approval of RaganSmith shall be at the sole risk of Client. Further, Client agrees to defend, indemnify, and hold harmless RaganSmith from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the unauthorized use, re-use, or modification of this data/information. All documents (drawings, plans, letters, notes, calculations, renderings, reports, models, specifications, exhibits and other documents) produced by RaganSmith are instruments of service and remain the property of RaganSmith and can only be used on the specific project for which they were produced. Any other use of the documents is strictly prohibited.

Cherry Lane Master Plan Study

Rutherford County, Tennessee

Approximate Proposed
Route Length: 4.7 mi



A
4 Possible Scenarios:
Flyover, Full interchange, Exclusive Choice Lane
Access Interchange, ML only



B
Study Intersection of Florence Road & Cherry Lane



C
Study Intersection of Old Nashville Hwy & Cherry Lane



D
2 Possible Scenarios: Flyover or Controlled Access



COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Shared Cost for Repairs to Firing Range at the Rutherford County Sheriff's Office

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

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

Summary

Consider cost sharing for the repairs needed at the RCSO firing range.

Staff Recommendation

Approve the shared cost of the repairs needed at the RCSO firing range.

Background Information

The current firing range at RCSO was installed in 2008 and MPD has been a partner agency regarding use and maintenance of the facility. The block walls are now deteriorating and need to be replaced. The RCSO received competitive RFPs for the installation of a new concrete, sound barrier wall for a total cost of \$810,295. The County Commission approved this purchase by the Sheriff's Office on March 13, 2025. Pursuant to section 7 of the Agreement between Rutherford County, Rutherford County Sheriff's Officer and the City for the Financing and Operation of the Firing Range, the City's share of the expense would be \$405,147.

Council Priorities Served

Safe and Livable Neighborhoods

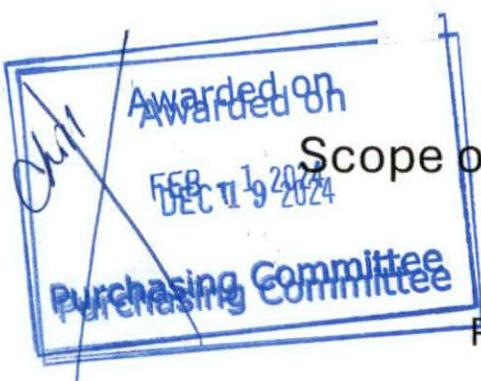
Properly trained officers are crucial to public safety.

Fiscal Impacts

\$208,000 of this repair will be funded by the department's FY25 operating budget. The remaining \$197,147 will be funded from Unforeseen.

Attachments:

1. Proposal from H&H Construction
2. Minutes from the County Purchasing Committee
3. MOU with RCSO



ORIGINAL

Robert Park
Joe Chavis
Cal Bayard
Anthony Johnson
Dee Deuel

Price will include as follows:

- A. All engineering costs with SSR included in this proposal.
- B. All required soil testing by Southern Consultants.
- C. All required survey requirements for grade and elevation as well as specific lay out.
- D. Include the removal of the roof at the backside of the vacuum system and separate the other structure from CMU wall.
- E. Demo CMU wall and move to discussed location.
- F. Supply all material to replace the CMU wall with the durisol wall including galvanized columns, wall panels excavation, and concrete.
- G. The existing footing will stay in place. We will only remove section to accommodate drilling.
- H. Will include the grading to finish project and will ensure to put the areas used to complete this project back to its original state. H&H Construction, Inc. will regrade, seed, fertilize, and straw at all points that are disturbed.
- I. H&H Construction, Inc. will dispose of all materials removed at contractors cost other than the excess dirt, concrete, mortar and CMU products, H&H will move these products to pre-approved location.
- J. H&H Construction, Inc. will provide the owner with a performance bond in the contract amount and will also provide proof of workers' compensation, general liability, and auto policies for any and all vehicles and equipment on site by H&H Construction, Inc.

- K. All work will be inspected and will require the approval of the EOR- SSR Mr. AJ Matthews.
- L. Price for this job will be good through the contract process.
- M. The contractor will bill the owner 1 time per month and will expect prompt payment within 10 days of these pay requests. These pay requests will have to be approved by the EOR.
- N. Owner will be expected to pay a payment in the amount of \$100,000 within 10 days of receiving confirmation that the wall panels and columns have been put into production and the stamped engineer drawings from durisol have been received by H&H Construction, Inc. H&H Construction, Inc., will obtain all project permits.
- O. H&H Construction, Inc. has gained permission from the city codes department to begin work immediately if awarded contact and will accept our 3rd party inspection and testing. H&H Construction Inc. will be required to purchase permit from the city code department upon receiving the stamped drawings from Durisol.

Rutherford Range Wall Estimated Schedule

A. 02/21/2025- We need a purchase order and signed contract by the end of February. If this happens, we will place the full order, and the plans should be ready within 30 days. Estimated date to receive stamped plans 03/21/2025.

03/22/2025- Product will go into production and will receive columns the 2nd week of April.

05/01/2025- We will begin receiving panels on 1st of May and final panel delivered by the 15th of May.

B. 02/25/2025- Demo will start within the 1st week of P.O. being issued and contract being signed.

02/25/2025- Demo will start with the separation of existing covered shelters and the removal and disposal of the rear roof structure.

02/25/2025- Start the covering and protection of components that will stay in place.

02/25/2025- 03/15/2025- Will begin demo and removal of all CMU wall and components- this process will consist of approximately 2 weeks of labor trucking and all necessary equipment.

03/10/2025-03/14/2025- Will begin saw cutting and demo of the sections of the footings that must be removed. All other footings are subgrade and will not be removed.

03/15/2025- Will perform survey requirements to excavate column footings and to set the column for ballistic wall.

04/01/2025- 04/15/2025- Will begin the excavation of the column holes.

03/22/2025- 03/30/2025- Receive galvanized columns.

03/22/2025- Begin setting columns and pouring cylinders.

03/28/2025- Complete foundation columns and concrete.

04/01/2025- Start clean up and grading process.

04/10/2025- Place some landscaping, seeding, and covering.

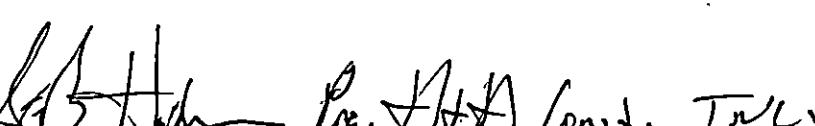
05/01/2025- 05/15/2025- Begin installation of panels. This process will take approximately 2 weeks depending on the delivery of the panels.

05/15/2025- 05/30/2025- Complete the final grade and clean up.

05/16/2025- 05/30/2025- Install flashing from existing roof structures to new ballistic walls. Final walk through with owner and EOR. Price for complete job including all labor, material, bond, and insurance cost.

Total: \$810,295.17

Eight hundred ten thousand two hundred ninety- five dollars & 17/100

Signed:  R. H. H. Construction, Inc.

President of H&H Construction, Inc.

Date: 02-10-2025

JOE S. CARR
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

Sub-Recipient Title VI Assurance

Sub-Recipient's Name assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 and as amended, and the Civil Rights Restoration Act of 1987 (P.I. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from Rutherford County Government.

Sub-Recipient's Name further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs or activities are federally funded or not.

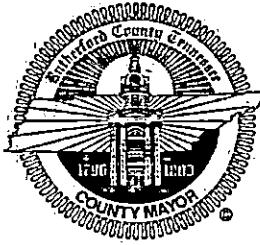
In the event **Sub-Recipient's Name** distributes Federal Assistance to a consultant, contractor, or subcontractor and other participants, **Sub-Recipient's Name** will include Title VI language in all written agreements and will monitor the consultant, contractor, or subcontractor and other participants for compliance. The **Sub-Recipient's Name** Title VI Coordinator is responsible for initiating and monitoring Title VI activities, preparing required reports and other responsibilities as required by 23 CFR 200 and 49 CFR 21.

As required by the contractual agreement, **Sub-Recipient's Name** will comply with the applicable laws and regulations relative to nondiscrimination in federally or state assisted programs of Rutherford County Government.

John P. H. Carr, Jr. No-Subs
Administrative Head Signature

02.10.2025
Date

JOE S. CARR
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

RUTHERFORD COUNTY
CONTRACT MONITORING FORM
COMPLIANCE SURVEY

Rutherford County intends to fully comply with the Title VI of the Civil Rights Acts of 1964. The county does not discriminate based on race, color national origin, sex or disability, nor do we exclude from participation or deny benefits under any program or activity receiving federal financial assistance. For compliance, the county requests disclosure of the following information related to the owner(s) of the company.

Company Name: H & H Construction, Inc.

Name of Owner(s): Steven B. Hudson

Address: 30 Substation Loop Erin, TN 37061

Phone Number: 931-216-4545 Fax Number: _____

Owner Information – (Number in each category)

African American		Disabled	
American Indian/Alaskan		Female	
Asian		Male	2
Caucasian	2		
Hispanic			
Native Hawaiian/Pacific Islander			
Other or Multi-Racial (please specify)			

Employee Information – (Number in each category)

African American		Disabled	
American Indian/Alaskan		Female	2
Asian		Male	6
Caucasian	8		
Hispanic			
Native Hawaiian/Pacific Islander			
Other or Multi-Racial (please specify)			

Bid/Proposal Title: Rutherford County Range Wall
Sheriff
Date of Bid/Proposal Deadline: 02-11-2025

Signature Confirming Information: [Signature]

Date: 02-10-25



Rutherford County Contracts CERTIFICATE OF NONDISCRIMINATION

As Bidder, Contractor, or Subcontractor on Rutherford County Project,
Name of Project

The undersigned states that he/she does not discriminate against any subcontractor, employee, or applicant for employment on the grounds of race, color, national origin, or sex and if awarded a contract for this project, agrees in performance of work:

1. Not to discriminate against any subcontractor, employee, or applicant for employment on the grounds of race, color, national origin, or sex; and
2. To maintain payrolls of laborers and mechanics employed on this contract until 90 days after final release and final payment by Rutherford County;
3. Require a similar certificate to be executed by each subcontractor at the time a subcontractor is executed under the contract with the requirement that such subcontractor agrees to require a similar certificate of requirement on any lower tier subcontractors.

Contractor's Name: Steven B. Hudson Date: 02.10.25

Signature: Steven B. Hudson Title: President

JOE S. CARR
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

**Iran Divestment Act Certification
(T.C.A. § 12-12-111)**

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalties of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106."

Print Name Paul Ritchie
Signed Paul A. Ritchie
Title Vice president

Subscribed and sworn before me this 10 day of February, 2025.

Signed Robin Kaydene Hudson Print Name Robin Kaydene Hudson
Title Secretary

My commission expires: September 24th, 2028.



NOTE: Unless otherwise provided by law, a bid shall not be considered nor shall any award be made if this certification is not provided. See T.C.A. § 12-12-111(c).



JOE S. CARR
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

**Iran Divestment Act Certification
(T.C.A. § 12-12-111)**

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalties of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106."

Print Name Steven B. Hudson
Signed Steven B. Hudson
Title President

Subscribed and sworn before me this 10th day of February 20, 2011.

Signed Amber L. Norton Print Name Amber L. Norton
Title Office Manager

My commission expires: June 15, 2011.



NOTE: Unless otherwise provided by law, a bid shall not be considered nor shall any award be made if this certification is not provided. See T.C.A. § 12-12-111(c).

JOE CARR
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

Non-Boycott of Israel Certification

The Contractor certifies that it is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel as defined by Tenn. Code Ann. § 12-4-119. This provision shall not apply to contracts with a total value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

Signature: Steven B. Hudson
Printed Name: Steven B. Hudson
Title: President
Date: 02.10.25

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Steven B. Hudson

2 Business name/disregarded entity name, if different from above

H & H Construction, Inc

Print or type.
See Specific Instructions on page 3.

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

Individual/sole proprietor or single-member LLC C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see Instructions) ►

5 Address (number, street, and apt. or suite no.) See Instructions.

30 Substation Loop

Requester's name and address (optional)

6 City, state, and ZIP code

Erin TN 37061

7 List account number(s) here (optional)

4 Exemptions (codes apply only to certain entities, not individuals; see Instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number	

or

Employer identification number	
37	-1903683

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the Instructions for Part II, later.

**Sign
Here**

Signature of
U.S. person

Date ► **02-10-2025**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid).

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

AIA® Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

H&H Construction, Inc.
30 Substation Loop
Erin, Tennessee 37061

OWNER:

(Name, legal status and address)
Rutherford County
One Public Square
Murfreesboro, TN 37130

BOND AMOUNT: Five Percent of the Total Amount Bid (5% of the Total Amount Bid)

SURETY:

(Name, legal status and principal place
of business)

Great Midwest Insurance Company
800 Gessner Road, Suite 600
Houston, Texas 77024

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

Any singular reference to
Contractor, Surety, Owner or
other party shall be considered
plural where applicable.

PROJECT:

(Name, location or address, and Project number, if any)

RFP-RCSO Installation Firing Range Three Sided Wall
Rutherford County Sheriff's Office
940 New Salem Highway
Murfreesboro, TN

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

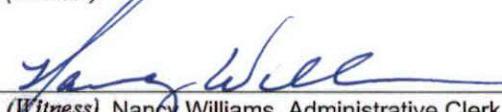
Signed and sealed this 11th day of February, 2025.

H&H Construction, Inc.

(Principal)

(Seal)

(Witness)


(Witness) Nancy Williams, Administrative Clerk

(Title)

Great Midwest Insurance Company

(Surety)


(Title) Greg Bennett, Attorney-in-Fact

(Seal)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Init.

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051110

POWER OF ATTORNEY

Great Midwest Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **GREAT MIDWEST INSURANCE COMPANY**, a Texas Corporation, with its principal office in Houston, TX, does hereby constitute and appoint:

James L. Noe, III, Craig Whitlow, Charles Myers, James Myers, Andrew Bennett, Amelia Cain, Ruth Kjosa, Lisa Wilson, Greg Bennett, Seth Chapman, Rhyan Atwood, Brianna Mai Ferguson, Charlena Denae Brockman, Morgan Collins Wills, Darian Schrembs

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **GREAT MIDWEST INSURANCE COMPANY**, on the 1st day of October, 2018 as follows:

Resolved, that the President, or any officer, be and hereby is, authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed Twenty-Five Million dollars (\$25,000,000.00), which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed in the Company's sole discretion and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **GREAT MIDWEST INSURANCE COMPANY**, has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 11th day of February, 2021.



GREAT MIDWEST INSURANCE COMPANY

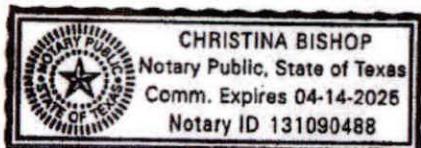
BY _____

A handwritten signature of Mark W. Haushill.

Mark W. Haushill
President

ACKNOWLEDGEMENT

On this 11th day of February, 2021, before me, personally came Mark W. Haushill to me known, who being duly sworn, did depose and say that he is the President of **GREAT MIDWEST INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



BY _____

A handwritten signature of Christina Bishop.

Christina Bishop
Notary Public

CERTIFICATE

I, the undersigned, Secretary of **GREAT MIDWEST INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Houston, TX this 11th Day of February, 2025.



BY _____

A handwritten signature of Leslie K. Shaunty.

Leslie K. Shaunty
Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/7/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Marcia Curtis
	PHONE (A/C, No, Ext): (615) 905-1685 FAX (A/C, No): (615) 905-1698
INSURED	E-MAIL ADDRESS: Marcia.Curtis@IGA.Biz
	INSURER(S) AFFORDING COVERAGE NAIC #
H&H Construction Inc 30 Substation Loop Erin, TN 37061	INSURER A: Selective Ins Co of SC 19259
	INSURER B: Builders Mutual Ins Co 10844
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
						EACH OCCURRENCE	\$ 1,000,000
A	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		S 2542514	11/8/2024	11/8/2025	DAMAGE TO RENTED PREMISES (EA occurrence)	\$ 500,000
						MED EXP (Any one person)	\$ 15,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:						\$
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		S 2542514	11/8/2024	11/8/2025	COMBINED SINGLE LIMIT (EA accident)	\$ 1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		S 2542514	11/8/2024	11/8/2025	EACH OCCURRENCE	\$ 1,000,000
	DED <input checked="" type="checkbox"/> RETENTION S 0					AGGREGATE	\$
						Aggregate	\$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	WCP 1082194 03	11/8/2024	11/8/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Inland Marine- Comme		S 2542514	11/8/2024	11/8/2025	Leased/Rented Equip.	200,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
Rutherford County Suite 101 Courthouse Murfreesboro, TN 37130	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

RC80

Agenda Item: Range Wall

Department: RC80 - Opt' will Holton / Spence
emailed - 7/11

Invitations Mailed: _____

Sealed Bids Received: 11

1. R3 Contractors
2334 Southpark Dr., Ste. 100
Murfreesboro, TN 37128
615-848-0055 | fax: 615-848-0095

2. H and H Construction
Steve Hudson
30 Substation Rd Erin TN 37061
931-216-4545, 931-232-2364
Hudsoncustomhomes@yahoo.com

vendors
eyatuziser3contractors.net

On file - 1/21/2025

Rachel - Ross Services - 1/30/2025
rmross@rosssvc.com ✓ EM

James Baah
james.baah@constructconnect.com 1/30/2025 - EM

Kendra Buhlig - BXTN.org 1/31/2025 - EM
Kendra.Buhlig@bxtn.org

Carla Hill

From: Will Holton <wholton@rcsotn.org>
Sent: Wednesday, January 22, 2025 12:58 PM
To: Carla Hill
Cc: sspence@rcsotn.org
Subject: Re: RFP on Range Wall

**EXTERNAL EMAIL
WARNING**

Please do not open links, nor attachments, without verifying their authenticity.

Yes ma'am, please include all documents. It's just for reference of the product specs.

Here is R3 email contact. eyatuzis@r3contractors.net

Captain Will Holton
Rutherford County Sheriff's Office
Service Support Division
Dispatch: (615) 898-7770
Cellular: (615) 533-6073

On Jan 22, 2025, at 12:54 PM, Carla Hill <chill@rutherfordcountytn.gov> wrote:

Good Afternoon,

Yes, sir can get this one onto the February meeting. I just want to verify that the quote from Durisol stays in the RFP. Also, do ya'll have an email address for R3 Contractors? Some of the images won't look good when printed, they are already smudgey and pixelated, but if not, it is what it is.

Thanks!

Carla

Carla Hill
Purchasing Administrator
Rutherford County Mayor's Office
615-849-4853.

From: Steve Spence <sspence@rcsotn.org>
Sent: Wednesday, January 22, 2025 12:24 PM
To: Carla Hill <chill@rutherfordcountytn.gov>
Cc: Will Holton <wholton@rcsotn.org>
Subject: RFP on Range Wall

EXTERNAL EMAIL WARNING

Please do not open links, nor attachments, without verifying their authenticity.

Good Afternoon,

Can we Please get this on the agenda for February 11th? Captain Holton will present this request.

If you have any questions, please let us know.

Thank you,

Steve Spence
Deputy Chief, Support Services
Rutherford County Sheriff's Office
940 New Salem Highway
Murfreesboro, Tn. 37129
Office: (615) 904-3062
Cell: (615) 210-5899

Do not forward without the express written permission of the above-named author of this message. The information and/or attachments in this E-mail message is confidential and intended only for the use of its intended recipient. If you, the reader of this message, are not the intended recipient, you are hereby notified that you should not further disseminate, distribute, or forward this E-mail message. If you have received this E-mail in error, please notify the sender and destroy the message. Thank You.

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JOE CARR
COUNTY MAYOR



RUTHERFORD COUNTY
TENNESSEE

January 22, 2025

To Whom It May Concern:

You are personally invited by the Rutherford County Purchasing Committee to submit a sealed bid for **“RFP- RCSO Installation Firing Range Three Sided Wall”**. The bids will be opened on February 11, 2025 at 4:30 PM at a meeting which will be held in Suite 205, Historic Courthouse, One Public Square, Murfreesboro, TN. A Special Called Purchasing Committee Meeting will be held on February 18, 2025, at 4:30 p.m. for the purpose of awarding the contract, if necessary. Bids must be in a sealed envelope, clearly marked **“SEALED BID—RFP- Range Wall”** and **must be received in the County Mayor’s Office by 4:00 P.M. local time on that date.**

Electronic or fax transmissions will not be accepted. Bids which are mailed should be mailed to the following address and must be delivered on time: Rutherford County Mayor’s Office, Suite 101, Historic Courthouse, One Public Square, Murfreesboro, TN 37130. **You must provide an original and four (4) copies of your bid at a minimum.**

Rutherford County intends to fully comply with TITLE VI of the CIVIL RIGHTS of 1964; 49 CFR 21. Enclosed please find TITLE VI information that must be returned with your bid.

By submission of this bid, each bidder and each person signing on behalf of any bidder, certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to TCA 12-12-106.

The Purchasing Committee reserves the right to accept the lowest or best bid and/or reject any and all bids. Specifications are enclosed. If you have any questions, please contact Captain Will Holton, 615-533-6073 or wholton@rcsotn.org

Sincerely,


Joe S. Carr
Rutherford County Mayor
Purchasing Committee Chairman

PURCHASING COMMITTEE

February 11, 2025, 4:30 P.M.

MINUTES

MEMBERS PRESENT:

Jeff Phillips
Anthony Johnson,
Robert Peay
Trey Gooch
Carl Boyd

OTHERS:

Sheriff Fitzhugh
Chief Deputy Lowery
Deputy Chief Spence
Captain Holton
Eric Hennessee
Kristen Zachary, Tracking Solutions
H & H Constructions
Laura Clark
Director Smith
Director Brooks
Denise Martin. MEO
Tim Rice

Vice-Chair Commissioner Peay welcomed everyone and called the Purchasing meeting to order at 4:30 P.M. with five members present. He advised that Chairman Carr was out of town and asked him to cover this meeting.

Vice-Chair Peay asked Commissioner Gooch for the approval of the minutes. Commissioner Gooch reviewed the minutes from December 17 and 19, 2024, and approved the massive typo correction from the November 12, 2024 minutes.

“Commissioner Gooch motioned to approve the minutes of December 17 and 19 as well as the November 12th correction, seconded by Commissioner Boyd.” The motion passed unanimously by acclamation.

PUBLIC COMMENTS

No Public Comments

NEW BUSINESS

Change Order on Full Depth Reclamation (FDR)

Director Greg Brooks with the Highway Department came forward to discuss the change order on the Full Depth Reclamation, Quote – G705. Director Brooks requested that the contractor doing the work on Landfill Road add a little more work to the project. This change order is to add 1311 square yards, about a mile away from the current approved portion. This is

for work at the area where the new Transfer Station ties into. This will save time and be less intrusive for the construction crew working out there. The total is for \$21,631.50. This work will be a permanent fix as good or better than before. Commissioner Peay verified that this work is in addition to the approved work. Director Brooks advised it was.

“Commissioner Johnson motioned for the approval of the change order by Road Works, quote G705, seconded by Commissioner Phillips.” The motion passed unanimously by a roll call vote.

RFP- RCEMS/MEO BODY REMOVAL/TRANSPORT SERVICES

Director Denise Martin, with the Medical Examiner’s office, came forward for the opening of the Body Removal/Transport bids. Two bids were received:

- Middle Tennessee Removal Service
- Tri-Eagle Mortuary

Commissioner Phillips questioned who currently provided the service. Mrs. Martin advised it was with Tri-Eagle Mortuary and that the contract with him is up, and they had a price increase last year. Commissioner Peay questioned if Mrs. Martin needed more time to review the bids, and she advised she did.

“Commissioner Phillips motioned to take under advisement, seconded by Commissioner Boyd.” The motion passed unanimously by acclamation.

RFP- RC RECOVERY COURT- MEDICAL SERVICES PROVIDER

Commissioner Peay didn’t see anyone from Recovery Court but did advise that no bids were received. He advised he would get with Mayor Carr about rebidding.

RFP- GPS MONITORING SERVICES

Chief of Staff Eric Hennessee came forward to discuss the purpose of this bid. Mr. Hennessee advised that the State of Tennessee changed the law last year, which requires the county to find a provider to provide GPS monitoring in particular domestic violence cases, but not all of them. Mr. Hennessee advised that the county is not responsible for paying for the GPS monitoring of the defendants and that we have to select the provider. He advised that this law does have a lot of statutory requirements for the providers and that he would like to take this under advisement. Four bids were received.

- Tracking Solutions
- Tennessee Recovery and Monitoring
- Alternative 2 Incarceration (A2i)
- Tennessee AMS

Commissioner Phillips asked Mr. Hennessee if he will get with the Sheriff's office to get input on the bids. Mr. Hennessee advised that he has been in contact with them regarding this RFP.

"Commissioner Phillips motioned to take under advisement, seconded by Commissioner Boyd." The motion passed unanimously by acclamation.

RCSO- Surplus Seized Weapons

Deputy Chief Spence came forward to request the surplus and sale of 144 handguns and 50 rifles that were seized in the Sheriff's office. He advised after selling that they would bring it back to this committee to get approval for the sale to the vendor. Deputy Chief Spence advised that if the weapon was involved in murder or suicide, those weapons were destroyed.

"Commissioner Gooch motioned for the surplus, seconded by Commissioner Johnson." The motion passed unanimously by a roll call vote.

RFP- Installation Firing Range Three-Sided Wall

Captain Holton came forward to join Deputy Chief Spence on the discussion the need for the Range wall installation. Captain Holton advised that the current firing range is just a block wall, not filled with concrete and was built in 2008. He stated that an Engineer came out to look at the current wall, and he advised that they were lucky it hadn't fallen yet. This RFP is to take down the existing and install the sound barrier, similar to what TDOT puts along the interstate. Captain Holton advised the the City of Murfreesboro Police Department would be paying for half of this. Two bids were received:

- H & H Construction \$810,295.17
- Rice Construction \$1,150,000.00

Commissioner Peay asked if he wanted a few minutes to review the bids, due to the price difference and come back to them after the next business:

Deputy Chief Spence and Captain Holton stepped out of the office to review the bids.

Purchasing Policy Update

Director Michael Smith came forward to discuss the updates to the Purchasing Policy, that they are administrative changes. He advised that the changes are highlighted in yellow. The first one

was the change on the verbal quotes. The amounts were left at \$5,000-\$10,000, and for anything between 10-20, you didn't have to get a verbal quote or anything. This is the increase proportionally and did not require to be voted on at Budget, only the Purchasing Committee. The other changes that the private act required to be voted on at Budget and Purchasing are that some things are exempt from getting a purchase order, like utilities. When this policy was revised in 2018, we didn't have local transportation, like Uber and such, so this category was added. We also added the wording of Conference to Seminars, added Recovery Court Clients to the Drug and Medical Cost for inmates, and added in the expenditures related to Grant and Construction contracts where the contract was already approved. Some of the recommendations on verbiage were from outside auditors.

“Commissioner Phillips motioned to approved the updated changes to the Purchasing Policy, seconded by Commissioner Gooch.” The motion passed unanimously by a roll call vote.

RFP- Installation Firing Range Three-Sided Wall continued

Deputy Chief Spence and Captain Holton came forward after reviewing the two bids received. Captain Holton advised both vendors meets the qualifications on the scope of work. There is a \$340,000 difference in price. After reviewing the bids, they agreed to go with the low bid from H & H Construction. Deputy Chief Spence advised that they will have to do a Budget Amendment to transfer the money that was earmarked from last year.

“Commissioner Gooch motioned to accept the H & H bid, seconded by Commissioner Johnson.” The motion passed unanimously by a roll call vote.

Other Business

Vice Chair Peay advised of the Special Called Meeting on February 18th.

Director Smith came forward to discuss the Solid Waste Truck. Vice-Chair Peay advised the committee of the Solid Waste truck accident and the need to purchase a truck. The driver was hurt and has now been released from the hospital. Director Smith advised that Director Wagener has found a truck on a Statewide contract or Sourcewell agreement and wants to add the item to the full Commission meeting on Thursday. Commissioner Phillips advised to have this put on under business to be brought up at the meeting.

Vice Chair Peay also advised that Ms. Hill had not changed the date stamp on the awarded items, restamped them, and that he had initialed the correct date.

There being no further business at this time, Vice Chair Peay declared the meeting adjourned at 5:16 P.M.

Joe S. Carr, Chairman

ch

AGREEMENT BETWEEN
RUTHERFORD COUNTY,
RUTHERFORD COUNTY SHERIFF'S OFFICE,
AND
CITY OF MURFREESBORO
FOR
FINANCING AND OPERATION OF THE FIRING RANGE

This Agreement is made this 13th day of March, 2008, by and between the City of Murfreesboro, hereinafter referred to as "City," Rutherford County, hereinafter referred to as "County," and the Rutherford County Sheriff's Office, hereinafter referred to as "RCSO," for the construction, operation and maintenance of the firing range located at 940 New Salem Highway.

WHEREAS, the City of Murfreesboro Police Department ("MPD") and the Rutherford County Sheriff's Office desire and need a quality firing range for the training of their certified law enforcement officers;

WHEREAS, the County possesses land located at 940 New Salem Highway, which is suitable for the building of a quality firing range and has committed to dedicate such land to use as a firing range;

WHEREAS, the City has committed to contribute \$658,500 towards the construction of such a firing range in conjunction with the County;

WHEREAS, the County has committed to contribute \$573,500 towards the construction of such a firing range and oversee such construction;

WHEREAS, the City and RCSO have agreed to share the use of the firing range for training of City of Murfreesboro Police Department and Rutherford County Sheriff's Office certified law enforcement personnel; and

WHEREAS, the City and RCSO have agreed to cooperatively operate and manage such firing range;

WITNESSETH:

NOW THEREFORE, in consideration of the mutual promises herein contained the parties agree as follows:

Section 1. OWNERSHIP. The County shall be the owner of the firing range to be located at 940 New Salem Highway. The rangehouse/classroom/office facility shall be permanently named "The Rutherford County Sheriff's Office / Murfreesboro Police Department Firearms Training Center" and the downrange target and berm shall be permanently named "Bowman's Berm." Appropriate signage shall be obtained by the RCSO.

Section 2. CONSTRUCTION.

- a. Subject to approval by the Rutherford County Commission, the County shall dedicate land located at 940 New Salem Highway for the site of the RCSO/MPD Firearms Training Center.
- b. Subject to approval by the City of Murfreesboro, City Council, the City shall pay \$658,500 towards the construction of the Rutherford County Sheriff's Office/Murfreesboro Police Department Firearms Training Center to be located at 940 New Salem Highway. Said payment shall be made in two installments. One, in the amount of \$25,000, shall be made when the contract for architectural services is let; the second, in the amount of \$633,500, when the construction contract is let. Should construction cost less than the total of the sums budgeted by the City and the County, City shall be entitled to a prorata refund of said payment amount.
- c. Subject to approval by the Rutherford County Commission, the County shall contribute \$573,500 towards the construction of the RCSO/MPD Firearms Training Center to be located at 940 New Salem Highway.
- d. The County shall be responsible for obtaining the services of a qualified architect for the design and construction of the RCSO/MPD Firearms Training Center subject to the approval of the City and RCSO.
- e. The County shall be responsible for letting bids for the construction of the RCSO/MPD Firearms Training Center.
- f. The County shall be responsible for awarding the bid for construction of the RCSO/MPD Firearms Training Center to the lowest responsive and responsible bidder.
- g. The County shall be responsible for overseeing this construction project until completion.

Section 3. ACCESS.

- a. The City of Murfreesboro Police Department (MPD) and the Rutherford County Sheriff's Office (RCSO) shall have access to the firing range for the purpose of training MPD and RCSO certified law enforcement personnel.
- b. The MPD may also utilize the firing range for participants in the MPD Citizen's Police Academy provided any civilians allowed access to the range must sign a waiver of liability form releasing the City, County and RCSO from any and all liability.
- c. The RCSO may also utilize the firing range for participants in the RCSO's Citizen's Academy provided any civilians allowed access to the range must sign a waiver of liability form releasing the City, County and RCSO from any and all liability.
- d. RCSO employees possessing state handgun instructor certification shall regularly teach Tennessee Handgun Safety and Carry Permit classes to qualified individuals and groups. The classroom portion of such courses shall occur after 5:30 p.m. on a weeknight and the range portion shall occur on Saturdays, as agreed upon by the City and RCSO. Following any such class the RCSO shall be responsible for cleaning up the range as required in section 6(b) of this Agreement and the Range Safety Rules. All participants in the above reference courses shall be required to sign a waiver of liability form releasing the City, County and RCSO from any and all liability.
- e. Current and retired RCSO and MPD law enforcement officers and their qualified immediate family members may use the range with the permission of the respective departments provided non-certified individuals must provide evidence of having successfully graduated from either a state-certified handgun safety class or the Tennessee Wildlife Resources Agency's Hunter Safety education course. "Qualified immediate family members" means a spouse, parent, and son or daughter over the age of eighteen (18). Additionally, any individual not employed by the RCSO or MPD must sign a waiver of liability form releasing the City, County and RCSO from any and all liability prior to use of the range. Further, all usage shall be under control of a qualified range officer and shall not interfere with prior scheduled training by either agency.
- f. RCSO reserves the right to conduct other civilian training/range usage as the need occurs provided that any civilian (i.e. not employed by RCSO or MPD) shall sign a waiver of liability form releasing the City, County and RCSO from any and all liability prior to use of the range.
- g. Any individual utilizing the range must be eighteen years old or older.

- h. No fee shall be charged for use of the firing range by such family members of RCSO or MPD. However, a fee shall apply for the Tennessee Handgun Safety Class and Carry Permit Class taught by RCSO. Other fees for certain activities may also apply to help defray range upkeep costs. Any revenues generated by use of the range shall be placed in a fund for maintenance and upkeep of the range.
- i. Use of the firing range by any other certified law enforcement agency will be subject to approval of the RCSO and subject to availability.
- j. Any full-time consistent use of the firing range by a certified law enforcement agency other than the RCSO or the MPD shall require an amendment to this Agreement.
- g. No other individuals or entities shall be allowed to use the firing range unless all parties to this Agreement agree to such usage or this Agreement is amended in writing.
- h. Certified law enforcement personnel from either agency may practice at anytime the range is open under supervision of RCSO or MPD certified instructors as long as it does not occur during scheduled training.

Section 4. CONTROL. No firing shall occur on the range unless a MPD or RCSO POST-certified firearms instructor has control of the facility and is physically present on the firing range during any firing exercises. For security and safety purposes, only instructors from the two agencies shall have access to the range and associated buildings. A logbook containing date, times, name(s) of instructor(s) and range users shall be maintained.

Section 5. SCHEDULING.

- a. The RCSO shall have exclusive access to the firing range the first and third full week of every month.
- b. The MPD shall have exclusive access to the firing range the second and fourth full week of each month.
- c. In a month containing five weeks the MPD and RCSO shall alternate exclusive use of the fifth week beginning with the MPD.
- d. Nothing contained herein shall prohibit the MPD and RCSO from mutually agreeing to an alternate schedule.
- e. For purposes of Section 5 of this Agreement, a week shall be defined as follows: usage of the range shall begin at 0001 hours Monday and conclude at 2400 hours Sunday. Daily usage shall be 0700-1730 hours Monday through Sunday. If no other law enforcement only training

is scheduled on nights or weekends, the range shall be available for use for civilian instruction classes, family, or retired law enforcement from 1730 until 2100 hours Monday through Friday, and 0900-02100 hours on Saturday and Sunday instructor availability allowing.

Section 6. OPERATION.

- a. All parties utilizing the firing range shall comply with the Range Safety rules developed and adopted by the MPD and RCSO attached hereto as Exhibit "A."
- b. At the end of each department's weekly usage, such department shall clean up the range, including, but not be limited to; picking up the shell casing, disposing of used targets, emptying all trash, and making minor repairs as damage occurs.

Section 7. MAINTENANCE.

- a. The RCSO shall contract with a reputable company specializing in lead reclamation that is EPA certified. RCSO shall also contract with the company installing the bullet traps and target system to ensure the maintenance and upkeep of the range equipment. The company selected and the terms and conditions of the contract must be acceptable to City. Company shall be required to maintain liability insurance applicable to its performance of the contract.
- b. Other repairs to the physical facility will either be accomplished by RCSO maintenance personnel or a private contractor selected pursuant to County purchasing laws and approved by the City. Any reasonable costs of normal maintenance repairs shall be split 50/50 between the City and RCSO.
- c. The City shall reimburse the RCSO fifty percent (50%) of the payment to the lead reclamation contractor within thirty (30) days upon receipt of an invoice or proof of payment from the RCSO.
- d. Operation supplies shall be provided by each department for use by their own personnel.
- e. No ammunitions or weapons shall be stored on the firing range site.

Section 8. SUPERVISION.

- a. When the MPD has control of the firing range, the MPD shall be responsible for supervision of all activities conducted on the range. "Control of the firing range" means the MPD Range Master or Firearms Instruction staff are present and supervising use of the range.
- b. When the RCSO has control of the firing range, the RCSO shall be responsible for supervision of all activities conducted on the range. "Control of the firing range" means the RCSO Range Master or Firearms Instruction staff are present and supervising use of the range.

Section 9. TERM

- a. The County and RCSO agree to the use of the property where the firing range is located as set forth in this Agreement from _____ to _____, 2058. The term of this Agreement shall be from _____ to _____, 2058.
- b. This Agreement may be modified and extended only by written amendment executed by all parties hereto.

Section 10. TERMINATION. In the event of a breach of this Agreement, the non-breaching party or parties shall give written notice of the breach. If said notice of breach does not result in a satisfactory cure of the breach within one hundred and eighty (180) days of said notice, the non-breaching party may terminate the Agreement or may bring legal action for equitable relief including specific performance of the Agreement and, additionally or alternatively, for monetary damages.

Section 11. LIABILITY.

- a. Nothing in the performance of this Agreement shall impose any liability for claims against the City other than claims for which liability may be imposed by the Governmental Tort Liability Act.
- b. Nothing in the performance of this Agreement shall impose any liability for claims against the County other than claims for which liability may be imposed by the Governmental Tort Liability Act.
- c. Nothing in the performance of this Agreement shall impose any liability for claims against the RCSO other than claims for which liability may be imposed by the Governmental Tort Liability Act.

- d. Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.
- e. The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.
- f. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto. 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.
- g. The costs of future modifications and/or changes to the firing range that are required by federal and/or state regulatory authorities shall be shared by the County and the City fifty-fifty.
- h. It is the understanding of the City, County and RCSO that each has workers' compensation coverage applicable to its own employees for any injuries to said employees which might occur in the performance of this Agreement. It is the intent of the parties that no party shall assert against any other party any claim for subrogation for a workers' compensation claim made by one of its employees. For this reason, each party to this Agreement hereby releases and discharges every other party from any and all such claims, rights or demands.

Section 12. COMPLIANCE WITH LAWS. The Parties agree to comply with any applicable federal, state, and local laws and regulations.

Section 13. NON-DISCRIMINATION.

- a. The Parties shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
- b. It is the policy of the City, County and RCSO not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, the Parties certify and warrant that they will comply with this policy.

Section 14. GOVERNING LAW. The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that any party may provide.

Section 15. MODIFICATION OF AGREEMENT. This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

Section 16. COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one in the same Agreement.

Section 17. FORCE MAJEURE. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or other similar cause.

Section 18. SEVERABILITY. Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

Section 19. NOTICE. It is the responsibility of all parties to this Agreement to provide current contact information for the positions listed below. Notices regarding this Agreement shall be sent to:

For the City: Police Chief Glenn Chrisman or Range Officer
City of Murfreesboro
P.O. Box 1139
Murfreesboro, TN 37133-1139
(615) 849-2629

For the RCSO: Sheriff Truman L. Jones
Rutherford County Sheriff's Office
940 New Salem Road
Murfreesboro, TN 37129
(615) 898-7720

For the County: Mayor Ernest Burgess
Rutherford County Courthouse
Room 101
Murfreesboro, TN 37130
(615) 898-7745

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signature.

CITY OF MURFREESBORO, TENNESSEE

Tommy Bragg, Mayor
Tommy Bragg, Mayor

Approved as to form:

Susan Emery McGannon
Susan Emery McGannon, City Attorney

Kelley Blevins Baker
Kelley Blevins Baker, Staff Attorney

RUTHERFORD COUNTY, TENNESSEE

Ernest Burgess
Ernest Burgess, Mayor

Approved as to form:

James C. Cope
James C. Cope, County Attorney

RUTHERFORD COUNTY SHERIFF'S
OFFICE

Truman L. Jones
Truman Jones, Sheriff

RESOLUTION

WHEREAS, the Sheriff's Department desires to enter into an Agreement with the City of Murfreesboro for the operation and maintenance of a firing range located at 940 New Salem Highway; and

WHEREAS, the 2007-08 Rutherford County budget includes funding in the amount of Five Hundred Forty-Three Thousand Five Hundred Dollars (\$543,500.00) as a transfer from the Development Tax Fund to the General Capital Projects Fund for the purpose of providing funding to construct a firing range to be located at the Sheriff's Department; and

WHEREAS, the estimated cost for architect fees for the firing range is approximately Fifty Thousand Dollars (\$50,000.00) with said cost to be split equally between Rutherford County and the City of Murfreesboro; and

WHEREAS, the City of Murfreesboro has committed Six Hundred Fifty Eight Thousand Five Hundred Dollars (\$658,500.00) towards the construction of such firing range in conjunction with the County.

THEREFORE BE IT RESOLVED by the Rutherford County Board of Commissioners that an additional Thirty Thousand Dollars (\$30,000.00) be appropriated from the DEVELOPMENT TAX FUND as a transfer to the GENERAL CAPITAL PROJECTS FUND as follows for the construction of a firing range to be located at the Sheriff's Department; and additionally, that the County Mayor and other appropriate officials of Rutherford County, Tennessee be and are hereby authorized to execute an Agreement with the City of Murfreesboro, **AS ATTACHED HERETO**, for the operation and maintenance of the firing range.

Operating Transfers:

From: 125-39000 – Undesignated Fund Balance -	\$30,000
To: 125-99100-590 – Transfers Out -	\$30,000

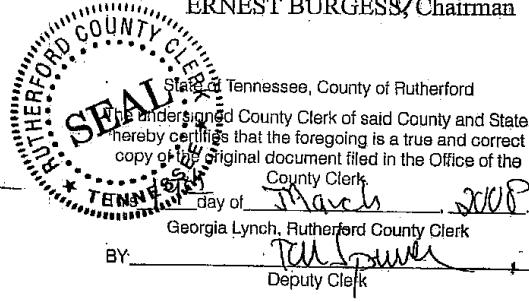
RESOLVED this 13th day of March, 2008.

RUTHERFORD COUNTY, TN

BY: Ernest Burgess
ERNEST BURGESS, Chairman

ATTEST:

Georgia Lynch
GEORGIA LYNCH, County Clerk



No Items.

COUNCIL COMMUNICATION

Meeting Date: 03/27/2024

Item Title: City Judge Employment Agreement

Department: Council

Presented by: Shane McFarland, Mayor

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

Consider Employment Agreement for City Judge between City of Murfreesboro and Ewing Sellers

Staff Recommendation

Approve employment agreement.

Background Information

The proposed employment agreement establishes the office of City Judge as a part-time position and sets forth the duties, authority, and compensation of the position. Under the terms of the agreement, the City Judge will be eligible to participate in the City's health, dental, and vision insurance programs on the same terms as full-time employees; however, because the position is part-time, the City Judge would not accrue any additional pension or retirement benefits or any additional vacation or sick leave. In all other respects, the terms of the agreement are consistent with those in the employment agreements with the City Manager, City Recorder/Treasurer, and City Attorney.

Fiscal Impact

The salary and benefits to be paid under the agreement are budgeted for in the City's FY2025 budget.

Attachments

Employment Agreement

EMPLOYMENT AGREEMENT WITH CITY JUDGE

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the last date signed below (“Effective Date”) by and between the City of Murfreesboro, a Tennessee municipal corporation (“City”), and Ewing Sellers (“City Judge”).

WHEREAS, the Murfreesboro City Council has appointed Ewing Sellers to serve as City Judge and preside over Murfreesboro’s City Court; and

WHEREAS, the City Council confirmed that appointment on March 27, 2025; and

WHEREAS, Ewing Sellers has accepted the appointment; and

WHEREAS, Ewing Sellers understands the position of City Judge is a part-time position; and

WHEREAS, in order to provide the services of City Judge and to establish compensation for such services, it is appropriate for the City to enter into an employment agreement with the City Judge for such services;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the City and Ewing Sellers agree as follows:

1. **Term.** The City Judge’s term of office shall be for a period of two years, beginning on April 6, 2025, and ending on April 5, 2027, unless earlier terminated in accordance with Section 9 of this Agreement. This Agreement may be renewed by City Council for additional successive two-year terms, and the City Council may choose to advertise for and interview other applicants or choose not to so advertise. In the case the City Council chooses to renew the contract without advertising, the City Judge shall receive notice and an opportunity to negotiate with the City Council before the Agreement is renewed.
2. **Licensure and Qualification.** The City Judge shall be qualified to vote in the City and shall be an attorney licensed to practice in the State of Tennessee. The City Judge shall remain in good standing with the Tennessee Board of Professional Responsibility throughout the term of this Agreement as a condition of employment. The City Judge must also comply with all other requirements for service as a municipal court judge, including, but not limited to, complying with all training and continuing education requirements and the Tennessee Code of Judicial Conduct and the Tennessee Board of Professional Responsibility. The City Judge shall immediately report to the City Council any failure to comply with this section.
3. **Judicial Independence.** The City Judge is independent from the City when performing judicial responsibilities and nothing contained herein shall be construed to interfere with the City Judge when the judge is performing judicial duties. The City Judge is solely responsible for all judicial decisions, and the City Judge shall use his/her best legal judgment in deciding cases brought before him/her without interference or pressure from any official or employee of the City.

4. **Duties and Authority.**

- 4.1 The City Judge shall perform those functions and duties specified for such office in the Murfreesboro City Charter and Chapter 9 of the Murfreesboro City Code. The City Judge shall perform all such functions in accordance with the requirements of the United States Constitution, the Tennessee Constitution, the Tennessee Code Annotated, and the Tennessee Code of Judicial Conduct.
- 4.2 In addition, the City Judge shall perform the following duties:
 - a. In coordination with the Court Clerk, ensure coverage over all court sessions so that all cases are adjudicated in a timely manner;
 - b. In coordination with the Court Clerk, develop, implement, and refine court policies and procedures, including docketing, calendaring, and case management policies and procedures;
 - c. In coordination with the City Attorney and Court Clerk, approve court forms and procedures necessary for the proper exercise of constitutional rights and other compliance with the law, and updating such forms and procedures as necessary;
 - d. In coordination with City Attorney and Court Clerk, ensure the proper training of court staff about court procedures and the use of approved court forms;
 - e. In coordination with the Court Clerk, ensure that City Court staff use approved forms, follow approved procedures, and comply with applicable provisions of the Code of Judicial Conduct, court rules, City code, and state statutes;
 - f. Notify the City Manager of additional resources necessary to ensure compliance with applicable laws and rules; and
 - g. Develop and maintain effective working relationships with court staff, other City departments, elected officials, other public agencies, and the public.
- 4.3 The City Judge acknowledges that the Court Clerk and all other court staff are supervised by the City Manager and that the City Judge does not serve in a supervisory role as to any of these or any other City employees except with regard to judicial procedures of the Court; provided, however, the City Judge shall consult with the City Manager concerning personnel issues, needed improvements to administrative policies and procedures, or issues that come to his/her attention through his/her service as City Judge. The City Judge further understands that all court staff must adhere to the same personnel policies as other City employees and that their salaries, benefits, hours of work, and working conditions shall be established by the City Council and/or City Manager.

5. Hours of Work; Court Schedule.

- 5.1 The City Judge shall be classified as a part-time employee to be compensated on an hourly basis. The City Judge is, however, a professional, exempt employee for purposes of the Fair Labor Standards Act and is not entitled to any overtime or additional pay except as provided in Section 6.1. As a part-time employee, the City Judge acknowledges that he/she is not covered by nor entitled to leave under the Family Medical Leave Act.
- 5.2 The City Judge shall hear cases and preside over other hearings at a minimum of three court sessions per week. The court sessions shall consist of at least two morning sessions and one afternoon session.
- 5.3 The City Judge will enter all time worked into the City's timekeeping system. The parties anticipate the City Judge devoting up to 12 hours per week to handling cases and other hearings and performing the other duties and functions set forth in Section 4. All time worked in excess of 12 hours per week must be approved by the City Manager, in consultation with the Court Clerk, before any payment for such time is made. In addition, if the City Judge anticipates that the Court's docket for any given week will require more than 12 hours of the City Judge's time, the City Judge shall inform the City Manager and Court Clerk of this possibility no later than Monday at noon.
- 5.4 The City Judge may take up to six vacation days per year. Such vacation will be deducted from his accrued vacation leave balance. In addition, the City Judge may take sick leave as necessary, with such leave being deducted from his accrued sick leave balance.
- 5.5 The City Judge, in coordination with the Court Clerk, shall ensure the availability of a judge *pro tem* approved by City Council to cover any absences due to vacation or sick leave or due to the City Judge's need to recuse himself/herself from hearing a case.
- 5.6 The City Judge shall schedule court sessions to accommodate any required continuing education and training required of municipal judges by the laws of the State of Tennessee, as well as any continuing legal education hours required by the Tennessee Board of Professional Responsibility.

6. Compensation.

- 6.1 The City agrees to pay the City Judge on a bi-weekly basis at an hourly rate of \$100 per hour.
- 6.2 After the Effective Date, this Agreement will be automatically amended to reflect any salary adjustments that are provided or required by the City's compensation policies to include all salary adjustments on the same basis as applied to all other City employees.

6.3 In addition to the compensation paid to the City Judge under Section 6.1 and in addition to any vacation or sick leave taken pursuant to Section 5.4, the City will pay the City Judge for eight (8) hours per week from his accrued sick leave balance at a rate of \$95.00 per hour, and once his sick leave balance is zeroed out, the City will pay the City Judge for eight (8) hours per week from his vacation leave balance at a rate of \$95.00 per hour until his accrued vacation leave balance is zeroed out. If upon termination of this agreement both his vacation and sick leave balances have not been zeroed out, the City agrees to pay the City Judge twenty (20) hours per week from first his vacation leave balance and then his sick leave balance at a rate of \$95.00 per hour until both balances are zeroed out.

6.4 The City Judge will not accrue any additional vacation or sick leave under this Agreement.

7. **Health, Disability, and Life Insurance Benefits.** The City agrees to provide and to pay the City's portion of the premiums for health, vision, and dental insurance for the City Judge and his/her dependents that are at least equal to that which is provided to the City's full-time employees.

8. **General Business Expenses.**

8.1 The City agrees to budget and pay for licensing fees, privilege taxes, and other charges that are required of lawyers to practice law in the State of Tennessee.

8.2 The City will pay the reasonable cost of all continuing education and training required of municipal judges by the laws of the State of Tennessee. The City will also pay up to \$1,000.00 per year for continuing legal education courses necessary for maintaining the City Judge's license to practice law in Tennessee. In addition, the City agrees to pay for reasonable travel and subsistence expenses to attend such training in accordance with City's travel reimbursement policies.

8.3 The City shall reimburse the City Judge for any business use of his/her personal vehicle in accordance with standard policies established by the City.

9. **Termination.**

9.1 The City Judge may terminate this Agreement by providing the City with a minimum of sixty (60) days' written notice prior to the effective date of termination, unless otherwise mutually agreed in writing by the parties.

9.2 The City, by vote of the majority of the City Council at a public meeting, may terminate this Agreement for cause. For purposes of this Agreement, "cause" shall include, without limitation, the following:

a. The City Judge refuses to perform, or does not perform, in a normal business manner his/her duties of employment with the City, provided, however, refusal or failure to perform such duties shall not constitute cause where performance of the duties could reasonably be viewed as a violation of the

Tennessee Code of Judicial Conduct, the Tennessee Rules of Professional Conduct, or other applicable law;

- b. The City Judge fails or refuses to obey and comply with the instructions, rules and regulations of the City as promulgated by the City Council or City Manager.
- c. The City Judge engages in any unlawful conduct in connection with his/her duties of employment with the City, is guilty of any acts of dishonesty in connection therewith, is convicted of a felony, is convicted of a misdemeanor involving moral turpitude, dishonesty, theft or unethical business conduct, or engages in any conduct clearly detrimental to the business of the City;
- d. Except as otherwise protected by applicable state or federal law, the City Judge is abnormally absent from the workplace for reasons other than reasonable periods of remote work, approved vacation periods, business trips, sick leave, or other periods common to his/her position without permission of the City;
- e. The City Judge fails to fully cooperate in any investigation by the City;
- f. The City Judge engages in any gross misconduct;
- g. The City Judge's license to practice law in Tennessee is suspended or revoked; or
- h. The City Judge's substantial breach of this Agreement.

9.3 The City, by vote of the majority of City Council at a public meeting, may also terminate this agreement if due to physical or mental illness or incapacity, the City Judge becomes unable to perform substantially all of the duties and services required of him/her under this Agreement for a period of 12 weeks in the aggregate during any 12-month period, unless such termination is otherwise prohibited by applicable state or federal law. Such termination shall take effect 10 days following prior written notice given by the City following the expiration of the 12-week period.

9.4 This Agreement is subject to the annual appropriation of funds for the City Judge position and may be terminated by the City without notice in any year in which sufficient funds are not appropriated to fund the City Judge position, provided, however, the City may not appropriate funds in the same year to employ another in the same capacity or to provide for comparable alternative services to those of the City Judge.

10. **Ethical Commitments.** The City Judge shall not endorse candidates, make financial contributions, sign, or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office with the City, nor seek or accept any personal enrichment or profit derived from confidential information, or holding office, or misuse of public time. The City shall support the City Judge in keeping these commitments by refraining from any order, direction or request that would require the City Judge to

undertake any of the aforementioned activities. Specifically, neither the City Council nor any individual member thereof shall request the City Judge to endorse any candidate, make any financial contribution, sign, or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter involving personnel on a basis other than fairness, impartiality, and merit.

11. **Limitation on Law Practice.** During his/her tenure in office as City Judge, the City Judge agrees that he/she shall not engage in the practice of law in an adversarial or representative capacity before the City Council, the City Court, or any City board, commission, or authority and that he/she shall not represent another party in any court or administrative proceeding involving the City or a member of City Council as a party or otherwise affecting the City's interests.
12. **Conflicts of Interest.** The City Judge is subject to the City's Ethics Code and shall refrain from any activity or employment that might place him/her in a position of conflict of interest with his/her duties for the City.

13. **Indemnification.**

- 13.1 Beyond that required under federal, state or local law, the City must defend, save harmless, and fully indemnify the City Judge against any obligation to pay money or perform or refrain from performing actions, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any third-party tort action or any other threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of City Judge's duties or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton misconduct. If the provision of legal representation by the City may reasonably present a legal conflict of interest, the City Judge may request independent legal representation at the City's expense, and the City may not unreasonably withhold approval of such request. Legal representation, provided by the City for the City Judge, will extend until a final determination of the legal action including any and all appeals. In the event independent legal representation is provided by the City, any settlement of any claim against the City Judge may not be made without prior approval of the City, which shall not be arbitrarily or capriciously withheld.
- 13.2 The City agrees to pay all reasonable litigation expenses of the City Judge throughout the pendency of any litigation to which the City Judge is a party, witness, or advisor to the City unless the action is brought by the City against the City Judge. Such expense payments survive the termination of this Agreement for any reasons and continue beyond the City Judge's service to the City as long as litigation is pending.

14. **Bonding.** The City bears the full cost of any fidelity or other bonds required of the City Judge under any law or ordinance.

15. **Notices.** Notice pursuant to this Agreement will be given by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

If to the City Judge:

At the address provided by the City Judge
to City's Human Resources Department

If to the City:

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

Notice is deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

16. General Provisions

16.1 **Non-Waiver.** The failure on the part of either party at any time to require performance by the other party of any portion of this Agreement shall not be deemed a waiver of or in any way affect that party's rights to enforce such provision or another provision in the future. Any waiver by either party of any provision of this Agreement shall not be taken or held to be a waiver of any other provision herein or any other breach of hereof.

16.2 **Integration.** This Agreement sets forth and establishes the entire understanding between the City and the City Judge relating to the employment of the City Judge by the City. Any prior discussions or representations by or between the City and the City Judge are merged into and rendered null and void by this Agreement.

16.3 **Amendment.** The City and the City Judge by mutual written agreement may amend any provision of this Agreement during its term with such amendments being incorporated into and made a part of this Agreement.

16.4 **Binding Effect.** This Agreement is binding on the City and the City Judge as well as their heirs, assigns, executors, personal representatives, and successors in interest.

16.5 **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

16.6 **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the remaining provisions will be deemed to be in full force and effect as if they have been executed by both the City and the City Judge subsequent to the expungement or judicial modification of the invalid provision.

16.7 **Precedence.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of the City's policies, ordinances, or rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement takes precedence over contrary provisions of the City's policies, ordinances, or rules and regulations, or any permissive state or federal law.

16.8 **Governing Law, Venue, and Waiver of Jury Trial.** This Agreement shall be governed by and interpreted according to the law of the State of Tennessee. Any action related to this Agreement shall be brought in the courts of Rutherford County or the U.S. District Court for the Middle District of Tennessee. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement.

16.9 **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City or its elected and appointed officials, employees, or agents and, in particular, governmental immunity afforded or available pursuant to the Tennessee Government Tort Liability Act.

16.10 **Non-Assignment.** the City Judge acknowledges that this is a professional, personal service agreement and, as such, the City Judge cannot assign the City Judge's duties hereunder.

IN WITNESS WHEREOF, the parties hereto have entered in this Agreement as of the day and year first hereinabove written.

CITY JUDGE:

Ewing Sellers

Date

3/20/2025

CITY OF MURFREESBORO, TN:

Shane McFarland, Mayor

Date

Approved as to form:


Adam E. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Beer Permits

Department: Finance

Presented by: Erin Tucker, City Recorder

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

TCA 57-5-103 delegates the authority to regulate the sale, distribution, manufacture, or storage of beer to the City where the business is located.

Staff Recommendation

The applications from the following applicants meet requirements and are recommended to be approved. The permits will only be issued once the permits are approved by the City Council (Beer Board) and building and codes final inspections are passed for regular beer permits or a special event permit is approved for special event beer permits.

Regular Beer Permits

Name of Applicant	Name of Business	Address	Type of Permit	Type of Business	Reason
San Juan Markets, LLC	Delicias Markets	810 NW Broad St Ste 218	Off-Premises	Grocery/Market	New Location
NFL, LLC	Neighbors Murfreesboro	2512 Roby Corlew Ln	On-Premises	Restaurant	New Location
M633 Group, LLC	Crab Fever	1720 Old Fort Pkwy Ste C170	On-Premises	Restaurant	Ownership Change

Special Event Beer Permits

Name of Applicant	Date of Event	Type of Event	Location of Event
Oaklands Association	04/13/2025	5th Annual Ar- "beer"-etum	900 & 901 N Maney Ave
Oaklands Association	05/10/2025	Spring Craft Fair	900 & 901 N Maney Ave
Oaklands Association	05/24/2025	The Spring Party	900 & 901 N Maney Ave
Oaklands Association	08/09/2025	Membership Dinner	900 & 901 N Maney Ave
Oaklands Association	09/06/2025	Fall Craft Fair	900 & 901 M Maney Ave
Oaklands Association	09/27/2025	Octoberfest	900 & 901 N Maney Ave
Oaklands Association	10/16/2025	Oaklands After Dark Evening Tours and Pumpkin Patch	900 & 901 N Maney Ave
Oaklands Association	10/17/2025	Oaklands After Dark Evening Tours and Pumpkin Patch	900 & 901 N Maney Ave
Oaklands Association	12/05/2025	Christmas Dinner	900 & 901 N Maney Ave

Background Information

All applicants meet the requirements for issuing a beer permit per the City Code Chapter 4 Alcoholic Beverages with the exception of pending building and codes inspections for regular beer permits or pending special event permit for special event beer permits.

Council Priorities Served

Maintain public safety

Controlling the sale of beer within the City provides enforcement tools by the City for restrictions as to where beer is sold, ability to obtain the right to sell beer, time of beer sales and onsite consumption.

Attachments

Summaries of Request

Beer Application

Summary of information from the beer application:

Name of Business Entity/Sole Proprietor	San Juan Markets LLC
Name of Business	Delicias Markets
Business Location	810 NW Broad St Ste 218
Type of Business	Grocery/Market
Type of Permit Applied For	Off-Premises

Type of Application:

New Location	<input checked="" type="checkbox"/>
Ownership Change	<input type="checkbox"/>
Name Change	<input type="checkbox"/>
Permit Type Change	<input type="checkbox"/>
Corporation	<input type="checkbox"/>
Partnership	<input type="checkbox"/>
LLC	<input checked="" type="checkbox"/>
Sole Proprietor	<input type="checkbox"/>

5% or more Ownership

Name	Juan Ignacio Rocha
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Age	63
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Residency City/State	Franklin, TN
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Race/Sex	White/M
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Background Check Findings

City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
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TBI/FBI:	No indication of any record that may preclude the applicant for consideration.
----------	--

Name	Maria S. Rocha
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Age	61
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Residency City/State	Franklin, TN
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Race/Sex	White/F
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Background Check Findings

City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
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TBI/FBI:	No indication of any record that may preclude the applicant for consideration.
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Name	Juan Rojo Guzman
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Age	38
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Residency City/State	Rockvale
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Race/Sex	White/M
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Background Check Findings

City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
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TBI/FBI:	No indication of any record that may preclude the applicant for consideration.
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Name	Maria Vanessa Rocha
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Age	40
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Residency City/State	Rockvale, TN
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Race/Sex	White/F
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Background Check Findings

City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
-----------------------	--

TBI/FBI:	No indication of any record that may preclude the applicant for consideration.
----------	--

Yes

Application Completed Properly?

No

Occupancy Application Approved?

The actual beer application is available in the office of the City Recorder.

***I request permission to issue the beer permit upon successful completion of all required building and codes inspections.

Beer Application

Summary of information from the beer application:

Name of Business Entity/Sole Proprietor	NFL, LLC
Name of Business	Neighbors Murfreesboro
Business Location	2512 Roby Corlew Ln
Type of Business	Restaurant
Type of Permit Applied For	On-Premises

Type of Application:

New Location	<input checked="" type="checkbox"/>
Ownership Change	<input type="checkbox"/>
Name Change	<input type="checkbox"/>
Permit Type Change	<input type="checkbox"/>
Corporation	<input type="checkbox"/>
Partnership	<input type="checkbox"/>
LLC	<input checked="" type="checkbox"/>
Sole Proprietor	<input type="checkbox"/>

Manager

Name	Victoria Piller
Age	38
Residency City/State	Nolensville, TN
Race/Sex	White/M

Background Check Findings

City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

Application Completed Properly? Yes

Occupancy Application Approved? No

The actual beer application is available in the office of the City Recorder.

***I request permission to issue the beer permit upon successful completion of all required building and codes inspections.

Beer Application

Summary of information from the beer application:

Name of Business Entity/Sole Proprietor	M633 GROUP, LLC
Name of Business	Crab Fever
Business Location	1720 Old Fort Pkwy Ste C170
Type of Business	Restaurant
Type of Permit Applied For	On-Premises

Type of Application:

New Location	<input type="checkbox"/>
Ownership Change	<input checked="" type="checkbox"/>
Name Change	<input type="checkbox"/>
Permit Type Change	<input type="checkbox"/>
Corporation	<input type="checkbox"/>
Partnership	<input type="checkbox"/>
LLC	<input checked="" type="checkbox"/>
Sole Proprietor	<input type="checkbox"/>

Manager

Name	Hawa Dogbey
Age	36
Residency City/State	Smyrna, TN
Race/Sex	Black/F

Background Check Findings

City of Murfreesboro:	No indication of any record that may preclude the applicant for consideration.
TBI/FBI:	No indication of any record that may preclude the applicant for consideration.

Application Completed Properly? Yes

Occupancy Application Approved? No

The actual beer application is available in the office of the City Recorder.

***I request permission to issue the beer permit upon successful completion of all required building and codes inspections.

Special Event Beer Application

Summary of information from the beer application:

Name of Non-Profit Organization Oaklands Association Inc.
Organization Address 901 N. Maney Ave.

Event Location Oakland's Park
Event Date 900 & 901 N. Maney Ave.
Event Time 4/13/2025
Period for Beer to be Served 2:00 p.m. until 5:00 p.m.
Nature and Purpose of Event 2:00 p.m. until 5:00 p.m.
Approximate Number of Persons Expected to Attend 5th Annual Ar- "beer"-etum
60

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 5/10/2025
Period for Beer to be Served 10:00 a.m. until 5:00 p.m.
Nature and Purpose of Event 10:00 a.m. until 5:00 p.m.
Approximate Number of Persons Expected to Attend Spring Craft Fair
1000

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 5/24/2025
Period for Beer to be Served 6:30 p.m. until 10:00 p.m.
Nature and Purpose of Event 6:30 p.m. until 10:00 p.m.
Approximate Number of Persons Expected to Attend The Spring Party
150

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 8/9/2025
Period for Beer to be Served 5:00 p.m. until 9:30 p.m.
Nature and Purpose of Event 5:00 p.m. until 9:30 p.m.
Approximate Number of Persons Expected to Attend Membership Dinner
125

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 9/6/2025
Period for Beer to be Served 10:00 a.m. until 5:00 p.m.
Nature and Purpose of Event 10:00 a.m. until 5:00 p.m.
Approximate Number of Persons Expected to Attend Fall Craft Fair
1000

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 9/27/2025
Period for Beer to be Served 4:00 p.m. until 8:00 p.m.
Nature and Purpose of Event 4:00 p.m. until 8:00 p.m.
Approximate Number of Persons Expected to Attend Octoberfest
500

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 10/16/2025
Period for Beer to be Served 6:00 p.m. until 9:00 p.m.
Nature and Purpose of Event 6:00 p.m. until 9:00 p.m.
Approximate Number of Persons Expected to Attend Oaklands After Dark Evening Tours and Pumpkin Patch
150

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 10/17/2025
Period for Beer to be Served 6:00 p.m. until 9:00 p.m.
Nature and Purpose of Event 6:00 p.m. until 9:00 p.m.
Approximate Number of Persons Expected to Attend Oaklands After Dark Evening Tours and Pumpkin Patch
150

Special Event Permit Approved? No
Event Location Oakland's Mansion
Event Date 900 & 901 N. Maney Ave.
Event Time 12/5/2025
Period for Beer to be Served 6:30 p.m. until 10:00 p.m.
Nature and Purpose of Event 6:30 p.m. until 10:00 p.m.
Approximate Number of Persons Expected to Attend Christmas Dinner
200

Special Event Permit Approved? No
Application Completed Properly? Yes
Internal Revenue Letter Provided? Yes

No Items.

COUNCIL COMMUNICATION

Meeting Date: 03/27/2025

Item Title: Purchase of First Due Software

Department: Fire

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

Consider contract to purchase First Due software.

Staff Recommendation

Approve the Carasoft software contract.

Background Information

The department uses ZOLL cardiac monitors and AED machines during cardiac arrest responses. Any data collected during patient care is uploaded into reporting software for documentation required by State law. As of December 31, 2025, ZOLL is no longer offering the reporting software currently being used.

After research and product demonstrations, First Due software was determined to best fit the department's needs. Not only will it transition well from our current software, it also contains an inventory and staffing module that we currently do not have. We request to purchase the First Due software from Carahsoft through the Omnia contract, in the amount of \$139,850.

Council Priorities Served

Maintain public safety

Cardiac monitors and AED machines are crucial response items when treating cardiac arrest victims. Reporting software is needed for patient documentation and quality assurance for our providers.

Responsible Budgeting

By using a Cooperative Purchasing Agreement, we are obtaining quality software that fits our needs, in a cost-effective manner.

Fiscal Impacts

The expenditure, \$139,850, is funded from the Fire Department's FY25 budget.

Attachment

Carasoft Contract



Agreement for Services

This Agreement for Services (this "Agreement") dated as of **March 1, 2025** (the "Effective Date") is made by and between Locality Media, Inc dba First Due a Delaware corporation, having offices at 107 7th St, Garden City, NY, 11530 ("Locality Media" or "First Due") and the **City of Murfreesboro** located at **111 W Vine St, Murfreesboro, TN 37130** (the "Customer").

1. Locality Media maintains a website through which Customer members may access Locality Media's **First Due Size-Up™** Community Connect™, Mobile Responder™ and/or other software-as-a-service platforms and solutions identified in the attached Exhibit A – Carahsoft Quote and Exhibit B - Statement of Work (collectively, the "Service") in connection with the performance of their Customer duties. Locality Media agrees to grant the Customer access to the Service pursuant to the terms and conditions set forth below and in Exhibits A and B, and the Customer agrees to use the Service only in strict conformity with and subject to such terms and conditions.
2. Locality Media may provide the Customer with one or more user ID's, initial passwords, digital certificates and/or other devices (collectively, "Credentials") and/or application programming interfaces ("APIs") to access the Service. The Customer shall access the Service only by using such Credentials and APIs. The Customer authorizes Locality Media to act on any instructions Locality Media receives from users of the Service who present valid Credentials and such individuals shall be deemed authorized to act on behalf of the Customer, including, without limitation, to change such Credentials. It is the Customer's sole responsibility to keep all Credentials and other means of access within the Customer's direct or indirect possession or control both confidential and secure from unauthorized use. The Customer understands the utility of the First Due Size Up Service depends on the availability of data and information relating to Locations and structures in the Customer's jurisdiction, including but not limited to building system and structural information, building inspection codes and incident report data (collectively, "Location Data"). Locality Media also may process and furnish through the Service, in addition to Location Data, other data regarding residents and roadways within the Customer's jurisdiction ("Community Data"). Location Data and Community Data are referred to collectively herein as "Data". Locality Media may acquire Data from third party public and/or private sources in Locality Media's discretion. In addition, the Customer will upload to the Service or otherwise provide to Locality Media in such form and using such methods as Locality Media reasonably may require from time to time, any and all Data from the Customer's records and systems which the parties mutually designate for inclusion in the Service database. The Customer agrees not to filter or alter such records except to conform such Data to the formats reasonably required by Locality Media. Subject to any third-party license restrictions identified expressly in writing by the Customer, the Customer grants to Locality Media a perpetual, non-exclusive, worldwide, royalty-free right and license to process, use and disclose the Data furnished to Locality Media by the Customer in connection with the development, operation, and performance of Locality Media's business, including but not limited to the Service. Customer shall own all Customer data and upon termination or written request, Locality Media shall provide Customer data to Customer.
3. As between the parties, the Customer and its employees, contractors, members, users, agents, and representatives (collectively, "Customer Users") are solely responsible for determining whether and how to use Data accessed through the Service. The Customer acknowledges that Locality Media, through the Service, provides an interface for viewing Data compiled from the Customer and other sources over which Locality Media has no control and for which Locality Media assumes no responsibility. Locality Media makes no representations or warranties regarding any Location or structure (including but not limited to a Location's safety, construction, occupancy, materials, hazards, water supply, contents, location, surrounding structures, exposures, size, layout, compliance, condition or history), residents, roadways, or any actual or expected outcome from use of the Data, nor does Locality Media make any representation or warranty regarding the accuracy or reliability of the Data received by Locality Media. Locality Media provides administrative and information technology services only and does not advise, recommend, or render an opinion with respect to any information communicated through the Service and shall not be responsible for the Customer's or any third party's use of any information obtained through the Service.

4. The Customer shall obtain and maintain, at its own expense, computers, operating systems, Internet browsers, tablets, phones, telecommunications equipment, third-party application services and other equipment and software ("Equipment") required for the Customer to access and use the Service (the Service being accessible to users through standard Internet browsers subject to third party network availability and signal strength). Locality Media shall not be responsible for any problem, error or malfunction relating to the Service resulting from Customer error, data entry errors or malfeasance by the Customer or any third party, or the performance or failure of Equipment or any telecommunications service, cellular or Wi-Fi network, Internet connection, Internet service provider, or any other third-party communications provider, or any other failure or problem not attributable to Locality Media ("Technical Problems").
5. This Agreement will be effective for an initial term of **12 months** (the "Initial Term") commencing on the Effective Date. After the Initial Term, this Agreement will automatically renew for successive terms of **12 months** each (a "Renewal Term"), subject to the right of either party to cancel renewal at any time upon at least 60 days' written notice. Locality Media reserves the right to increase Customer's renewal Service fees by no more than **5%** per annum, applied to the Service fees set forth in the previous term. Either party also may terminate this Agreement immediately upon written notice if the other party: (i) becomes insolvent; (ii) becomes the subject of a petition in bankruptcy which is not withdrawn or dismissed within 60 days thereafter; (iii) makes an assignment for the benefit of creditors; or (iv) materially breaches its obligations under this Agreement and fails to cure such breach within 30 days after the non-breaching party provides written notice thereof.
6. Upon termination, the Customer shall cease use of the Service and all Credentials then in the Customer's possession or control. This Section 6 and Sections 8 through 11 and 15 through 25 hereof shall survive any termination or expiration of this Agreement.
7. The Customer agrees to pay the fees set forth in Exhibit A for use of those Service features described in Exhibit B (as available as of the Effective Date). Locality Media may charge separately for services offered from time to time that are not included in the scope of Exhibit A and Exhibit B (such as new Service features, systems integration services and applications of the Service for new purposes), subject to the Customer's written acceptance of the terms of use and fees associated with such services. The Customer shall be responsible for the payment of all taxes associated with provision and use of the Service (other than taxes on Locality Media's income).
8. Locality Media owns and shall retain all right, title, and interest in and to the Service, all components thereof, including without limitation all related applications, APIs, user interface designs, software and source code (which shall further include without limitation any and all source code furnished by Locality Media to the Customer in connection with the delivery or performance of any services hereunder) and any and all future enhancements or modifications thereto howsoever made and all intellectual property rights therein but not Data furnished by the Customer. Except as expressly provided in this Agreement or as otherwise authorized in advance in writing by Locality Media, the Customer and Customer Users shall not copy, distribute, license, reproduce, decompile, disassemble, reverse engineer, publish, modify, or create derivative works from, the Service; provided, however, that nothing herein shall restrict the Customer's use of the Data that the Customer has provided.
9. "Confidential Information" means any and all information disclosed by either party to the other which is marked "confidential" or "proprietary," including oral information that is designated confidential at the time of disclosure. Without limiting the foregoing, all information relating to the Service and associated software and the terms of this Agreement shall be deemed Locality Media's Confidential Information. Notwithstanding the foregoing, "Confidential Information" does not include any information that the receiving party can demonstrate (i) was known to it prior to its disclosure hereunder; (ii) is or becomes publicly known through no wrongful act of the receiving party; (iii) has been rightfully received from a third party authorized to make such disclosure without restriction; (iv) is independently developed by the receiving party, without the use of any Confidential Information of the other party; (v) has been approved for release by the disclosing party's prior written authorization; or (vi) is required to be disclosed by court order or applicable law, provided that the party required to disclose the information provides prompt advance notice thereof to the other party (except to the extent such notice is prohibited by law).
10. Each party hereby agrees that it shall not use any Confidential Information belonging to the other party other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by the other party. Each party shall use the same degree of care to protect the other party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances with less than reasonable

care. Neither party shall disclose the other party's Confidential Information to any person or entity other than its employees, agents or consultants who need access thereto in order to effect the intent of this Agreement and in each case who have been advised of the confidentiality provisions of this Agreement, have been instructed to abide by such confidentiality provisions, entered into written confidentiality agreements consistent with Sections 9-11 or otherwise are bound under substantially similar confidentiality restrictions.

11. Each party acknowledges and agrees that it has been advised that the use or disclosure of the other's Confidential Information inconsistent with this Agreement may cause special, unique, unusual, extraordinary, and irreparable harm to the other party, the extent of which may be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which the nonbreaching party may be legally entitled, the nonbreaching party shall have the right to seek to obtain immediate injunctive relief, without the necessity of posting a bond, in the event of a breach of Section 9 or 10 by the other party, any of its employees, agents or consultants.
12. LOCALITY MEDIA REPRESENTS AND WARRANTS THAT IT SHALL USE COMMERCIALLY REASONABLE EFFORTS TO PROVIDE THE SERVICE WITHOUT INTRODUCING ERRORS OR OTHERWISE CORRUPTING DATA AS SUBMITTED BY THE CUSTOMER. OTHER THAN THE FOREGOING, THE SERVICE, INCLUDING ALL DATA, IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, LOCALITY MEDIA MAKES NO WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR AVAILABLE AT ALL TIMES, NOR DOES LOCALITY MEDIA WARRANT THAT THE SERVICE WILL REMAIN COMPATIBLE WITH, OR OPERATE WITHOUT INTERRUPTION ON, ANY EQUIPMENT OF THE CUSTOMER OR CUSTOMER USERS. Locality Media will provide the service on a 24X7X365 basis with an uptime guarantee of 99.5% availability excluding scheduled maintenance. Locality Media will respond to Customer and provide Initial Responses, Temporary Resolutions and Final Resolutions in accordance with the time requirements set forth in the table below.

Severity Level:	Vendor's Initial Response will be provided within:	Vendor's Temporary Resolution will be provided within:	Vendor's Final Resolution will be provided within:
1: Mission Critical – Software is down /undiagnosed but feared critical; situation may require a restore and Software use is suspended until a diagnosis is given	60 minutes from receipt of initial notice from the Customer, or discovery, of the error	24 hours from receipt of initial notice from the Customer, or discovery, of the error	2 days from receipt of initial notice from the Customer, or error discovery
2: Critical Issue – Software is not down, but operations are negatively impacted	2 hours from receipt of initial notice from the Customer, or discovery, of the error	48 hours from receipt of initial notice from the Customer, or discovery, of the error	3 days from receipt of initial notice from the Customer, or error discovery
3: Non-Critical Issue – resolution period to be mutually agreed upon	4 hours from receipt of initial notice from the Customer, or discovery, of the error	3 days from receipt of initial notice from the Customer, or discovery, of the error	15 days from receipt of initial notice from the Customer, or error discovery

13. EXCEPT AS SET FORTH ABOVE IN SECTION 12, LOCALITY MEDIA MAKES AND THE CUSTOMER RECEIVES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SUBJECT MATTER HEREOF. LOCALITY MEDIA SPECIFICALLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE SUBJECT MATTER HEREOF, INCLUDING WITHOUT LIMITATION THE SERVICE.
14. The Customer represents and warrants that the Customer is authorized and has all rights necessary to enter into this Agreement, to provide the Data furnished by the Customer to Locality Media, and to use the Service and Data, and Customer will only use the Service and Data, as permitted under this Agreement and in accordance with the laws, regulations, and any third-party agreements applicable to the Customer and Customer Users. Without limiting the generality of the foregoing, Customer shall not cause or permit any Data to be uploaded to the Service or used in connection with the Service in any manner that would violate any third-party intellectual property rights or license between Customer and any third party. Customer agrees not to use or permit the use of the Service and Data in connection with any public or private enterprise other than operation and performance of the Customer's functions and services. In addition, the Customer and the Customer Users shall

not copy, distribute, license, reproduce, publish, modify, or otherwise use any Personally Identifiable Information (PII) contained within the Data accessed through the Service for any purpose other than to lawfully carry out the services and duties of the Customer. The Customer shall remain responsible for the performance, acts and omissions of each Customer User as if such activities had been performed by the Customer.

15. Locality Media will indemnify, defend and hold harmless the Customer from and against any and all damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") resulting from any third-party claim, suit, action, investigation or proceeding (each, an "Action") brought against the Customer based on the infringement by Locality Media of any third-party issued patent, copyright or registered trademark, except to the extent such Action is based on Data furnished from the Customer, the Customer's breach of any third party agreement, or any combination or integration of the Service with any Customer- or third-party property, method or system.
16. To the extent permitted by law, the Customer will indemnify, defend and hold Locality Media harmless from and against any and all Losses arising from or relating to: (i) any breach by the Customer of Section 8; or (ii) any Action by a Customer User or third party arising from or relating to the use of the Service or Data accessed through the Service, except to the extent such Losses are subject to Section 15 above or result from the gross negligence or willful misconduct of Locality Media.
17. Such indemnification under Sections 15 and 16 will be provided only on the conditions that: (a) the indemnifying party is given written notice reasonably promptly after the indemnified party receives notice of such Action; (b) the indemnifying party has sole control of the defense and all related settlement negotiations, provided any settlement that would impose any monetary or injunctive obligation upon the indemnified party shall be subject to such party's prior written approval; and (c) the indemnified party provides assistance, information and authority as reasonably required by the indemnifying party.
18. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS IN SECTION 15, AND EXCEPT FOR CLAIMS OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, LOCALITY MEDIA SHALL NOT BE LIABLE TO THE CUSTOMER OR CUSTOMER USERS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SERVICES OR DATA, EVEN IF THE CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS IN SECTION 15, AND EXCEPT FOR CLAIMS OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, LOCALITY MEDIA SHALL NOT BE LIABLE TO THE CUSTOMER OR CUSTOMER USERS FOR ANY DAMAGES IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE AMOUNT OF FEES PAID OR PAYABLE BY THE CUSTOMER TO LOCALITY MEDIA WITHIN THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.
19. All notices, requests, demands, or consents under this Agreement must be in writing, and be delivered personally, by email or facsimile followed by written confirmation, or by internationally recognized courier service to the addresses of the parties set forth in this Agreement.
20. Except as otherwise provided below, neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party. Locality Media may assign this Agreement or any rights or obligations hereunder to any Locality Media affiliate or in connection with the merger or acquisition of Locality Media or the sale of all or substantially all of its assets related to this Agreement, without such consent. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.
21. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
22. Any modification, amendment or waiver to this Agreement shall not be effective unless in writing and signed by the party to be charged. No failure or delay by either party in exercising any right, power, or remedy hereunder shall operate as a waiver of such right, power, or remedy.
23. The parties are independent contractors with respect to each other, and neither shall be deemed an employee, agent, partner, or legal representative of the other for any purpose or shall have any authority to create any obligation on behalf of the other. Neither party intends to grant any third-party beneficiary rights as a result of this Agreement.
24. Any delay in or failure of performance by either party under this Agreement will not be considered a breach and will be excused to the extent caused by any event beyond the reasonable control of such party including,

but not limited to, acts of God, acts of civil or military authorities, strikes or other labor disputes, fires, interruptions in telecommunications or Internet or network provider services, power outages, and governmental restrictions.

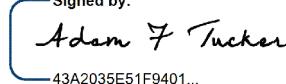
25. This Agreement supersedes all prior agreements, understandings, representations, warranties, requests for proposal and negotiations, if any. Each provision of this Agreement is severable from each other provision for the purpose of determining the enforceability of any specific provision.

LOCALITY MEDIA, INC.

Signed by:
By: 
Name: Toby Ritt
Title: Vice President, Sales
Date: 3/24/2025
88681F19F5B948A...
(Signature)

City of Murfreesboro

By: _____
(Signature)
Name: Shane McFarland
Title: Mayor
Date: _____

Signed by:

43A2035E51F9401...
(Signature)



GOVERNMENT - PRICE QUOTATION

CARAHSOFT TECHNOLOGY CORP

11493 SUNSET HILLS ROAD | SUITE 100 | RESTON, VIRGINIA 20190
 PHONE (703) 871-8500 | FAX (703) 871-8505 | TOLL FREE (888) 66CARAH
 WWW.CARAHSOFT.COM

Exhibit A
carahsoft

TO: Jamie Layhew
 Murfreesboro Fire Department
 220 NW Broad St
 Murfreesboro, TN 37130 USA

FROM: Noel Stapleton
 Carahsoft Technology Corp.
 11493 Sunset Hills Road
 Suite 100
 Reston, Virginia 20190

EMAIL: jlayhew@murfreesboron.govEMAIL: Noel.Stapleton@Carahsoft.com

PHONE: (615) 893-1422

PHONE: (571) 591-6954

TERMS: OMNIA EDU contract: R191902
 Term: April 30, 2025
 FTIN:52-2189693
 Shipping Point: FOB Destination
 Credit Cards: VISA/MasterCard/AMEX
 Remit To: Same as Above
 Payment Terms: Net 30 (On Approved Credit)
 Sales Tax May Apply

QUOTE NO:	52618744
QUOTE DATE:	02/11/2025
QUOTE EXPIRES:	04/30/2025
RFQ NO:	
SHIPPING:	GROUND
TOTAL PRICE:	\$139,826.13
TOTAL QUOTE:	\$139,826.13

LINE NO.	PART NO.	DESCRIPTION	PRICING	QUOTE PRICE	QTY	EXTENDED PRICE
1	FDPSL1500-756	Access to the First Due Platform for service population from 1,500,001 to 1,750,000 for a single agency Locality Media, INC. - FDPSL1500 Start Date: 03/01/2025 End Date: 02/28/2026	LIST: \$135,454.55 CONTR: \$134,777.27	\$126,050.00	COOP 1	\$126,050.00
2	FDPS-756	Implementation Services Locality Media, INC. - FDPS Start Date: 03/01/2025 End Date: 02/28/2026	LIST: \$195.00 CONTR: \$194.03	\$194.03	COOP 71	\$13,776.13
SUBTOTAL:						\$139,826.13
TOTAL PRICE:						\$139,826.13
TOTAL QUOTE:						\$139,826.13

The above listed fee is for:

Payment Terms: The above-listed Total Quote will be invoiced on or around the Subscription Start date of March 1, 2025. For subsequent annual periods, the Service fees are due and payable annually in advance on March 1st.

Pricing is adjusted to serve a population of 153,000.

CONFIDENTIAL
 PAGE 1 of 1

QUOTE DATE: 02/11/2025
 QUOTE NO: 52618744



Locality Media, Inc. dba First Due
 107 Seventh St
 Garden City, NY 11530, United States
 Phone: +1 (516) 874-2258
 Website: <https://www.firstdue.com/>

Exhibit B: Statement of Work

First Due ID: 1545132000398334693

Statement of Work | City of Murfreesboro

1. Introduction

1.1 Purpose

The purpose of this Statement of Work (SoW) document is to clearly define the Implementation, Training, Data Migration, Integrations, Customer Success Manager, Customer Support, and Assumptions for **City of Murfreesboro** ("Customer") from Locality Media, Inc. dba First Due ("First Due") for the purchased product(s) set forth in Exhibit A – Carahsoft Quote and noted below in the Included Modules section below ("Purchased Products") attached to the Agreement. This SOW is pursuant and governed by OMNIA - EDU SW: R191902.

1.2 Scope:

This SOW includes the configuration, optimization, and deployment of the Purchased Products with the goal of meeting the organizational needs of the Customer.

2. Included Modules

The table below defines the Modules that are included as related to subscription/access as well as implementation. Any modules missing from this table will be assumed to be out of scope:

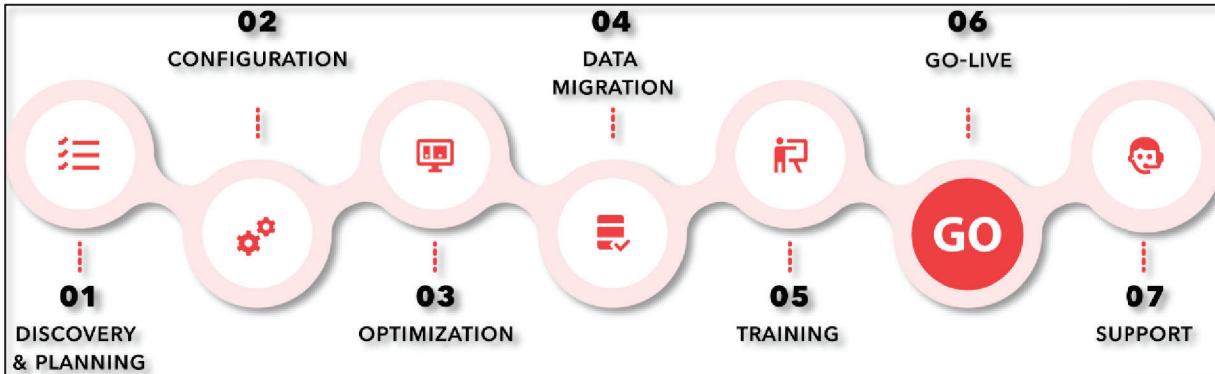
Included Modules and Implementation/Configuration Services	
Occupancy Management & Pre-Incident Planning	Manage Occupancies, Pre-Incident Mapping, ArcGIS Maps, Fire Systems, Hazardous Material, and Contacts.
Responder	Web Responder dashboard and Responder iOS/Android App with notifications, statusing and routing.
Command	Comprehensive Incident Command Module with digital command board, drag and drop task assignment, customizable checklists, live map annotation and automated Incident log.
Hydrant Management – Advanced	Manage Hydrants including hydrants visible on pre-plan & response map, hydrant list, hydrant types, hydrant uploads, ArcGIS hydrant layers, hydrant setup, hydrant service checklist, data management, mapping, service inspections, hydrant flow test and reporting.
Inspections	Field Inspections, Configurable Checklists, Violation Management, Virtual Inspections, Inspections Scheduler, and Integrated Pre-Incident Planning.
Invoicing	Invoice Management, Bulk Mailing, Billing Report and Customizable Fee Schedules.
Permitting	Permit Management, Customizable Permit Types, Plan Review and Permit Fees.
Investigations	Organize, analyze, and document investigations, keeping case information secure and separated from, but integrated with other modules.
Incident Reporting – NFIRS	NFIRS Incident Documentation, State and Federal Compliance with automated submission.
Incident Reporting – ePCR	ePCR Incident Documentation, State and Federal Compliance with automated submission.
Scheduling	Manage staff schedules with an interactive shift board, configurable call shifts module, messaging, time-off and shift trades.

Personnel Management
Store, Manage and Access Employee Records including demographic data, certifications and employment information.
Basic Training Records
Assign Training, Record Completions, View Training Logs, and Manage Certifications.
Events & Activities
Create Events, View Global Activity Log, and Access Global Calendar.
Assets & Inventory
Assets, vehicles, equipment and inventory management, assets and equipment checks, and work order management.
Medications Tracking
Track all medications, including DEA Scheduled Medications. Tracking a medication's lifecycle (receipt, usage, waste or removal) by expiration date, lot number or serial number. Ensure compliance with internal and external signatures, as well as advanced role security and authentication.
Community Connect
Online portal for residents and businesses to input critical occupant and property data that can be made available to Emergency Response Agencies during an incident.
Central Square Enterprise/TriTech CAD Integration
Receive CAD Data to support First Due Responder and Incident Reporting modules via sFTP utilizing the CST CAD Enterprise CAD-to-External System Export.
Training Integration w/ Third Party (Target Solutions)
Training Integration with Target Solutions
ODBC Connector – Weekly
ODBC connection to First Due data views for purposes of data analysis and extraction. (Weekly)
Essentials Online Training Package
Up to 24 Hours Online Training with certified First Due Instructor
Implementation and Configuration Services
Services related to configuring and customizing the First Due Platform as described in the Statement of Work.

3. Implementation

3.1 Overview

First Due utilizes a combination waterfall and iterative approach to implementation. This includes Discovery, Configuration, Optimization, Data Migration, Training, and Go-Live.



3.2 Implementation Resources

- Implementation Manager:** Project lead and go-to person, acting as the primary liaison between the Customer and the First Due project team. The Implementation Manager will develop and execute the project plan, manage communication, and ensure adherence to predefined timelines and quality standards. This individual is also responsible for helping to configure the core system and some of the more straightforward modules.

- **Implementation Product Specialist(s):** While the Implementation Manager will lead the overall project, Product Specialists will be brought in to help configure and optimize specialty modules such as Fire Prevention, ePCR, Assets & Inventory, Training, Scheduling, and Reporting. They are product experts in First Due and are versed in industry best practices for their specific product specialties. Depending on the modules purchased and complexity, your project may be assigned 1-3 Product Specialists.
- **Technical Implementation Specialist:** Responsible for managing data migration from your current vendor to First Due and the integration between First Due and CAD. The Technical Implementation Specialist team comes from a diverse background, ranging from database management to public safety software integration.
- **Customer Success Manager:** As the point person after project completion, the Customer Success Manager (CSM) will be part of the implementation as an advocate and to ensure a seamless transition to support post go-live. During the Implementation they will regularly check-in to ensure progress is being made and help with the addition of new modules or scope from a commercial perspective. Post go-live, they will provide regular check-ins to ensure the Customer is adopting the Purchased Products and deriving value from them.
- **Training Manager:** Responsible for developing and executing the training plan, with the goal of effective adoption of the Purchased Products by Customer. The Training Manager will be involved throughout the project to ensure they have the Customer specific knowledge to design the most effective training plan possible.

3.3 Implementation Phases

2.3.1 Discovery & Planning: Once the Project has been assigned, Customer will receive a set of tailored discovery questionnaires. Once filled out, the Implementation Manager will schedule a Project Kick-Off. During this meeting the Customer will receive access to the First Due platform, meet the project team and receive an initial product tour. The Implementation Manager will also provide an overview of the project plan, decide the meeting cadence, and formalize the next steps. CAD Integration and Data Migration planning meetings are also held during this phase, if required. These meetings will be led by the Technical Implementation Specialist.

- **Key Meeting(s):** Project Kick-Off, CAD Kick-Off, Data Migration Planning
- **Milestone(s):** Project Kick-Off, System Access
- **Customer Task(s):** Fill Discovery Questionnaires
- **Deliverable(s):** Welcome email, Initial Account Set-Up, System Logins Provided

2.3.2 Configuration: After planning is complete, the Implementation Manager will begin scheduling the Configuration sessions. Before each configuration session there will be some light prep work for the Customer to complete. Generally, there will generally be one (1) configuration session per module, but in cases where there is more complexity, there may be multiple. These sessions will be either be run by the Implementation Manager or the Implementation Product Specialist, depending on the module.

- **Key Meeting(s):** Module Configuration Sessions (1-2 per module)
- **Milestone(s):** N/A
- **Customer Task(s):** Configuration Prep Work (per module)
- **Deliverable(s):** Initial Module Configuration
- **Scope:** All Purchase Products

2.3.3 Optimization: After the configuration is complete, the Customer will be provided with test work (module User Acceptance Testing (UAT)) to complete. Following the completion of the UAT work, Optimization Sessions will be held to review Customer feedback, correct any issues, and finalize the configuration of the module. There will generally be one (1) Optimization session per module, but in cases where there is more complexity, there may be multiple. Once a module is configured and optimized, the Customer will be provided a module sign-off document to review and sign. Note Configuration and Optimization sessions may run interchangeably to ensure the project stays on-track.

- **Key Meeting(s):** Module Optimization Sessions (1-2 per module)
- **Milestone(s):** Module Acceptance and Sign-Off (1 per module)
- **Customer Task(s):** Optimization Prep Work (UAT per module)
- **Deliverable(s):** Module Optimization resulting in Customer Acceptance
- **Scope:** All Purchase Products

2.3.4 Data Migration: Data Migration will occur through-out the project and can be summarized in three steps: (1) initial data migration at the beginning of the project required for configuration, (2) import of historical records, usually occurring throughout the project, and (3) final data migration immediately before go-live. First Due's Data Migration team will review your legacy data environment and provide guidance on the best path to extract, map, and import the data into First Due.

- **Key Meeting(s):** Data Migration Planning
- **Milestone(s):** Data Migration Sign-Off
- **Customer Task(s):** Extract or provide access to legacy data based on guidance from First Due Data Migration team, Data Mapping Assistance, review and approve data load.
- **Deliverable(s):** Data Migration Plan, Data Mapping Assistance, Data Import

2.3.5 Training: As the project is in the final stages, the Training Manager will work with the Customer to arrange a training plan that will result in the successful adoption of the Purchased Products. Note that while Webinar Administrator training will occur during configuration and optimization sessions, the Training Manager will arrange formal Webinar and/or Onsite Train-the-Trainer and/or End User Training Session(s). Additive to the provided training, Customer will also have access to live weekly training academy sessions as well as on demand online training videos and training guides via the First Due Knowledgebase.

- **Key Meeting(s):** Training Planning, Training Sessions
- **Milestone(s):** Training Completed
- **Customer Task(s):** Coordinate staff to be trained
- **Deliverable(s):** Training Plan and Training Session(s)

2.3.6 Go-Live: Once all modules have been signed off and training has been arranged or completed, First Due will work with the Customer to kick-off the Go-live process. This includes: (1) Final System Acceptance, (2) Go-live planning meeting, (3) Final Data Migration, (4) Go-live, and (5) Post go-live implementation support.

- **Key Meeting(s):** Go-live planning, Post Go-live Check-Ins
- **Milestone(s):** System Acceptance, Go-live
- **Customer Task(s):** Final Testing
- **Deliverable(s):** Post Go-live Implementation Support (2-4 weeks)

2.3.7 Transition to Customer Success: Following the completion of the post go-live support period and assuming all critical implementation tasks are complete, Customer will be transitioned to their Customer Success Manager (CSM) and to the First Due Support team.

- **Key Meeting(s):** Customer Success Transition Meeting
- **Milestone(s):** Transition to Customer Success and Support
- **Customer Task(s):** N/A
- **Deliverable(s):** N/A

4. Training

Training is an integral part of any successful implementation. First Due is focused on providing your agency adequate training to ensure effective user adoption of the platform. As part of this Statement of Work, the Customer shall receive:

- Formal training as outlined in Exhibit B – Statement of Work
- Administrator Training as part of the Configuration / Optimization
- Access to live First Due Academy Webinars
- Access to online recorded training videos and guides via an interactive knowledgebase

Any additional scope or detail related to Training will be listed below.

5. Data Migration

First Due understands the importance of data migration to our customers and has extensive experience working to migrate historical records into the platform. First Due will use best efforts to migrate applicable data from Customer's existing systems utilizing data migration best practices. This includes:

- Data Migration Planning Session
- Assistance/Guidance in extracting data from existing system/s
- Mapping extracted data to First Due import workbooks
- Importing of Data into First Due

The Data Migration scope of this Statement of Work will be to import legacy data from Customer existing systems in order for the Purchased Products to be operational. This includes operational data and historic records. Note that there are times when certain data is not seen as valuable to migrate to First Due. First Due and Customer will agree during the planning phase on what data needs to be migrated and priorities around data migration.

6. Integrations

As part of this Statement of Work, First Due will Implement all integrations and relevant scope outlined in Exhibit A – Carahsoft Quote. Integrations will be implemented during the configuration and optimization phases outlined above. In most cases, these integrations will be aligned with the module they are related. The only exception to this is the CAD Integration which, if part of scope, will have its own dedicated session at the beginning of an implementation. Customer or complex integrations may follow this same exception and have their own sessions to implement.

First Due will support these integrations post go-live. Note First Due is not responsible for outages, issues, and failures of 3rd Party Vendors. First Due will, however, always endeavor to work with Customer to resolve issues, regardless of responsibility.

Any additional scope or detail related to Integrations will be listed below.

7. Customer Success Manager

First Due understands the value of ongoing Customer Success activities post go-live. As part of this Statement of Work, Customer will receive a Customer Success Manager who will be the point person for Customer post go-live. Customer will receive regular check-ins to ensure the adoption of the Purchased Products. As part of the regular check-ins, the Customer Success Manager can help Customer with any major enhancements or issues, new feature updates, interest in other modules and additional training needs.

8. Customer Support

A customer's success is important to First Due and we understand having a reliable, knowledgeable Customer Support (or Support) team there to help is vital. Customer Support provides a central point of contact to ensure that all customer support requests are responded to and resolved. Below is a summary of the support components.

8.1 Contacting Customer Support

Customer Support is a service provided to our customers when they have questions, requests, or issues with the Services. When Customer submits a support request, a Support Ticket (or Ticket) is created within First Due's Support CRM and a unique ID (or ticket number) is assigned to track and document Customer's support request.

We offer a variety of channels to communicate with our Support team:

- **Online:** <https://support.firstduesizeup.com/portal/en/kb/first-due-community-connect-support>
- **Email:** support@firstdue.com
- **Phone:** (516) 874-5818

8.2 Self-Service Resources

First Due strives to provide useful, empowering self-service resources that are available 24/7 on our [online Support Center](#). Our Knowledgebase contains step-by-step/how-to articles, FAQs, videos, best practices, etc.

8.3 Hours of Operation

Customer Support hours of operation (Business Hours) are:

- Monday to Friday, 9:00am – 6:00pm ET**
- ** 24x7 Support available for Sev 1 (Down/Urgent) issues.

9. Assumptions

9.1 Customer Participation

Every successful implementation requires adequate participation from the Customer. Although First Due is ultimately responsible for deliverables in the SoW, Customer agrees to attend the necessary calls and complete required preparatory work in order to help drive the project forward. At a minimum, Customer resources will be required for one (1) hour per week for meetings, and half an hour to one (0.5-1) hour of prep work per week by one or multiple individuals. Customer understands the importance of ensuring the correct Customer resources are available when required.

9.2 Statement of Work Expiration

Excluding significant delays caused by the First Due team, this Statement of Work will expire within twelve (12) months of the Subscription Start Date as detailed in Exhibit A – Carahsoft Quote. In situations where the project is delayed for no fault of either party, First Due agrees to extend the term, only if there is an agreed plan to complete the project within the extension period. Note the term expiration does not apply to section 6 & 7 above and will not impact First Due's ability to support the Customer post go-live.

9.3 Best Practice and Standard Workflow

First Due intends to meet the organizational needs of the Customer and their respective software requirements by configuring the Purchased Products to closely align with existing workflows. Although First Due is incredibly flexible, there may be times when First Due recommends using standard functionality or best practice to ensure a timely implementation, and simplification of current process. These workflows may differ from Customer existing workflows. Customer understands the importance of collaboration to achieve the ultimate goal of successfully adopting the Purchased Products and is aware there may be changes to existing workflow to accomplish this.

9.4 Go-live Requirements & Gaps

Over the course of the Implementation, both parties may uncover functionality gaps in the Purchased Products. Some of these gaps may have a material impact on the ability to implement or adopt the product. Gaps of this nature, deemed Go-Live Requirements, will be prioritized to ensure a timely go-live and project completion. However, in the case that certain features are not complete before go-live, they will be added to module and system signoffs as exceptions and will be completed within an agreed upon timeframe.

Zoho Sign Document ID: 2AB7F2F4-DYS87BMFZ6F6DFSETPYEIDKQ6MIPLHDFRXG7UIKOONG

W-9
 Form (Rev. March 2024)
 Department of the Treasury
 Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give form to the requester. Do not send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.Print or type.
See Specific Instructions on page 3.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
		-			-				
or									
Employer identification number									
8	1	-	1	3	8	8	0	6	2

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person	Andreas Huber
-----------	--------------------------	---------------

Date Jan 02 2025 10:23 PST

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

