

MURFREESBORO CITY COUNCIL
Regular Session Agenda
Council Chambers – City Hall – 6:00 PM
December 16, 2021

PRAYER

Mayor Shane McFarland

PLEDGE OF ALLEGIANCE

Ceremonial Items

Proclamation: Oakland High School Football Team

Consent Agenda

1. Approval of Naming of County One Stop Building (Administration)
2. Grant of an Easement to Middle Tennessee Electric Membership Corporation (Administration)
3. Replacement of Insulation and Floor Coating in Hangar 3 (Airport)
4. Community Investment Program Funds Transfer (Finance)
5. Mandatory Referral Industrial Drive Water Line Easement Abandonment (Planning)
6. Mandatory Referral for Abandonment of Alley Right-of-Way Along Bridge Avenue (Planning)
7. Mandatory Referral for Abandonment of Sanitary Sewer Easement along Butler Drive (Planning)
8. Mandatory Referral for Abandonment of Sanitary Sewer Easement along Medical Center Parkway (Planning)
9. Donation of Tactical Body Armor to Blount County Law Enforcement Training Academy (Police)
10. Conveyance of Retired Police K9 (Police)
11. Master Services Agreement with Gresham Smith (Transportation)
12. Dr. Martin Luther King Jr. Blvd. Phase 2, Sidewalk Project Amendment No. 1 TDOT Contract (Transportation)
13. Master Services Agreement with Neel Schaffer, Inc. (Transportation)
14. Asphalt Purchases Report (Water Resources)
15. Purchase of Precast Manhole Structures (Water Resources)

Minutes

16. Approval of City Council Minutes for November 17, and 18, 2021 Regular Meetings (Finance)

Old Business

Land Use Matters

17. Ordinance 21-OZ-33 Rezoning property along Bridge Avenue (2nd and Final Reading) (Planning)
18. Ordinance 21-OZ-34 Zoning for property located north of Dejarnette Lane (2nd and Final Reading) (Planning)
19. Ordinance 21-OZ-35 Zoning for property located south of South Rutherford Boulevard (2nd and final reading) (Planning)
20. Ordinance 21-OZ-36 Rezoning property along Franklin Road (2nd and final reading) (Planning)
21. Ordinance 21-O-38 Amending the Zoning Ordinance regarding the City Core Overlay District (2nd and final reading) (Planning)

New Business

Ordinance

22. FY22 Budget Amendment Ordinance (Administration)
 - a. Ordinance
 - b. First Reading: Ordinance 21-O-43

Land Use Matters

23. Plan of Services, Annexation, and Zoning for property located along Veals Road
 - a. Public Hearing: Plan of Services and Annexation
 - b. Resolution 21-R-PS-39: Plan of Services
 - c. Resolution 21-R-A-39: Annexation
 - d. Public Hearing: Zoning 205.5 acres
 - e. First Reading: Ordinance 21-OZ-39
24. Planning Commission Recommendations to Schedule Public Hearings (Planning)

Resolution

25. Resolution 21-R-38 TDOT Procurement Policy (Transportation)

On Motion

26. Jordan Farms Public Restroom (Administration)
27. Contract for Sign Consultant (Building Codes)
28. Purchase of SCBAs for Two New Apparatus (Fire Rescue)
29. Purchase of RAE Gas Monitors (Fire Rescue)

30. Central Square (Tritech) Contract Extension (Police)
31. Purchase of Radio Equipment (Police)
32. Agreement with Stansell Electric Co. for Traffic Signal/Electrical Maintenance (Transportation)
33. Salem/Barfield Improvements/ ELI Engineering Supplement #2 (Water Resources)
34. Northeast Regional Pump Station/SSR Task Order Amendment #2 (Water Resources)
35. New Administrative Building Architectural Design Services (Water Resources)

Licensing

Board & Commission Appointments

Payment of Statements

Other Business

Adjournment

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Approval of Naming of County One Stop Building

Department: Administration

Presented by: Craig Tindall, City Manager

Requested Council Action:

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

Summary

Approval of the County's desire to name the new County One Stop Building

Staff Recommendation

Approve the County expressed desire to name the County One Stop Building after Bart Smith.

Background Information

Approximately three years ago, the City permitted the County to construct a one-stop building on City-owned land at Blaze Drive and Fortress Blvd. This building provides a westside location for County and State services that are utilized by City residents. As a part of that agreement, the City reserved approval of the naming applied to the facility.

On November 10, 2021, the County Commission passed a resolution naming the facility after Bart Smith. The proposed facility name is the Bart Smith One Stop Building.

Fiscal Impact

None

Attachments

Rutherford County Board of Commissioner Resolution dated November 10, 2021

RESOLUTION

WHEREAS, Rutherford County has engaged the Public Building Authority of Rutherford County, Tennessee for the planning, design, construction, and furnishing of the One Stop Building to be located on property owned by the City of Murfreesboro, Tennessee at the corner of Blaze Drive and Fortress Boulevard; and

WHEREAS, said One Stop Building will consist of office space for the Rutherford County Clerk, space for a Department of Safety and Homeland Security Express Center, and other shelled space; and

WHEREAS, Rutherford County has entered into a certain Ground Lease Agreement with the City of Murfreesboro regarding the One Stop Building; and

WHEREAS, said Ground Lease provides that Rutherford County shall name the One Stop Building, and shall create appropriate signage to reflect such naming, subject to concurrence of the One Stop Building name by the Murfreesboro City Council; and

WHEREAS, the Property Management Committee recommended that the One Stop Building's name be designated as the "Bart Smith One Stop Building".

NOW, THEREFORE, BE IT RESOLVED by the Rutherford County Board of Commissioners that this body hereby recommends that the One Stop Building be named the "Bart Smith One Stop Building", subject to concurrence by the Murfreesboro City Council.

BE IT FURTHER RESOLVED that the County Mayor is hereby authorized to forward this Resolution to the City of Murfreesboro Mayor for consideration and presentation to the Murfreesboro City Council for review and approval.

RESOLVED this 10th day of November, 2021.

RUTHERFORD COUNTY, TENNESSEE

ATTEST:

BY:


BILL KETRON, Chairman


LISA DUKE CROWELL, County Clerk

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Grant of an Easement to Middle Tennessee Electric Membership Corporation

Department: Administration

Presented by: Craig Tindall, City Manager

Requested Council Action:

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

Summary

Grant easement to Middle Tennessee Electric Membership Corporation (MTEMC) for County One-Stop Facility on City-owned land at Blaze Drive and Fortress Boulevard.

Staff Recommendation

Approve the granting of an easement to MTEMC.

Background Information

An electric easement to MTEMC is required to complete the construction of the facility that will provide state mandated services for City and County residents in the western portion of the City.

Fiscal Impact

None

Attachments

MTEMC Easement.

Prepared by:

MTEMC
555 New Salem Hwy.
Murfreesboro, TN 37129

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

RIGHT OF WAY EASEMENT

Development Blanket Easement YES ☐ NO ☒ Name of Development Rutherford County One Stop at Blackman

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (whether one or more)

_____ and/by _____
Print Name _____ Print Name _____
(unmarried) (husband and wife) or (Print Business Name) City of Murfreesboro (business entity) for a good and valuable
consideration, the receipt whereof is hereby acknowledged, do hereby grant unto Middle Tennessee Electric Membership Corporation, a cooperative
corporation hereinafter "Cooperative", whose address is Murfreesboro, Tennessee, and to its successors or assigns, the right to enter upon the lands of the
undersigned, situated in the County of Rutherford, State of Tennessee, at
(911 address) 3906 Blaze Drive Murfreesboro TN 37128
house # Street/road name City State Zip

further described in County Tax Assessor's Tax Maps as

County Code 75 Map 92 Group _____ Parcel 46.01

which property may be further referenced as property of record in Deed Book 623, Page 183, of the Register's Office of the
above named county and may be further described according to Exhibit "1" attached hereto and incorporated herein by reference as if set forth herein at
length verbatim, if attached, to install, construct, reconstruct, rephase, operate and maintain an electric transmission and/or distribution line or system
and/or any other service permitted by law, on or under the above described lands and/or in, upon or under all streets, roads or highways abutting said
lands; to inspect and make such repairs, changes, alterations, improvements, removals from, substitutions and additions to its facilities as Cooperative
may from time to time deem advisable, including, by way of example and not by way of limitation, the right to increase or decrease the number of
conduits, wires, cables, poles, guy wire and anchors, hand holes, manholes, connection boxes, transformers and transformer enclosures; to cut, trim and
control the growth by chemical means, machinery or otherwise of trees and shrubbery located within 20 feet of the center line (a total of 40') of said line
or system, or any tree that may interfere with or threaten to endanger the operation and maintenance of said line or system (including any control of the
growth of other vegetation in the right-of-way which may incidentally and necessarily result from the means of control employed); to prohibit, prevent
and restrict the planting and/or maintenance of any trees, shrubbery or vegetation not approved in writing by MTEMC (except those trees that appear on
the MTEMC approved standard planting guide) which approval may be withheld by MTEMC in its sole discretion if it determines said trees, shrubbery
or vegetation may in the future interfere with or threaten to endanger the operation and maintenance of said line or system; to prohibit the planting of any
trees, shrubbery or vegetation within 15' of a pole or transformer; to keep the easement clear of all buildings, structures or other obstructions; and to
license, permit or otherwise agree to the joint use or occupancy of the lines, system or, if any of said system is placed underground, of the trench and
related underground facilities, by any other person, association or corporation for electrification, other utility or commercial purposes, or for any other
service permitted by law. The undersigned hereby expressly releases any claims, demands, actions, or causes of action for trespass related to the
Cooperative's use of this Right of Way Easement as described herein.

The undersigned agree that all poles, wires and other facilities, including any main service entrance equipment, installed in, upon or under the
above-described lands at the Cooperative's expense shall remain the property of the Cooperative, removable at the option of the Cooperative.

With respect to the planting or maintenance of any trees, shrubbery or other vegetation within twenty feet (20') of the centerline (a total of 40')
of said line or system, the undersigned must secure in advance the written approval of the cooperative which approval may be withheld by MTEMC in its
sole discretion if it determines said trees, shrubbery or vegetation may in the future interfere with or threaten to endanger the operation and maintenance
of said line or system.

If any portion of the lines or system is placed underground, the right-of-way herein granted includes the right to install and maintain guy
additions to overhead lines onto property of the undersigned.

The undersigned covenant that they are the owners of the above-described property.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this _____ day of
_____, 20 ____.

(Print Name) _____ (Legal Signature) _____

(Print Name) _____ (Legal Signature) _____

OR

(Print Business Name) City of Murfreesboro

(Authorized Representative Print Name & Title) _____ (Legal Signature) X

(ACKNOWLEDGMENT)

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, before
me personally appeared to me known (or proved to me on the basis of
satisfactory evidence) to be the person or persons described in, and who
executed the foregoing instrument, and acknowledge that he/she/they
executed the same as his/her/their free act and deed.

Witness my hand and official seal at _____, Tennessee,
the day and year aforesaid.

Notary Public _____

My commission expires _____

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, before
me personally appeared to me known (or proved to me on the basis of
satisfactory evidence) to be the person or persons described in, and who
executed the foregoing instrument, and acknowledge that he/she/they
executed the same as his/her/their free act and deed.

Witness my hand and official seal at _____, Tennessee,
the day and year aforesaid.

Notary Public _____

My commission expires _____

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Replacement of Insulation and Floor Coating in Hangar 3

Department: Airport

Presented by: Chad L. Gehrke, Airport Director

Requested Council Action:

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

Summary

Installation of new insulation and replacement of floor coating in Hangar 3 at the Murfreesboro Municipal Airport.

Staff Recommendation

Approve contract with Caliber Properties, LLC to install new insulation in Hangar 3 at the Murfreesboro Municipal Airport for \$42,500.

Approve contract with Specialty Coating, Inc. to replace the epoxy floor in Hangar 3 for \$32,640.

Background Information

Hangar 3 is a 100' X 100' hangar with approximately 2,300 square feet of office space. It is the largest hangar constructed by the City to date. It is leased to Murfreesboro Aviation, which provides aeronautical activities and services including aircraft maintenance, aircraft sales, avionics repairs and sales, certification testing, and flight training.

Hangar 3 was built in the early 1980s and due for maintenance and replacement work to extend its useful life. The hangar was constructed with blown insulation installed in the hangar bay. The insulation is currently in poor condition and discolored due to age. New insulation will improve the working environment within the hangar throughout the year as well as enhancing the interior appearance of the hangar. The bid for new insulation is \$42,500.

Additionally, the floor covering in Hangar 3 is due replacement. It is currently chipping and flaking. Replacing the epoxy coating will add further protection to the concrete subsurface and enhance the safe use of the hangar. The bid for replacement of the floor coating is \$32,640.

Council Priorities Served

Responsible budgeting

A strong on-going repair and replacement program for City facilities protects the City's investments, avoids undue expense, and is a critical part of responsible budgeting.

Operational Issues

To minimize operational issues, the contractors will be working directly with the tenant, to assure the projects are efficiently completed.

Fiscal Impact

The expense for this project, total \$75,140, is funded by the Airport Fund. The insulation project is \$42,500 and the floor coating project is \$32,640.

Attachments

Caliber Properties Spray Foam Insulation Contract

Specialty Coating, Inc. Replace Epoxy Floor Contract

Agreement for Spray Foam Insulation Installation

This Agreement is entered into and effective as of December 16, 2021, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Caliber Properties, LLC**, a Limited Liability Company of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document
- ITB-17-2022-Hanger 3 Spray Foam Insulation Project issued 11/23/2021 (the "Solicitation");
- Contractor's Proposal, dated December 9, 2021 ("Contractor's Proposal");
- Contractor's Price Proposal, dated December 9, 2021 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor.

- a. Scope of Work. Contractor is engaged to provide and install new spray foam insulation in Hangar 3 at the City of Murfreesboro Municipal Airport in accordance with the Contractor's proposal dated December 9, 2021, the City ITB-17-2022 – Hanger 3 Spray Foam Insulation Project dated November 23, 2021, and Price Proposal.
- b. Supervision and Superintendence of Work.
 - i. 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.
 - ii. 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.
 - i. Contractor will provide competent, suitably qualified personnel to perform the work as set forth in Contractor's Proposal dated December 9, 2021. The Contractor will at all times maintain good discipline and order at the site.
 - ii. 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.
 - iii. 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.

- iv. 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. The Contractor warrants to the City that:

- i. Unless otherwise provided for, all materials, machinery, and equipment used on the work shall be new, of the best quality in their kind and grade, and of the most efficient and effective design and type available for the purposes for which they are intended;
- ii. All materials, machinery, and equipment conform in every respect with the specifications, drawings, approved samples, and other requirements of the Contract documents;
- iii. Only such materials, machinery, and equipment shall be used on the work as have been produced or manufactured in accordance with the established and generally accepted standards for goods and workmanship of the type covered by the specifications and are of such a design and construction as to perform properly the function or work for which they are intended and to afford the maximum ease in upkeep and repair;
- iv. The finish of the exterior surface of the materials, machinery and equipment used on the work shall be in accordance with the specifications, or if there are no applicable specifications, such finish shall be consistent with commercially accepted practices for the services to be rendered by the respective materials, machinery, and equipment; and,
- v. 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 materials, machinery, and equipment or workmanship to be as warranted. Each warranty with respect to any items other than machinery and equipment, shall expire sixty (60) months from the date of receipt by the City of such items and, with respect to machinery and equipment, twenty-four (24) months after the date of initial operation of such machinery and equipment. The Contractor agrees to correct without expense to, and to the satisfaction of, the City, any defects that may develop in material, workmanship, and design during the period of such warranty.

The warranties set forth in the preceding paragraph are cumulative and shall not exclude or affect the operation of any other warranty or guaranty provided by law or by the Contract documents.

e. Subcontractors.

- i. 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.
- ii. 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.

- iii. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the City.
- iv. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate written agreement between Contractor and the subcontractor.

f. Permits

- i. 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.

- i. 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.
- ii. 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.

- i. 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:
 - 1. All employees on the work and other persons who may be affected thereby,
 - 2. All the work and all materials or equipment to be incorporated there, whether in storage on or off the site, and
 - 3. 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.

- ii. 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 commences on the Effective Date, December 16, 2021 and expires on June 16, 2022 unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

3. Price; Compensation; Method of Payment.

The price for the goods and other services to be provided under this Agreement is set forth in the Proposal dated December 9, 2021, which reflects a total purchase price of \$42,500.00. 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. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. All invoices should be sent to accounts payable@murfreesborotn.gov

4. 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.

5. Insurance.

During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000.00, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

6. Indemnification.

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

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

6. Notices.

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

If to the City of Murfreesboro:

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

If to Contractor: Robert Miller
PO Box 1380
Norris, TN 37828
robert@caliberhomepros.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 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.

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. 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 December 16, 2021 (the "Effective Date").

City of Murfreesboro, Tennessee

**Caliber Properties, LLC dba Caliber Construction
Sytems**

By: _____
Shane McFarland, Mayor

Robert Miller, President

Approved as to form:

Adam Tucker - City Attorney

Agreement for Epoxy Flooring Installation

This Agreement is entered into and effective as of December 16, 2021, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Specialty Coatings Inc**, a corporation of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document
- ITB-18-2022-Hanger 3 Epoxy Flooring Project issued 11/23/2021 (the "Solicitation");
- Contractor's Proposal, dated 12/01/2021 ("Contractor's Proposal");
- Contractor's Price Proposal, dated 12/01/2021 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor.

- a. Scope of Work. Contractor is engaged to provide and install new epoxy flooring in Hangar 3 at the City of Murfreesboro Municipal Airport in accordance with the Contractor's proposal dated December 1, 2021, the City ITB-18-2022 – Hanger 3 Epoxy Flooring Project dated November 23, 2021, and Price Proposal.
- b. Supervision and Superintendence of Work.
 - i. 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.
 - ii. 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.
 - i. Contractor will provide competent, suitably qualified personnel to perform the work as set forth in Contractor's Proposal dated 12/01/2021. The Contractor will at all times maintain good discipline and order at the site.
 - ii. 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.
 - iii. 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.
- iv. 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. The Contractor warrants to the City that:
- i. Unless otherwise provided for, all materials, machinery, and equipment used on the work shall be new, of the best quality in their kind and grade, and of the most efficient and effective design and type available for the purposes for which they are intended;
 - ii. All materials, machinery, and equipment conform in every respect with the specifications, drawings, approved samples, and other requirements of the Contract documents;
 - iii. Only such materials, machinery, and equipment shall be used on the work as have been produced or manufactured in accordance with the established and generally accepted standards for goods and workmanship of the type covered by the specifications and are of such a design and construction as to perform properly the function or work for which they are intended and to afford the maximum ease in upkeep and repair;
 - iv. The finish of the exterior surface of the materials, machinery and equipment used on the work shall be in accordance with the specifications, or if there are no applicable specifications, such finish shall be consistent with commercially accepted practices for the services to be rendered by the respective materials, machinery, and equipment; and,
 - v. 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 materials, machinery, and equipment or workmanship to be as warranted. Each warranty with respect to any items other than machinery and equipment, shall expire sixty (60) months from the date of receipt by the City of such items and, with respect to machinery and equipment, twenty-four (24) months after the date of initial operation of such machinery and equipment. The Contractor agrees to correct without expense to, and to the satisfaction of, the City, any defects that may develop in material, workmanship, and design during the period of such warranty.

The warranties set forth in the preceding paragraph are cumulative and shall not exclude or affect the operation of any other warranty or guaranty provided by law or by the Contract documents.

- e. Subcontractors.
- i. 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.
 - ii. 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.

- iii. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the City.
- iv. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate written agreement between Contractor and the subcontractor.

f. Permits

- i. 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.

- i. 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.
- ii. 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.

- i. 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:
 - 1. All employees on the work and other persons who may be affected thereby,
 - 2. All the work and all materials or equipment to be incorporated there, whether in storage on or off the site, and
 - 3. 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.

- ii. 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 commences on the Effective Date, December 16, 2021 and expires on June 16, 2022 unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

3. Price; Compensation; Method of Payment.

The price for the goods and other services to be provided under this Agreement is set forth in the Proposal dated December 1, 2021, which reflects a total purchase price of \$32,640.00. 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. 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. 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.

5. Insurance.

During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000.00, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

6. Indemnification.

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

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

6. Notices.

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

If to the City of Murfreesboro:

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

If to Contractor: Greg Callahan
Specialty Coatings, Inc
1767 Stillwater Circle
Brentwood, TN 37027-8645
gcallahan@specialtycoat.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 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.

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. 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 December 16, 2021 (the "Effective Date").

City of Murfreesboro, Tennessee

Specialty Coatings, Inc.

By: _____
Shane McFarland, Mayor

Greg Callahan, Vice President

Approved as to form:

Adam Tucker - City Attorney

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Community Investment Program Funds Transfer

Department: Finance

Presented by: Jennifer Brown

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 Community Investment Program (CIP) funds 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 the Street Department:

Wilkinson Pike Widening

Transfer \$35,000 from New Salem Highway Phase 1 to Wilkinson Pike Widening.

McFadden Improvements

Transfer \$100,000 from Land Acquisition/Contingencies to McFadden Improvements.

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 – Wilkinson Pike (2019 Loan)

CIP Funds Transfer Request – McFadden Improvements (2019 Loan)



... creating a better quality of life

CIP Funds Transfer Request

Mr. Tindall:

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

CIP Loan 2019 Loan

Transfer CIP funds from:

Transfer CIP funds to:

New Salem Highway Phase 1	\$	(35,000.00)	Wilkinson Pike Widening	35,000.00
---------------------------	----	-------------	-------------------------	-----------

_____			_____	
_____			_____	
_____			_____	

TOTAL TRANSFER	\$	(35,000.00)	TOTAL TRANSFER	\$	35,000.00
----------------	----	-------------	----------------	----	-----------

Explanation: Funding for the Wilkinson Pike Widening Project has been approved in the 2022 CIP.

This borrowing will take place in 2022. Professional engineering design services have begun for this

project. There are funds available in the New Salem Phase 1 Project that can be transferred to the

Wilkinson Pike Widening Project due to cost saving that can be used to pay for these costs as

incurred prior to the next borrowing.

Erin Tucker - Electronic Approval

11/29/2021

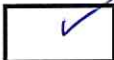
Budget Director Signature

Date

Vicki Massey
Reviewed by Finance

11/29/21
Date

Approved



[Signature]
City Manager

Declined



11/29/21
Date

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



... creating a better quality of life

CIP Funds Transfer Request

Mr. Tindall:

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

CIP Loan 2019 Loan

Transfer CIP funds from:

Transfer CIP funds to:

Land Acquisition/Contingencies	\$	(100,000.00)	McFadden	100,000.00
--------------------------------	----	--------------	----------	------------

TOTAL TRANSFER	\$	(100,000.00)	TOTAL TRANSFER	\$	100,000.00
----------------	----	--------------	----------------	----	------------

Explanation: Funding for improvements at McFadden Community Center has been approved in the
2022 CIP. The borrowing will take place in 2022. There is a need to start the improvements sooner,
and funds are available in the Land Acquisition/Contingencies line item in the current CIP. After this
transfer is made there will be a remaining balance of \$1,261,415.04 in the Land Acquisition/Contingencies
line item.

Erin Tucker - Electronic Approval

12/1/2021

Budget Director Signature

Date

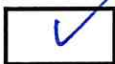
Vicki J. Massey

12/2/21

Reviewed by Finance

Date

Approved



[Signature]
City Manager

Declined



12/2/21
Date

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

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Mandatory Referral for Abandonment of Water Line Easement along Industrial Drive

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning 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 request to allow abandonment of a water line easement on property along Industrial Drive.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission will consider this item on its consent agenda at its December 15, 2021 regular meeting. If the Planning Commission does not recommend approval, this item will be removed from the Council agenda.

The Water Resources Board voted to recommend approval on December 7, 2021.

Background Information

In this mandatory referral [2021-729], Council is being asked to consider the abandonment of a water line easement on property located along Industrial Drive east of New Salem Highway, as shown on the attached exhibit. This easement abandonment request is from Middle Tennessee Electric (MTE) in conjunction with the expansion of its corporate campus along New Salem Highway, the construction of which will render this easement unnecessary. The Water Resources Department has reviewed the request and recommends its approval.

If this mandatory referral is approved, Staff and the Planning Commission recommend the following conditions in addition to the condition above from the Water Resources Board:

- 1) The applicant must provide to the City Legal Department all the necessary documentation (including any needed legal descriptions and exhibits) required to prepare and record the legal instrument.
- 2) The applicant will be responsible for paying any recording fees.

Council Priorities Served

Establish Strong City Brand

The abandonment of this easement is consistent with the City's goals to be customer

service-oriented, relinquishing its rights to what will be a surplus easement so that property owners can more fully enjoy and utilize their property.

Improve Economic Development

The abandonment of this easement will help to facilitate the expansion of Middle Tennessee Electric's facilities.

Attachments:

1. Staff comments from December 15, 2021 Planning Commission meeting
2. Memo from MWRD
3. Letter and exhibits from applicant

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
DECEMBER 15, 2021
PROJECT PLANNER: AMELIA KERR**

- 4.m. Mandatory Referral [2021-729] to consider the abandonment of an existing waterline easement located on property along the south side of Industrial Drive, Dan Dement, applicant.**

This easement abandonment request is from Dan Dement on behalf of Middle Tennessee Electric Membership Cooperation and is located along the south of side of Industrial Drive east of the intersection of New Salem Highway and Industrial Drive. (map below is pointing the wrong parcel. Also, map needs to zoom in closer to the property, so that it is easier to decipher.)



Planning Commission approved a site plan for a 22,109 ft² addition to the main office building and a 64,500 ft² operations center at the MTE Corporate campus on October 20, 2021. MTE is requesting the abandonment of an existing water easement as shown highlighted in red on the attached exhibit. This easement was dedicated by plat when the water main was installed originally to their Corporate Office. The construction of an addition to this Corporate office proposes to abandon this line and relocate. A new dedicated and private fire line will be installed to the new addition as well as a new water meter at the right of way, therefore a new easement will not be necessary. The Murfreesboro Water Resources Board met on December 7, 2021 and Staff recommended that the Board recommend to Planning Commission and City Council approval of the abandonment of this existing waterline easement.

The Murfreesboro Water Resources Board voted to recommend approval of this abandonment and staff recommends that it be made subject to the following conditions:

- 1) The applicant must provide to the City Legal Department all the necessary documentation (including any needed legal descriptions and exhibits) required to prepare and record the legal instrument.
- 2) The applicant will be responsible for paying any recording fees.

If approved by the City Council, then the Mayor will be authorized to sign the necessary documents to convey the City's interest back to the owner.



City of Murfreesboro
Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

Tax Map/Group/Parcel: Map 102, Parcel 19.13 | Address (if applicable): 555 New Salem Highway
Murfreesboro, TN 37129

Street Name (if abandonment of ROW):

Type of Mandatory Referral: **NOT INCLUDING** abandonment of right-of-way

Applicant Information:

Name of Applicant: Dan Dement, Vice President, Operations

Company Name (if applicable): Middle Tennessee Electric

Street Address or PO Box: 555 New Salem Highway

City: Murfreesboro

State: Tennessee

Zip Code: 37129

Email Address: dan.dement@mtmc.com

Phone Number: 615-494-1610

Required Attachments:

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

Applicant Signature

11-2-2021

Date

November 1, 2021

Murfreesboro Water Resources Board
Operations & Maintenance Facility
1725 South Church Street
Murfreesboro, TN 37130

Re: Mandatory Referral Request
Waterline Easement Abandonment
555 New Salem Highway

Dear Board Members:

Please accept this as our formal request for the City of Murfreesboro to vacate/abandon the existing waterline easement that was created with Plat Book 23 Page 195. A copy of the referenced Plat is included for reference.

The easement was for the existing fire line that serves Middle Tennessee Electric's corporate office located at 555 New Salem Highway. However, a new building addition is currently being proposed that will be constructed over a portion of the existing fire line. Therefore, a new fire line is being proposed to serve both the existing building and the proposed addition as shown at the attached Overall Utility Plan.

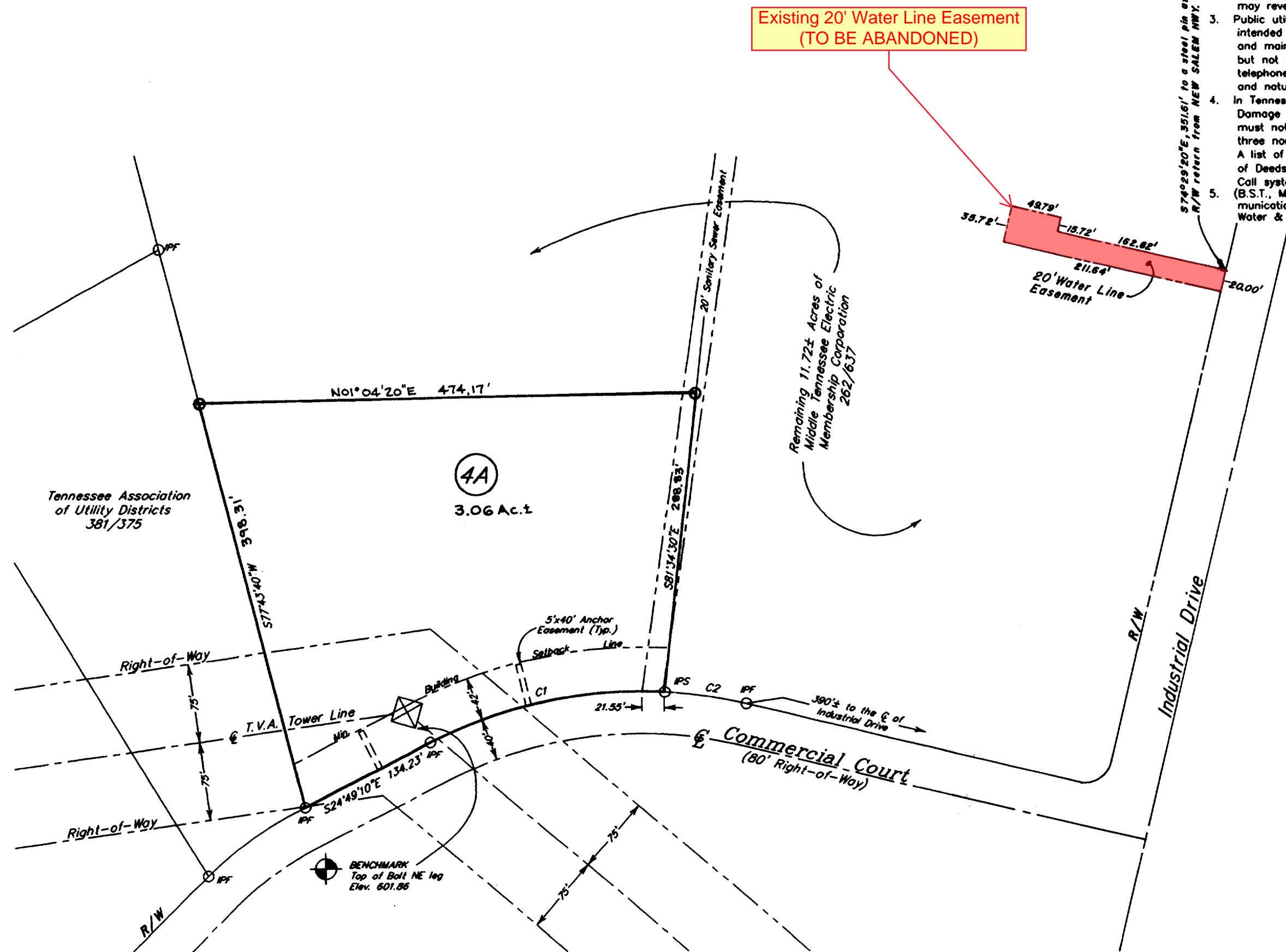
If you should have any questions concerning this letter, please feel free to call me at 615-494-1610 or by email at dan.dement@mtemc.com. Thank for considering this request and I look forward to addressing any concerns with this matter.

Respectfully,



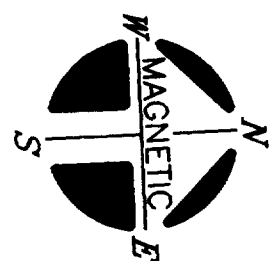
Dan Dement
Vice President, Operations

Attachments: Plat Book 23, Page 195
Overall Utility Plan



No.	Delta	Radius	Arc Length	Chord Length	Chord Bearing
C1	29°33'40"	442.91	231.10	228.49	S09°38'30"E
C2	10°10'40"	442.91	78.68	78.58	S10°23'40"W

Jennifer M Gerhart, Resister
Rutherford County Tennessee
Rec'd: 229021 Instrument 1025244
State: 10.00 NBK: 57 Ps 730
Clerk: 0.00
EDP: 2.00 9/28/2000 at 2:07 PM
Total: 12.00 in Plat Cabinet
23 Pages 195-195



ZONING: H-1
FRONT SETBACK: 42'
SIDE SETBACK: 10'
REAR SETBACK: 20'

THIS PARCEL IS NOT INCLUDED IN AREAS DESIGNATED AS "SPECIAL FLOOD HAZARD" ON THE NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY MAP 470168, PANEL NOS. 0259F & 0260F, ZONE: X, DATED NOVEMBER 8, 1993.

1 LOT - 3.06± ACRES
LEGEND FOR MONUMENTS
IPS ○ IRON PIN SET
IPF ○ IRON PIN FND.
○ RAILROAD SPIKE
* FENCE
● SURVEY POINT
△ NAIL
■ CONC. MARKER FND.

I hereby certify that this plat has been reviewed for the Rutherford County Development Tax.

TAX EXEMPT 9-28-00 *Toni*
RUTHERFORD COUNTY REGIONAL PLANNING COMMISSION

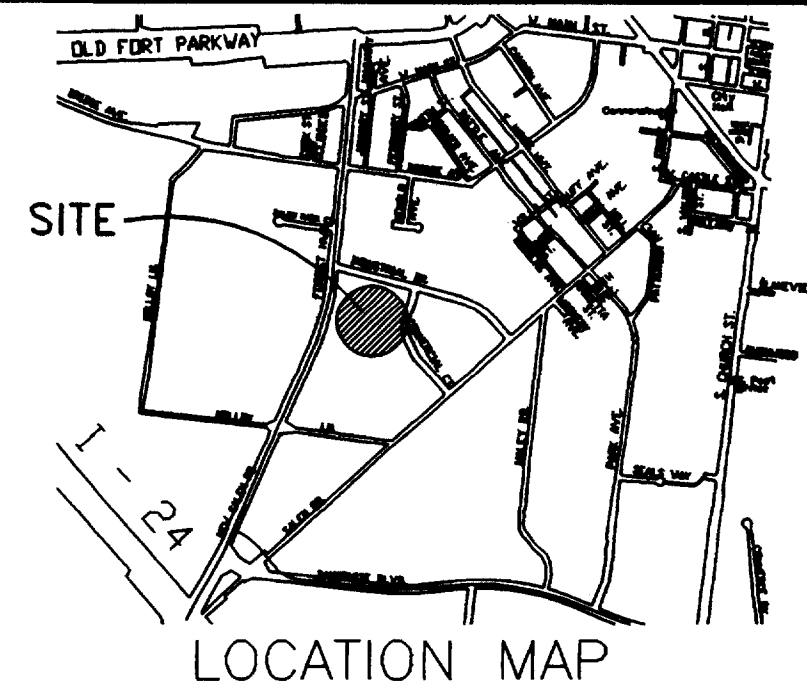
OWNER: Middle Tennessee Electric Membership Corporation
ADDRESS: 555 New Salem Road
Murfreesboro, TN 37129

Tax Map 102, Part of Parcel 19.13
Deed Book 262, Page 637

NOTE: THIS PARCEL IS SUBJECT TO ALL EASEMENTS AS SHOWN AND ANY OTHER EASEMENTS AND/OR RESTRICTIONS EITHER RECORDED OR BY PRESCRIPTION THAT A COMPLETE TITLE SEARCH MAY REVEAL.

PLAT NOTES

- It is the responsibility of each builder to design and construct a suitable grading and drainage scheme which will convey surface water, without ponding in the lot or under the house, from his structure to the drainage system constructed by the subdivision developer.
- Parcels may be subject to additional easements, and/or restrictions, by record or prescription, that a complete title search may reveal.
- Public utility and drainage easements where shown hereon are intended to indicate an easement for construction, operation, and maintenance of public utilities and drainageways; including, but not limited to, sanitary sewers, forcemains, water lines, telephone signal conduits, electric conductors, drainage pipes, and natural gas lines.
- In Tennessee, it is a requirement per "The Underground Utility Damage Prevention Act" that anyone who engages in excavation must notify all known underground utility owners, no less than three nor more than ten working days of their intent to excavate. A list of these utilities may be obtained from the County Register of Deeds. Those utilities that participate in the Tennessee One Call system can be notified by calling toll free 1-800-351-1111. (B.S.T., M.E.D., M.W.S.D., U.C.G. Easements) = BellSouth Telecommunications, Murfreesboro Electric Department, and Murfreesboro Water & Sewer Department, and United Cities Gas Easements.



N.T.S.

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish the minimum building restriction lines, and dedicate all streets, alleys, walks, parks and other open spaces to public or private use as noted.

Sept 18, 2000
Date

Deed Book: 262
Page: 637

MIDDLE TENNESSEE ELECTRIC
MEMBERSHIP CORPORATION

Jennifer M Gerhart
Authorized Representative

CERTIFICATE OF APPROVAL FOR RECORDING

I hereby certify that the subdivision plot shown hereon has been found to comply with the subdivision regulations for the City of Murfreesboro, Tennessee with the exception of such variances, if any, as are noted in the minutes of the planning commission and that it has been approved for recording in the office of the County Register of Deeds.

9-28-00, 2000
Date

Joseph D. Aydelott
SECRETARY, PLANNING COMMISSION

CERTIFICATE OF APPROVAL OF STREETS AND DRAINAGE

I hereby certify that (1) the streets, drainage structures, and drainage improvements for the subdivision shown hereon have been installed in accordance with City specifications, or (2) that a surety for these improvements has been posted with the City of Murfreesboro to assure completion of same.

SEPTEMBER 28, 2000
Date

Kenneth A. Hays
CITY ENGINEER

CERTIFICATE OF APPROVAL OF WATER SYSTEMS

I hereby certify that: (1) the water lines and appurtenances for the water system of the subdivision shown hereon have been installed in accordance with City codes and specifications and the Tennessee Department of Environment and Conservation, Community Public Water Systems Design Criteria, or (2) that a surety for these improvements has been posted with the City of Murfreesboro to assure completion of same and that the land shown to be subdivided hereon is within water service jurisdiction of Murfreesboro Water and Sewer Department.

9/22, 2000
Date

Shirley
MURFREESBORO WATER AND SEWER OFFICIAL

CERTIFICATE OF APPROVAL OF SEWER SYSTEMS

I hereby certify that: (1) the sewer lines and appurtenances for the sewer system of the subdivision shown hereon have been installed in accordance with City codes and specifications and the Tennessee Department of Environment and Conservation, Design Criteria for Sewage Works; (2) that a surety for these improvements has been posted with the City of Murfreesboro to assure completion of same; or (3) that a subsurface sewage system will be permitted subject to the approval of the local health authority.

9/22, 2000
Date

Shirley
MURFREESBORO WATER AND SEWER OFFICIAL

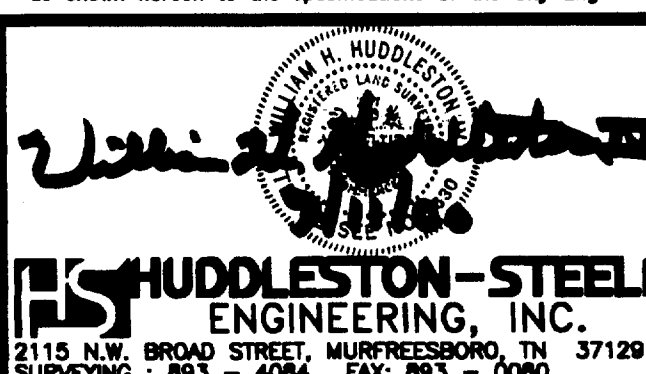
CERTIFICATE OF APPROVAL FOR ELECTRIC POWER

I hereby certify that the subdivision shown hereon has been approved by the Murfreesboro Electric Department (MED) for electric power service, that the subdivision is within the service area of MED, and that MED is able to provide electric power service to the subdivision subject to the owner complying with the applicable rules and regulations of MED. No electric power service will be provided until MED's requirements for electric power service have been met.

9-13-00, 2000
Date

Willie W. W. W.
ELECTRIC POWER SYSTEM OFFICIAL

CERTIFICATE OF ACCURACY - I hereby certify that this is a category "1" survey and the ratio of precision of the unadjusted survey is 1:10000 as shown hereon. I also certify that the monuments have been or will be placed as shown hereon to the specifications of the City Engineer.



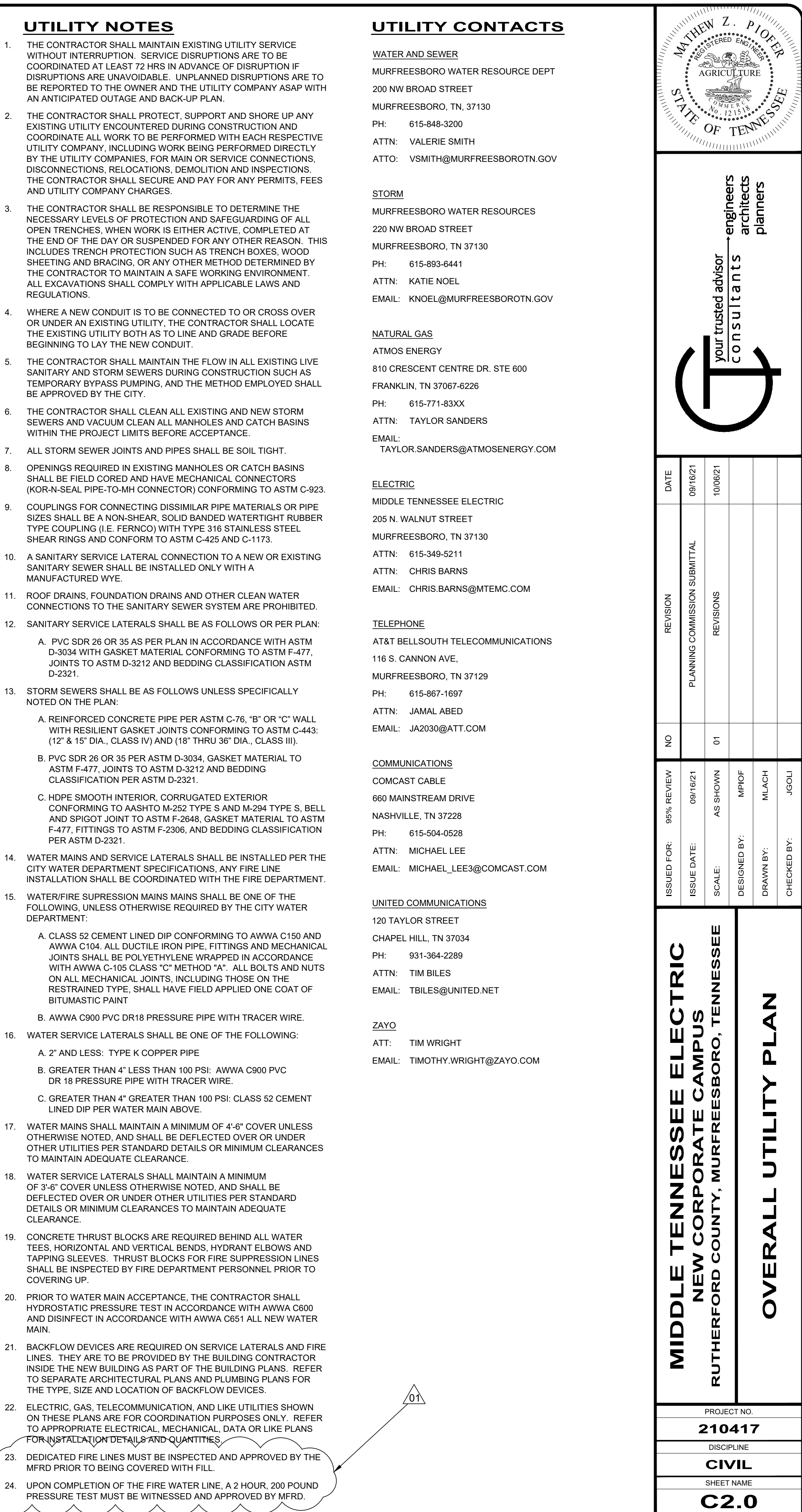
DATE OF RECORDING: Sept. 28, 2000
TIME OF RECORDING: 2:07 PM

PLAT BOOK: 23, PAGE: 195

Resubdivision of Lot 4, Section II
RUTHERFORD COUNTY INDUSTRIAL PARK
PATTERSON PROPERTY

19th Civil District of Rutherford County, Tennessee

Date: September, 2000 Scale: 1"=100' Sheet 1 of 1





... creating a better quality of life

MEMORANDUM

DATE: November 15, 2021

TO: Water Resources Board

FROM: Valerie H. Smith

SUBJECT: Water Easement Abandonment
MTEMC Corporate Building Addition
Industrial Drive

Background

This easement abandonment request is from Dan Dement on behalf of MTEMC. They are requesting the abandonment of an existing water easement as shown highlighted in red on the attached exhibit. This easement was dedicated by plat when the water main was installed originally to their Corporate Office. The construction of an addition to this Corporate office proposes to abandon this line and relocate. A new dedicated and private fire line will be installed to the new addition as well as a new water meter at the right of way, therefore new easement will not be necessary.

Recommendation

Staff recommends that the Board recommend to City Council approval of abandoning this existing water easement.

Fiscal Impact

Not applicable. The easement was dedicated through the recording of a plat.

Attachment

Easement Abandonment Request
Abandonment Exhibit

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Mandatory Referral for Abandonment of Alley Right-of-Way Along Bridge Avenue

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning 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 request to abandon a segment of alley right-of-way (ROW) north of Bridge Avenue.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission voted to recommend approval on December 1, 2021.

Background Information

In this mandatory referral [2021-724], Council is being asked to abandon a segment of an alley right-of-way (ROW) containing approximately 220 linear feet. The alleyway is located north of Bridge Avenue between Kings Highway and Battle Avenue and does not appear to be used for any public purpose. The abandonment request has been submitted in tandem with a rezoning request for the adjacent lots to the east. In addition to what the applicant has requested, Staff has included additional contiguous alley ROW in this study. Staff conducted a ROW abandonment study, the results of which are included in the attached memo. The impacts of this ROW abandonment request appear to be minimal.

The Planning Commission conducted a public hearing on this matter on December 1st and then recommended approval subject to three conditions. Since that time, Staff had had further discussion regarding how to dispose of this surplus right-of-way and is recommending that Council approve this request subject to the modified conditions below (revisions to Planning Commission's conditions are in italics).

- 1) The applicant shall prepare and submit legal descriptions and exhibits necessary for the City Legal Department to draft any necessary legal instruments. *This applies not only to the portion of the alley ROW the applicant proposes to acquire but also to all other portions of the ROW being abandoned.*
- 2) The applicant shall be responsible for the recording of the *respective* legal instruments, including payment of the recording fees.

- 3) The right-of-way abandoned *by the applicant* shall be combined with contiguous property via a duly-approved resubdivision plat. *The rights-of-way abandoned to other property owners need not be incorporated by resubdivision plats until the properties redevelop or some other event requires a replat.*
- 4) *Approval by Council also includes formal abandonment of any portion of the alley already depicted to be a part of Tax Map 091O, Group E, Parcel 01900.*

Council Priorities Served

Establish Strong City Brand

The abandonment of this right-of-way is consistent with the City's goals to be customer service-oriented, relinquishing its rights to surplus right-of-way so that property owners can more fully enjoy and utilize their property.

Attachments:

1. Staff comments from 12/01/2021 Planning Commission meeting
2. Memorandum from Staff summarizing feedback from various departments and utilities
3. Miscellaneous exhibits from applicant

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
DECEMBER 1, 2021
PROJECT PLANNER: HOLLY SMYTH**

4.c. Mandatory Referral [2021-724] for the abandonment of right-of-way of a segment of an alley approximately 220 feet in length located north of Bridge Avenue between Kings Highway and Battle Avenue, Jon Troutt applicant.

In this mandatory referral, the Planning Commission is being asked to consider abandoning a segment of an alley right-of-way (ROW) containing approximately 220 linear feet. The alleyway is located north of Bridge Avenue between Kings Highway and Battle Avenue and does not appear to be used for any public purpose.

The abandonment request has been submitted in tandem with Mr. Troutt's rezoning request for the adjacent lots to the east. In addition to the ROW requested for abandonment, Staff has included additional contiguous alley ROW in this study. If approved, the portion of ROW that has been requested for abandonment by the applicant will be combined with the adjacent property to the east via a subdivision plat.

Staff has obtained comments from other City departments and utility providers regarding the impact of the proposed utility easement abandonment. Their responses are included in the attached memorandum from Planning staff. The report attachments include the map depicting the location of the easement in question.

Staff recommends the following conditions of approval be applicable to the alley right-of-way abandonment:

1. The applicant shall prepare and submit legal descriptions and exhibits necessary for the City Legal Department to draft any necessary legal instruments.
2. The applicant shall be responsible for the recording of the legal instrument(s), including payment of the recording fee.
3. The abandoned right-of-way shall be combined with contiguous property via a duly-approved subdivision plat.

Action Needed

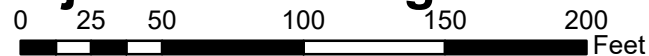
The Planning Commission should conduct a public hearing and then formulate a recommendation to the City Council. Staff recommends that any approval be made subject to the above conditions.

Attachments:

- Memorandum from Planning Staff regarding responses
- Non-Ortho and Ortho maps depicting the abandonment area
- Applicant Request to Abandon easement letter, legal descriptions, and engineer map



Request to Abandon Right-Of-Way of Alley Adjacent to Bridge Avenue





Request to Abandon Right-Of-Way of Alley Adjacent to Bridge Avenue

0 25 50 100 150 200 Feet



Memorandum

To: Greg McKnight, Planning Director
From: Holly Smyth, AICP Principal Planner
Date: November 22, 2021
Re: Mandatory Referral 2021-724 : Abandonment of contiguous alleyway north of Bridge Avenue between Kings Highway and Battle Avenue

Following is a summary of the City department staff and utility provider comments regarding the requested utility easement abandonment.

Engineering & Streets Departments

There is not conflict with the abandonment.

Fire and Rescue Department

MFRD does not object to the abandonment.

Police Department

MPD does not object to the abandonment.

Solid Waste Department

This abandonment will have no effect on the Solid Waste Department.

Murfreesboro Water Resources Department (MWRD)

MWRD has no objection to the easement abandonment, so as there are no water or sewer utilities in the easement.

Consolidated Utility District (CUD)

Not within CUD's service area.

Middle Tennessee Electric Members Cooperative (MTE)

MTE does not object to the abandonment and has no comments or conditions.

AT&T

There is no conflict for AT&T to abandon easement.

Atmos Energy

Atmos Energy has no facilities in this area and does not object to the abandonment.

Comcast

Comcast has no conflict with the abandonment.



City of Murfreesboro Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

Tax Map/Group/Parcel: 91-O, E, 18.00 & 19.00

Address (if applicable): SW corner of Kings Hwy @ Bridge Ave

Street Name (if abandonment of ROW): Half of Unnamed Alley

Type of Mandatory Referral: Including Abandonment of Right-of-Ways

Applicant Information:

Name of Applicant: Jon Troutt

Company Name (if applicable):

Street Address or PO Box: 1419 Northwoods Cove

City: Murfreesboro

State: TN

Zip Code: 37130

Email Address: jon@mylhl.com

Phone Number: (615)300-0599

Required Attachments:

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

X  FOR JON TROUTT

Applicant Signature

X 10-14-21

Date

October 11, 2021

Mr. Greg McKnight, Planning Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

Re: Abandonment of a Portion of an Unnamed Alley Right-of-Way
Just South of the Southwest Corner of Bridge Avenue at Kings Highway
Murfreesboro, TN

Dear Mr. McKnight:

At the request of our client, Mr. Jon Trout, and as directed by Planning Staff, we hereby make a request to abandon with a mandatory referral by Planning Commission and City Council, one half of the unnamed alley depicted on the King Ragland Realty Company Subdivision, recorded in Deed Book 51, Pages 564-567, which adjoins the property of Mr. Trout.

This alley adjoins Lot 14 of the Subdivision Plat of Section Two of the McFadden Urban Renewal Area (Plat Book 6, Page 6), and Lot 27 of the King Ragland Realty Company Subdivision (Deed Book 51, Pages 564-566), both lots being recently purchased by Mr. Trout (Record Book 2117, Page 3690 and Record Book 2112, Page 3179, respectively). An exhibit and legal description representing the proposed abandonment are attached.

Sincerely,

HUDDLESTON-STEELE ENGINEERING, INC.



Stephen A. Steele, P.E.

Mark D. Miller
Tax Map 91-0, Group E, Parcel 1.00
Record Book 1641, Page 1464
Lot 94, King Ragland Realty Company Subdivision
Deed Book 51, Page 564-566

12' Alley
(Deed Book 51, Page 564-567)

Bridge Avenue

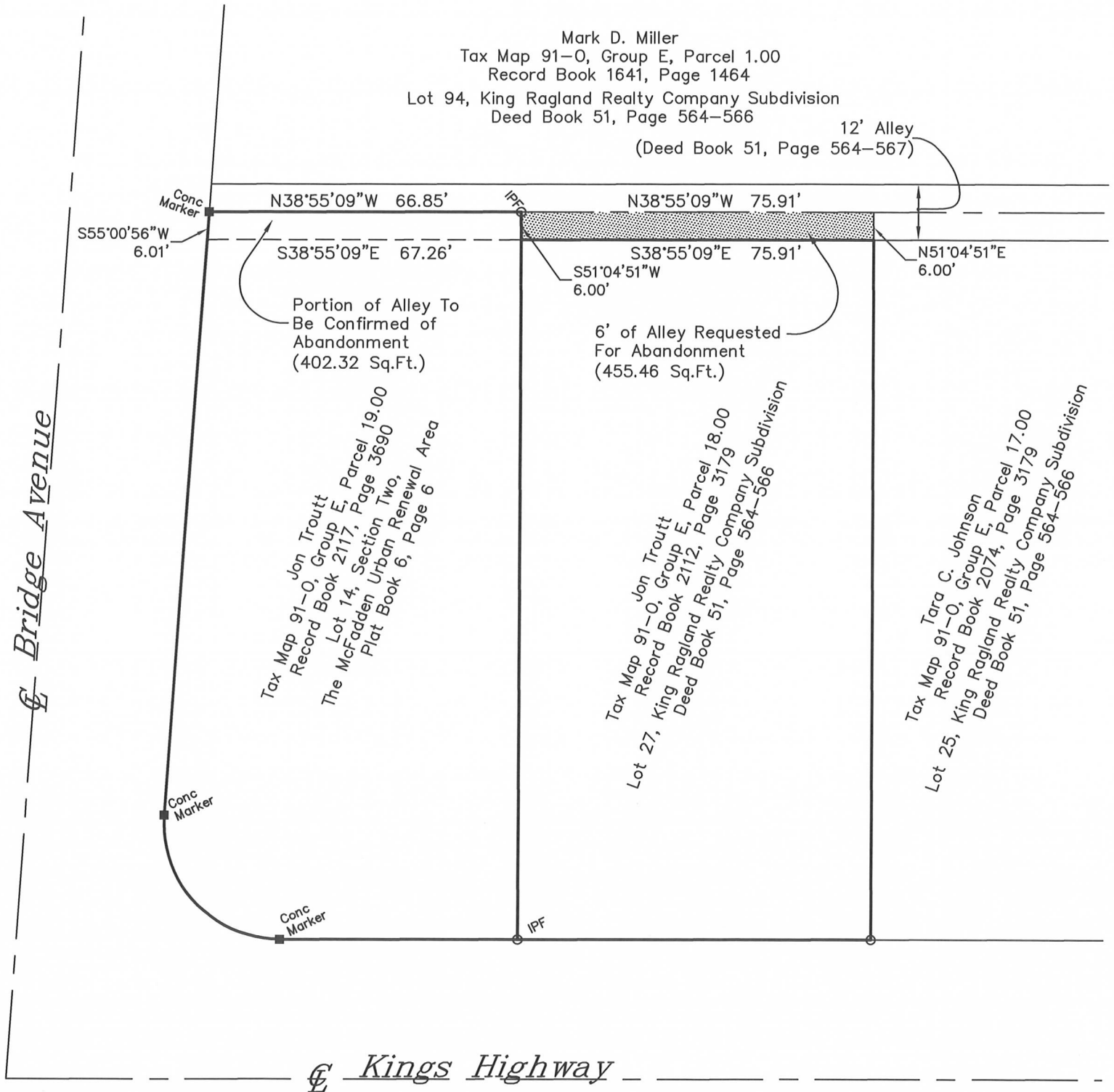
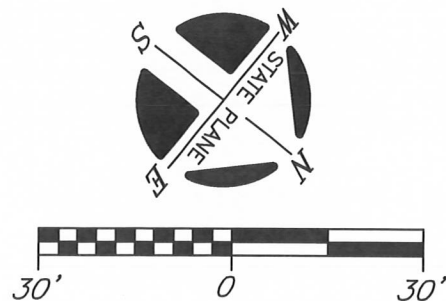


EXHIBIT
*Request for Alley
Abandonment*
October, 2021

HS HUDDLESTON-STEELE
ENGINEERING, INC.
2115 N.W. BROAD STREET, MURFREESBORO, TN 37129
SURVEYING : 893 - 4084, FAX: 893 - 0080



Portion of Alley To Be Confirmed of Abandonment
Part of Lot 14, Section Two, The McFadden Urban Renewal Area
Plat Book 6, Page 6
Part of Tax Map 91-O, Group E, Parcel 19.00

Located in the 13th Civil District of Rutherford County, Tennessee. Bound on the Southwest and Northwest by the remainder of a 12' Wide Alley (Deed Book 51, Pages 564-566); on the northeast by the remainder of Lot 14, Section Two, The McFadden Urban Renewal Area [Plat Book 6, Page 6; Jon Troutt (Record Book 2117, Page 3690)]; and on the Southeast by Bridge Avenue.

Beginning at a concrete marker found on the northwest right-of-way of Bridge Avenue, lying approximately 186.94 feet southwest of the centerline of Kings Highway, said marker being the south corner of Lot 14, Section Two, The McFadden Renewal Area and the south corner of this tract; thence running with the southwest line of Lot 14 N-38°55'09"-W, 66.85 feet to an iron pin found, being the west corner of this tract; thence with the northwest line of Lot 14 N-51°04'51"-E, 6.00 feet to a point, being the north corner of this tract; thence passing through Lot 14 S-38°55'09"-E, 67.26 feet to a point on the northwest right-of-way of Bridge Avenue, being the east corner of this tract; thence with the northwest right-of-way of Bridge Avenue S-55°00'56"-W, 6.01 feet to the pin at the beginning; containing 402.32 square feet, more or less.

This tract is subject to all easements and/or restrictions either recorded or by prescription that a complete title search may reveal.

Prepared by:
Huddleston-Steele Engineering, Inc.
2115 Northwest Broad Street
Murfreesboro, TN 37129

Portion of Alley To Be Abandoned
Part of the King Ragland Realty Company Subdivision
Deed Book 51, Pages 564-566

Located in the 13th Civil District of Rutherford County, Tennessee. Bound on the Southwest and Northwest by the remainder of a 12' Wide Alley (Deed Book 51, Pages 564-566); on the northeast by Lot 27, King Ragland Realty Company Subdivision [Deed Book 51, Pages 564-566; Jon Troutt (Record Book 2112, Page 3179)]; and on the southeast by Lot 14, Section Two, The McFadden Urban Renewal Area [Plat Book 6, Page 6; Jon Troutt (Record Book 2117, Page 3690)].

Commencing at a concrete marker found on the northwest right-of-way of Bridge Avenue, lying approximately 186.94 feet southwest of the centerline of Kings Highway, said marker being the south corner of Lot 14, Section Two, The McFadden Renewal Area; thence running with the southwest line of Lot 14 N-38°55'09"-W, 66.85 feet to an iron pin found, for a **Point of Beginning** being the south corner of this tract; thence continuing N-38°55'09"-W with the centerline of a 12' wide alley as recorded with King Ragland Realty Company Subdivision for a distance of 75.91 feet to a point, being the west corner of this tract; thence leaving the centerline of said alley N-51°04'51"-E, 6.00 feet to a point, being the north corner of this tract; thence with the southwest line of Lot 27, King Ragland Realty Company Subdivision S-38°55'09"-E, 75.91 feet to a point, being the east corner of this tract; thence with the northwest line of Lot 14, Section Two, The McFadden Urban Renewal Area S-51°04'51"-W, 6.00 feet to the pin at the beginning; containing 455.46 square feet, more or less.

This tract is subject to all easements and/or restrictions either recorded or by prescription that a complete title search may reveal.

Prepared by:
Huddleston-Steele Engineering, Inc.
2115 Northwest Broad Street
Murfreesboro, TN 37129

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Mandatory Referral for Abandonment of Sanitary Sewer Easement along Butler Drive

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning 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 request to allow abandonment of a sanitary sewer easement on property along Butler Drive.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission will consider this item on the consent agenda at its December 15, 2021 regular meeting. If the Planning Commission does not recommend approval, this item will be removed from the Council agenda.

The Water Resources Board voted to recommend approval on December 7, 2021.

Background Information

In this mandatory referral [2021-728], Council is being asked to consider the abandonment of a sanitary sewer easement on property located along Butler Drive, as shown on the attached exhibit. This easement abandonment request is from Fulmer Lucas on behalf of Mahle. A site plan was approved on October 14, 2020 for a 138,000 ft² expansion to the existing Mahle facility. This portion of the sanitary sewer easement requested for abandonment is no longer needed. The Water Resources Department has reviewed the request and recommends its approval.

If this mandatory referral is approved, Staff and the Planning Commission recommend the following conditions of approval:

- 1) The applicant must provide to the City Legal Department all the necessary documentation (including any needed legal descriptions and exhibits) required to prepare and record the legal instrument.
- 2) The applicant will be responsible for paying any recording fees.

Council Priorities Served

Establish Strong City Brand

The abandonment of this easement is consistent with the City's goals to be customer service-oriented, relinquishing its rights to a surplus easement so that property owners

can more fully enjoy and utilize their property.

Improve Economic Development

The abandonment of this easement will help to facilitate expansion at Mahle, which is in the process of making a significant corporate investment in the community.

Attachments:

1. Staff comments from December 15, 2021 Planning Commission meeting
2. Memo from MWRD
3. Letter and exhibits from applicant

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
DECEMBER 15, 2021
PROJECT PLANNER: AMELIA KERR**

- 4.I. Mandatory Referral [2027-728] to consider the abandonment of an existing sanitary sewer easement located on property along the west side of Butler Drive, Josh Hutcheson applicant.**

This easement abandonment request is from the Murfreesboro Water Resources Department as well as Fulmer Lucas on behalf of Mahle which is located along the west of side of Butler Drive north of the intersections of Joe B Jackson and Butler Drive.



In this mandatory referral, the Planning Commission is being asked to consider abandoning an existing sanitary sewer easement on property developed by Mahle. The request is to abandon a portion of an existing sewer easement as shown as the hatched area on the attached exhibit. This easement was dedicated by a legal document when it was determined that easement for the public sewer main on-site was never dedicated. A site plan was approved for a 138,000 ft² expansion to the existing 56.8-acre Mahle facility on October 14, 2020. Now, this portion of public easement is no longer needed. Mahle has agreed to maintain this portion of sewer main shown in the hatched area on Exhibit EXH, because this section of sewer and upstream extends underneath a private water tower and MWRD would be unable to maintain it. The Murfreesboro Water Resources Board met on December 7, 2021 and MWRD Staff recommended that the Board recommend to Planning Commission and City Council approval of the abandonment of this portion of the existing waterline easement.

The Murfreesboro Water Resources Board voted to recommend approval of this abandonment and staff recommends that it be made subject to the following conditions:

- 1) The applicant must provide to the City Legal Department all the necessary documentation (including any needed legal descriptions and exhibits) required to prepare and record the legal instrument.
- 2) The applicant will be responsible for paying any recording fees.

If approved by the City Council, then the Mayor will be authorized to sign the necessary documents to convey the City's interest back to the owner.



City of Murfreesboro Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

Tax Map/Group/Parcel:	125-013.02-000	Address (if applicable):	906 Butler Drive
Street Name (if abandonment of ROW): No ROW being abandoned			
Type of Mandatory Referral: Easement Abandonment			

Applicant Information:

Name of Applicant:	Josh Hutcheson		
Company Name (if applicable):	Fulmer Lucas		
Street Address or PO Box:	2002 Richard Jones Road, Suite B200		
City:	Nashville		
State:	TN	Zip Code:	37215
Email Address:	josh@fulmerlucas.com		
Phone Number:	615-477-9440		

Required Attachments:

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


Applicant Signature

10/27/2021
Date

November 4, 2021

CITY OF MURFREESBORO PLANNING DEPARTMENT
ATTN: Carolyn Jaco
111 W. Vine Street
Murfreesboro, Tennessee 37130

Re: Mahle Mandatory Referral Application Fee Check

Carolyn:

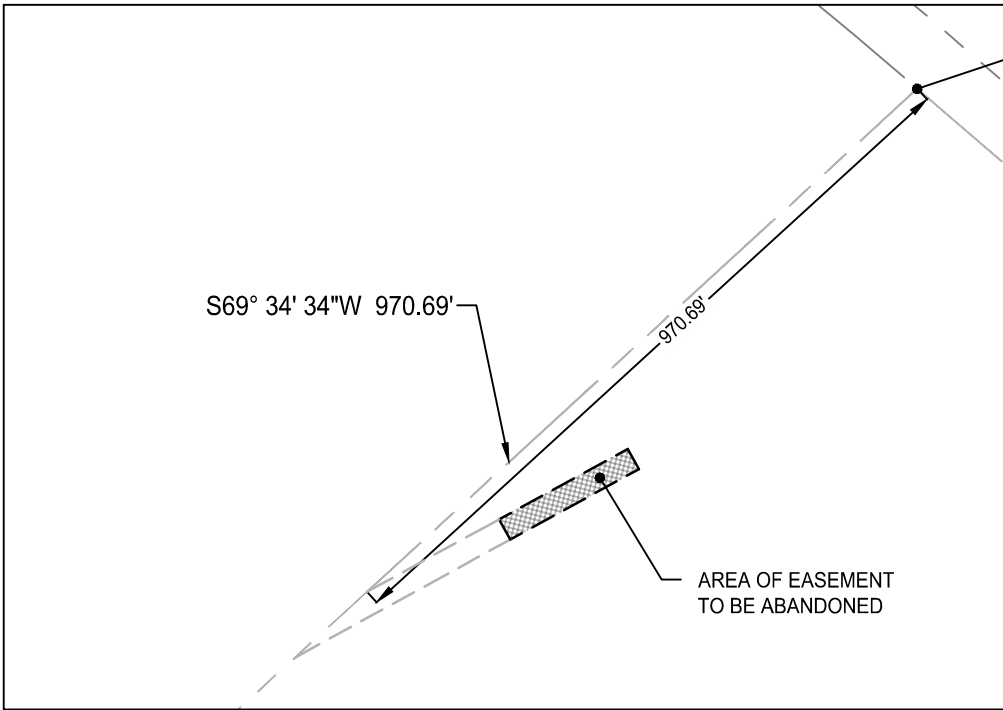
Please find enclosed a \$150 check for a Sewer Easement Abandonment for Mahle at 906 Butler Drive. This signed application, a legal description, and an exhibit have already been submitted to and reviewed by Matthew Blomeley. It is my understanding that we are on the 12/15 Planning Commission agenda for this easement abandonment. Please let me know if anything else is needed from us. If you have any questions or require additional information, please contact me via email (josh@fulmerlucas.com) or phone (615-477-9440).

Sincerely,

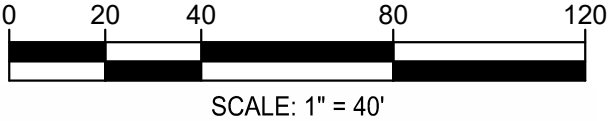
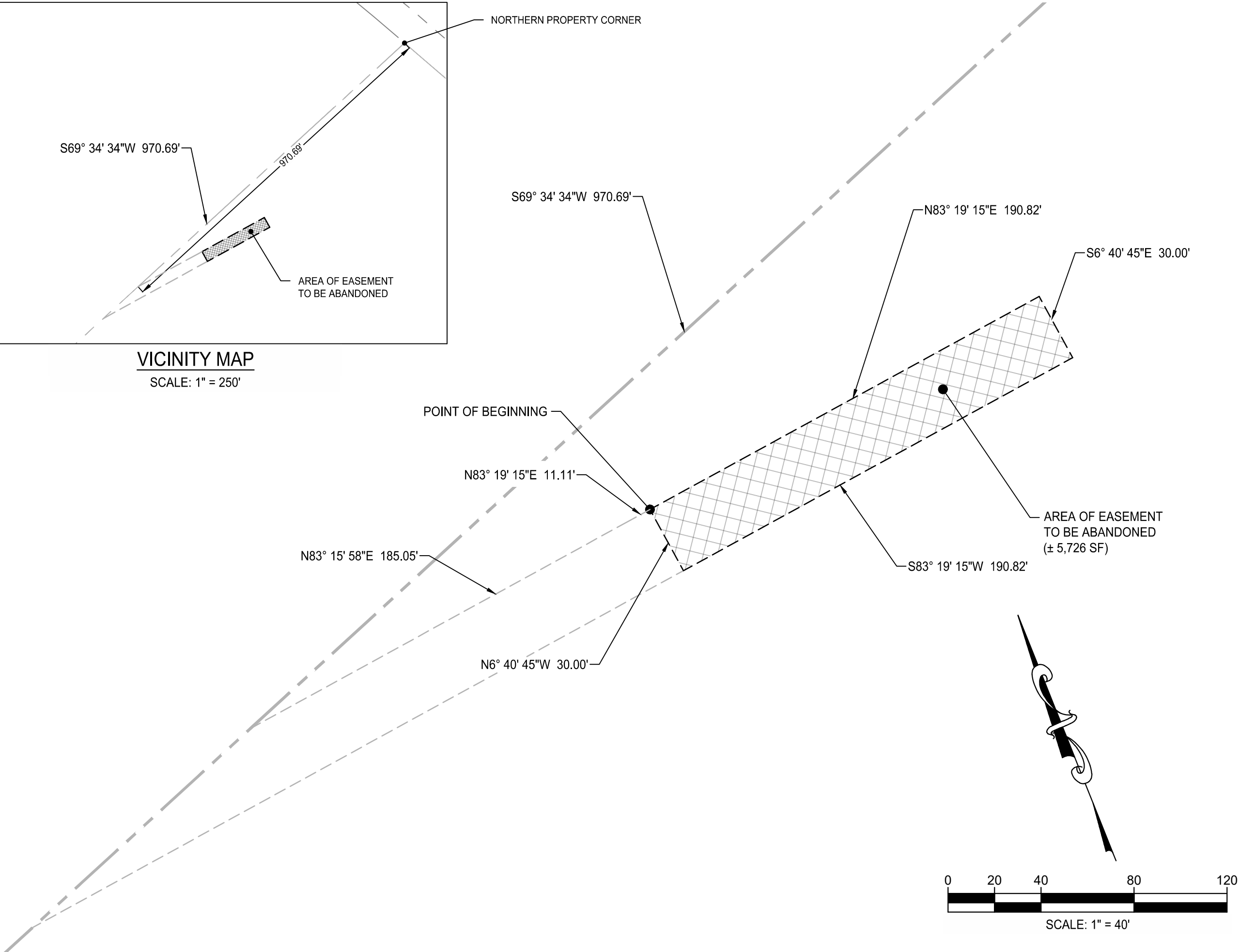
Josh Hutcheson

Josh Hutcheson, PE

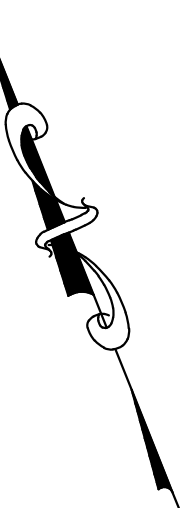
1013-17_Sewer Easement Exhibit.dwg



VICINITY MAP
SCALE: 1" = 250'



SCALE: 1" = 40'



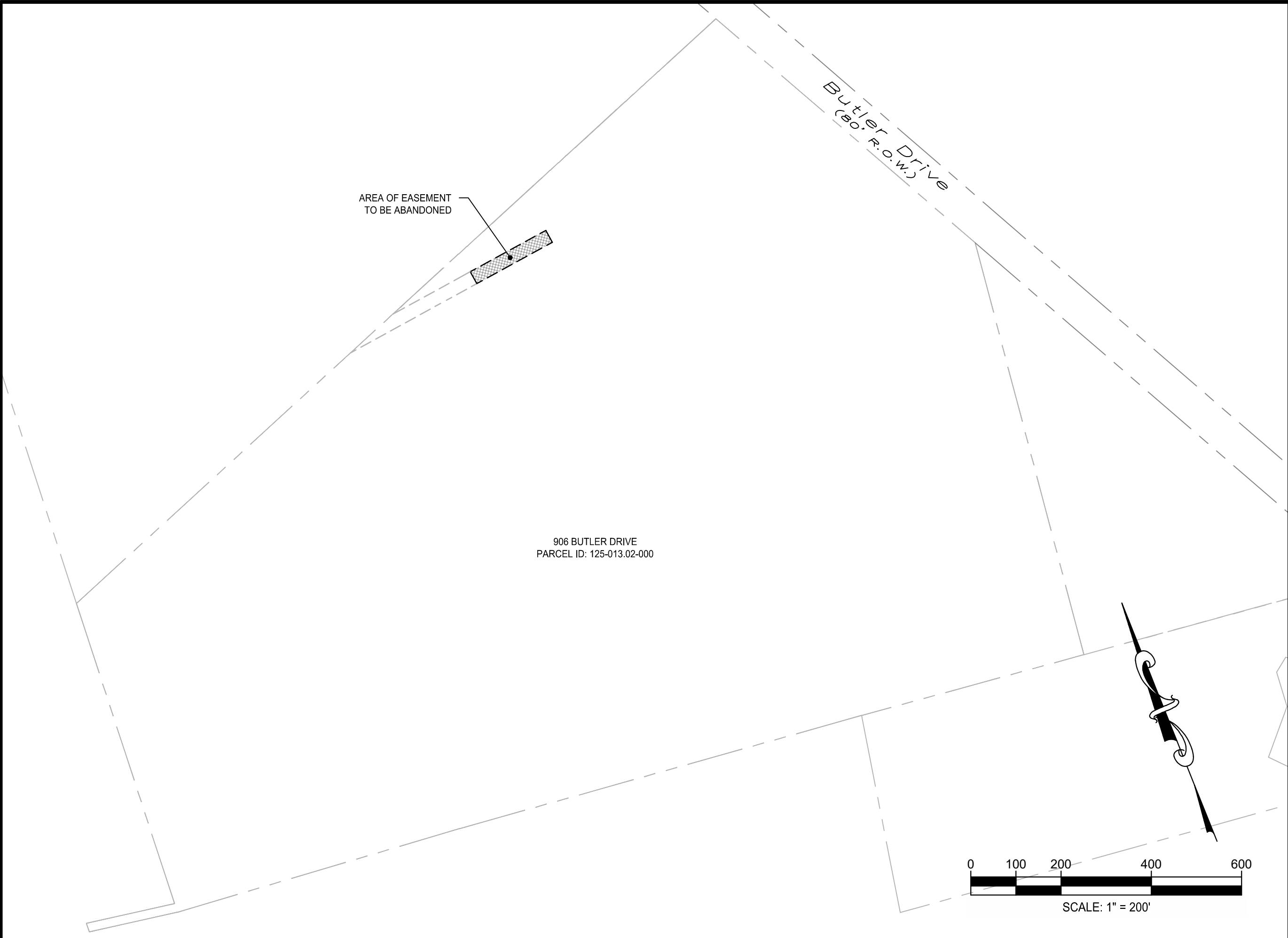
FULMER LUCAS

2002 RICHARD JONES RD - SUITE B200
NASHVILLE, TENNESSEE 37215
INFO@FULMERLUCAS.COM - (615) 345-3770

EXHIBIT FOR:
MAHLE BUILDING EXPANSION
906 BUTLER DRIVE
MURFREESBORO, RUTHERFORD COUNTY
TENNESSEE 37217

SEWER
EASEMENT
ABANDONMENT
EXHIBIT

EXH



FULMER LUCAS

2002 RICHARD JONES RD - SUITE B200
NASHVILLE, TENNESSEE 37215
INFO@FULMERLUCAS.COM - (615) 345-3770

EXHIBIT FOR:
MAHLE BUILDING EXPANSION

906 BUTLER DRIVE
MURFREESBORO, RUTHERFORD COUNTY
TENNESSEE 37217

SEWER
EASEMENT
ABANDONMENT
EXHIBIT

VICINITY

AREA OF EASEMENT TO BE ABANDONED (+/- 5,726 SF)

BEGINNING AT A POINT ALONG AN EXISTING SEWER EASEMENT, WITH THE FOLLOWING CALLS ORIGINATING FROM THE NORTHERNMOST PROPERTY CORNER; SOUTH 69 DEG 34 MIN 34 SEC WEST, 970.69 FEET TO A POINT; THENCE, NORTH 83 DEG 15 MIN 58 SEC EAST, 185.05 FEET TO A POINT; THENCE, NORTH 83 DEG 19 MIN 15 SEC EAST, 11.11 FEET TO THE POINT OF BEGINNING.

THENCE, NORTH 83 DEG 19 MIN 15 SEC EAST, 190.82 FEET TO A POINT; THENCE, SOUTH 06 DEG 40 MIN 45 SEC EAST, 30.00 FEET TO A POINT; THENCE, SOUTH 83 DEG 19 MIN 15 SEC WEST, 190.82 FEET TO A POINT; THENCE, NORTH 06 DEG 40 MIN 45 SEC WEST, 30.00 FEET TO THE POINT OF BEGINNING.



... creating a better quality of life

MEMORANDUM

DATE: November 15, 2021

TO: Water Resources Board

FROM: Valerie H. Smith

SUBJECT: Sewer Easement Abandonment/Relocation
Mahle – Butler Drive

Background

This easement abandonment request is from Staff as well as Fulmer Lucas on behalf of the Mahle Development on Butler Drive. We are requesting the abandonment of a portion of existing sewer easement as shown as the hatched area on the attached exhibit. This easement was dedicated by a legal document when it was determined that easement for the public sewer main on-site was never dedicated. Now, this portion of public easement is no longer needed. Mahle has agreed to maintain this portion of sewer main shown in the yellow highlighted area, because this section of sewer and upstream extends underneath a private water tower and the Department would be unable to maintain it.

Recommendation

Staff recommends that the Board recommend to City Council approval of abandoning this hatched portion of existing sewer easement.

Fiscal Impact

Not applicable. The easement was dedicated through the recording of an easement document by the Owner.

Attachment

Easement Abandonment Request
Abandonment Exhibit

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Mandatory Referral for Abandonment of Sanitary Sewer Easement along Medical Center Parkway

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning 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 request to allow abandonment of a sanitary sewer easement on property along Medical Center Parkway.

Staff Recommendation

Approve the mandatory referral request.

The Planning Commission will consider this item on its consent agenda at its December 15, 2021 regular meeting. If the Planning Commission does not recommend approval, this item will be removed from the Council agenda.

The Water Resources Board voted to recommend approval on October 26, 2021 subject to the new sewer main and right-of-way being established before abandonment.

Background Information

In this mandatory referral [2021-730], Council is being asked to consider the abandonment of a sanitary sewer easement on property located along Medical Center Parkway west of Robert Rose Drive, as shown on the attached exhibit. This easement abandonment request is from SEC, Inc. on behalf of the developers of the Clari-park development. The developer proposes to construct a new sewer main within a future right-of-way to be dedicated with the Clari Park project. This new sewer main will replace the existing main located within the easement that is proposed to be abandoned. The Water Resources Department has also reviewed the request and recommends its approval.

If this mandatory referral is approved, Staff and the Planning Commission recommend the following conditions in addition to the condition above from the Water Resources Board:

- 1) The applicant must provide to the City Legal Department all the necessary documentation (including any needed legal descriptions and exhibits) required to prepare and record the legal instrument.
- 2) The applicant will be responsible for paying any recording fees.

Council Priorities Served

Establish Strong City Brand

The abandonment of this easement is consistent with the City's goals to be customer service-oriented, relinquishing its rights to what will be a surplus easement so that property owners can more fully enjoy and utilize their property.

Improve Economic Development

The abandonment of this easement will help to facilitate the development of the Clari Park project, which will generate tax revenue for the City.

Attachments:

1. Staff comments from December 15, 2021 Planning Commission meeting
2. Memo from MWRD
3. Letter and exhibits from applicant

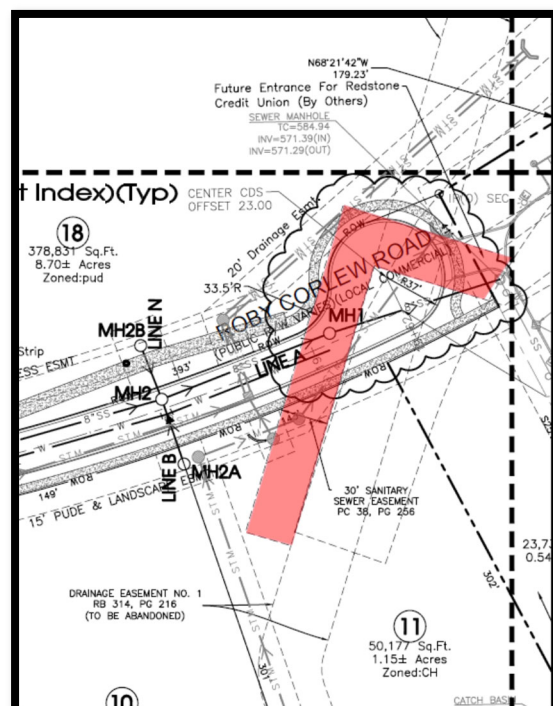
**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
DECEMBER 15, 2021**

Principal Planner: Margaret Ann Green

4.n. Mandatory Referral [2021-730] to consider the abandonment of a sanitary sewer easement located on property along Robert Rose Drive and Medical Center Parkway, Matt Taylor applicant.

The subject property is located along Medical Center Parkway and Robert Rose Drive, within the Clari Park subdivision. The applicants request that a dedicated sewer easement as shown on Plat Book 38, Page 256 be abandoned. This easement was dedicated by plat when the sewer main was installed with the North Church LLC Development. The Clari Park project proposes to install or re-align the sewer main as shown, from the dashed green line to the solid green line to follow a proposed roadway. The new sewer main will be within the roadway in which right of way will be dedicated and easements will no longer be necessary.

If this mandatory referral is approved, it should be made subject to the applicant providing all the necessary documentation required to prepare and record the instrument to City Staff. This includes legal descriptions and an illustration of the property. If approved, then the Mayor will be authorized to sign the necessary documents to convey the City's interest back to the owner. The MWRD Board considered this matter at its October 26, 2021 meeting as a Consent Agenda item and recommends approval.





City of Murfreesboro
Mandatory Referral Application

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

Mandatory Referral Fees:

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

Property Information:

Tax Map/Group/Parcel: 79 Parcel 94.00

Address (if applicable): Along Medical Center Parkway

Street Name (if abandonment of ROW):

Type of Mandatory Referral: Easement abandonment

Applicant Information:

Name of Applicant: Matt Taylor

Company Name (if applicable): SEC, Inc

Street Address or PO Box: 850 Middle TN Blvd

City: Murfreesboro

State: TN

Zip Code: 37129

Email Address: mtaylor@sec-civil.com

Phone Number: 615-890-7901

\$150.00 Receipt 716442
CR# 5868

RECEIPT DATE 11/16/2021 No. 716442

RECEIVED FROM SEC, Inc. \$150.00

One hundred Fifty & 100/100 DOLLARS

☐ FOR RENT Easement Abandonment

☐ FOR

ACCOUNT ☐ CASH

PAYMENT 150.00 ☐ CHECK

BAL. DUE 0 ☐ MONEY ORDER

☐ CREDIT CARD

FROM _____ TO _____

BY ACG Date 11/10/2021

October 20, 2021

Mrs. Valerie Smith
Murfreesboro Water Resources Dept
N.W. Broad Street
Murfreesboro, Tennessee 37130

RE: Clari Park
Sewer Easement Relocation Request
Murfreesboro, Tennessee

Dear Mrs. Smith:

Please accept this as our formal request for the City of Murfreesboro to relocate a portion of the waterline easement that is shown on Plat Book 38 Page 256. Furthermore, the attached exhibit highlights this area.

The easement was for an existing sewer main that is getting relocated with the Clari Lane Project so will no longer be necessary.

If the request is granted, SEC will complete a description and exhibit of the existing easement to be abandoned and a description and exhibit of the new proposed drainage easement

If you should have any questions concerning this letter, please feel free to call me at (615) 890-7901 or via email at mtaylor@sec-civil.com

Sincerely,



Matt Taylor, P.E.
Vice-President
SEC, Inc

November 10, 2021

Ms. Margaret Ann Green
City of Murfreesboro Planning Dept.
111 West Vine Street
Murfreesboro, TN 37133-1139

RE: Clari Park Subdivision
Sewer Easement Abandonment Mandatory Referral
SEC Project No. 14358

Dear Margaret Ann,

Please find the attached supplemental documents to support the mandatory referral request to abandon portions of sanitary sewer easements at the property located along Medical Center Parkway, south of Wilkinson Pike.

Should you need any clarification concerning the request, please feel free to contact me at 615-890-7901 or mtaylor@sec-civil.com.

Sincerely,



Matt Taylor, P.E.
SEC, Inc.

18

378,831 Sq.Ft.
8.70± Acres
Zoned:pud

Future Entrance For Redstone
Credit Union (By Others)

SEWER MANHOLE
TC=584.94
INV=571.39(IN)
INV=571.29(OUT)

N68°21'42"W
179.23'

20' Drainage Easement

33.5'R

393'

6" SS

149' MOB

15' PUDE & LANDSCAPE EASEMENT

30' SANITARY SEWER EASEMENT
PC 38, PG 256

23.7
0.54

302'

11

50,177 Sq.Ft.
1.15± Acres
Zoned:CH

DRAINAGE EASEMENT NO. 1
RB 314, PG 216
(TO BE ABANDONED)

10



... creating a better quality of life

MEMORANDUM

DATE: October 20, 2021

TO: Water Resources Board

FROM: Valerie H. Smith

SUBJECT: Sewer Easement Abandonment/Relocation
Clari Park Development
Medical Center Parkway

Background

This easement abandonment request is from SEC, Inc. on behalf of the Clari Park Development. They are requesting the abandonment of an existing sewer easement as shown highlighted in red on the attached exhibit. This easement was dedicated by plat when the sewer main was installed with the North Church LLC Development. The Clari Park project proposes to install or re-align the sewer main as shown, from the dashed green line to the solid green line to follow a proposed roadway. The new sewer main will be within the roadway in which right of way will be dedicated and easements will no longer be necessary.

Recommendation

Staff recommends that the Board recommend to City Council approval of abandoning this existing sewer easement once the new main and right of way are in place.

Fiscal Impact

Not applicable. The easement was dedicated through the recording of a plat by the developer.

Attachment

Easement Abandonment Request
Abandonment Exhibit

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Donation of Tactical Body Armor to Blount County Law Enforcement Training Academy

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

Donation of tactical body armor to Blount County LETA.

Staff Recommendation

Approve the donation of used tactical body armor to Blount County LETA.

Background Information

MPD has body armor no longer being used due to their age. MPD tries to assist other law enforcement agencies when possible and Blount County LETA can use this equipment in training classes at the academy.

Council Priorities Served

Establish a Strong City Brand

Assisting other law enforcement agencies helps to develop community partnerships.

Fiscal Impact

None.

Attachments

1. Surplus Property Disposal Forms
2. Hold Harmless Agreement

City of Murfreesboro**Surplus Property Disposal Form**City Department Murfreesboro Police DepartmentShort description of surplus property Expired Tactical Body Armor x 10

Check the proposed method of disposal.

Sell	<input type="checkbox"/>	Estimated value	_____
		Reserve value (Do not sell below this amt)	\$ _____
Trade-In	<input type="checkbox"/>	Trade-in value	\$ _____
Transfer	<input type="checkbox"/>	To whom? _____	
Donate	<input checked="" type="checkbox"/>	To whom? <u>Blount County LETA</u>	Estimated value <u>2000</u>
Throw away	<input type="checkbox"/>		
Recycle	<input type="checkbox"/>		

Describe the Surplus Property:

Approximate age	<u>8 yrs</u>	Estimated original cost	<u>\$20,000</u>
Seized Property?	<u>no</u>	Depr value (to be completed by FA Mgr if applicable)	\$ _____
Law Enforcement Restricted ?	<input type="checkbox"/>		

Condition of surplus property:

If **Sell**, complete and attach the appropriate Vehicle, Equipment, or Office Equipment, Furniture & Other Inspection Form.If **Trade-In, Transfer, Donate, or Junk** describe the condition of the surplus property below, including Make, Model, and Serial Number as appropriate:SID Expired Body Armor x 10(see attached for serial numbers)

Check the method used to determine the estimated / reserve values of the surplus property. Attach documentation if estimated value is over \$1,000.

Trade-in value	<input type="checkbox"/>	Equipment dealer	<input type="checkbox"/>
Appraisal	<input type="checkbox"/>	Completed online auctions	<input type="checkbox"/>
Kelley Blue Book	<input type="checkbox"/>	Depreciated value	<input type="checkbox"/>
		Other (Describe)	_____

I request that the item described above be declared surplus property and that the disposal method be approved.

[Signature]
Signed (Department Head)11-9-21
Date

I have reviewed the above information and determined that it is appropriate.

[Signature]
Signed (Fixed Assets Manager)12/1/21
DateI approve ☒ or disapprove ☐ that the above described property be determined surplus and disposed of as indicated.[Signature]
Signed (City Manager or Assist. City Manager)12/1/21
Date**FIXED ASSETS MANAGER TO RETAIN ORIGINAL. COPY WILL BE SENT BACK TO DEPT.**



Expired SID Body Armor

[illegible]

CITY OF MURFREESBORO

DONATION OF Expired Tactical Body Armor x 10

MUTUAL RELEASE OF LIABILITY AND HOLD HARMLESS AGREEMENT

For and in consideration of the mutual promises and agreements and for the donation of Expired Tactical Armor from the City of Murfreesboro ("City") to Blount County Law Enforcement Training Academy,

The City and Blount County LETA mutually agree as follows:

Each and every party to this agreement, individually and as agents for their employees, including their assigns, successors, agents, employees, and representatives, releases and discharges each and every other party to this agreement, including employees of each and every other party from any and all claims, rights, demands, covenants, agreements, duties, obligations, warranties, representations, liabilities, damages, expenses, attorneys' fees, costs, and causes of action, known or unknown of whatever kind, arising out of or related to the donation of the Tactical Body Armor from the City to Blount County LETA and the use of the Tactical Body Armor by Blount County LETA for whatever purposes Blount County LETA may use them for.

Blount County LETA agrees to hold City harmless in the event any claim is made against either the City or County arising from Blount County LETA's ownership or use or failure to use said Tactical Body Armor.

In executing this Release and Hold Harmless Agreement Blount County LETA acknowledges that City is making no representation as to the fitness, suitability or usability of said Tactical Body Armor for their stated purpose and function; it (they) have been owned, maintained and/or used by the City for multiple years. It (or their) current condition is not known or guaranteed by City; City is providing said Tactical Body Armor on an "as is" basis to Blount County LETA.

Blount County LETA shall be solely responsible for determining whether to use said Tactical Body Armor for any purpose.

IN WITNESS WHEREOF,
CITY OF MURFREESBORO

By: 
Craig Tindall, City Manager

By: _____

Title: _____

Approved as to form:


Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Conveyance of Retired Police K9

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

Donation of police canine "Ruger" to his handler Officer Blake Troutman.

Staff Recommendation

Approve the transfer of retired police canine to his current handler.

Background Information

Police canine Ruger is ten years of age and at the end his service life. Officer Troutman would like to continue to care for his canine partner and keep him throughout his retirement years as a pet.

Council Priorities Served

Safe and Livable Neighborhoods

Canine Ruger has served the community well for many years and has been an effective partner in keeping Murfreesboro safe and livable.

Fiscal Impacts

MPD will provide services as described in the Canine Release Waiver. If approved, covered services will be funded from the Department's annual operating budget.

Attachments:

1. Recommendation letter from AMC
2. Canine Release Waiver
3. Surplus Property Disposal Form

AMC

**ANIMAL MEDICAL CENTER, LLC
234 RIVER ROCK BLVD. – MURFREESBORO 37128
Phone (615) 867-7575 Fax (615) 867-7028**

November 17, 2021

To Whom It May Concern:

This letter is in regard to K-9 officer “Ruger”, handler Blake Troutman. “Ruger” has been diagnosed with a collapsing trachea. This condition is common in older Labrador Retrievers. Trachea collapse impairs movement of air into the lungs during panting. This restriction often leads to heat exhaustion/stroke and exercise intolerance. Intense physical demand in work/training exacerbates tracheal collapse.

In addition to the respiratory effects of tracheal collapse, it is intimately associated with degenerative neuropathy in aging Labrador Retrievers. As the neuropathy progresses, the rear legs become weakened or ataxic.

Based on “Ruger’s” age and the development of tracheal collapse, it is recommended that he be retired from service effective December 31, 2021. If there are any questions, please contact me at the above address or phone number.

Sincerely,

Dr. Steve Myers

Dr Steve Myers

CITY OF MURFREESBORO, TENNESSEE

POLICE/NARCOTICS CANINE RELEASE WAIVER

This agreement entered into by and between the **City of Murfreesboro, Tennessee** ("the City") and **Blake Troutman** ("Recipient") and made effective as of _____.

Whereas, the City of Murfreesboro Police Department (hereinafter, "MPD") previously used a police/patrol canine by the name of Ruger ("the Canine"); and

WHEREAS, the MPD has determined, by consultation with a licensed veterinarian and/or agreement of the chain of command, that the Canine is no longer suitable for use as a police canine and should be used only as a pet by someone competent in the handling and care of a police/patrol canine, the MPD is therefore retiring the canine from police service, and

WHEREAS, Recipient desires to have the Canine for use solely as a pet; and

WHEREAS, the City will make the Canine available to the Recipient as a pet with the understanding that Recipient does release and forever discharge the City and the MPD and their employees, agents, servants, and successors or assigns, from any and all actions, claims and demands including claims or actions for contribution and/or indemnity of whatever nature now existing or which may hereafter arise out of the control, possession, maintenance, and/or the conduct of the Canine delivered into Recipient's possession, including any consequence thereof now existing or which may develop, whether or not such consequences are known or anticipated.

The Recipient further agrees that the sole consideration of conveying ownership of the Canine to Recipient, the receipt of which is acknowledged, does release and forever discharge the City, the MPD, and their employees, agents, servants, and successors or assigns, from any and all actions, claims and demands including claims or actions for contribution and/or indemnity of whatever nature now existing or which may hereafter arise out of the control, possession, maintenance, and/or the conduct of the Canine delivered into Recipient's possession, including any consequence thereof now existing or which may develop, whether or not such consequences are known or anticipated.

The Recipient also agrees that, in consideration of conveying ownership of the Canine, Recipient will indemnify and hold harmless the City, the MPD, and their employees, agents, servants, and successors or assigns, from any and all actions, claims and demands arising out of the control, possession, maintenance and/or conduct of the Canine delivered into Recipient's possession.

NOW THEREFORE, for and in consideration of the mutual benefits hereunto appertaining, the parties agree as follows:

1. That Recipient recognizes and acknowledges that the Canine has been trained and worked as a police/patrol canine and in that connection has been trained in suspect control techniques and to perform other regular services as a police/patrol canine.

2. That the MPD makes no representations or warranties, expressed or implied, about the Canine's temperament or in any way guarantees or represents how the Canine will react to persons or property at the present time or in the future.
3. Recipient agrees to assume full financial responsibility, except as provided herein, regarding the care and maintenance of the Canine including, but not limited to: nutrition, kenneling/shelter, transportation requirements, veterinary expenses for conditions present and future.
4. The City shall be responsible for the veterinary care of the Canine, up to an amount not to exceed two thousand five hundred dollars (\$2,500) per calendar year, provided: (a) the animal remains in the possession and care of an active or retired MPD officer; (b) any such veterinary care is provided by a licensed veterinarian; and (3) Recipient presents any and all necessary documentation to the MPD's Deputy Chief to support the City's requirements for the reimbursement of funds.
5. The City shall be responsible for providing food for the Canine in the custody and control of an active or retired MPD officer at such officer's request. Such food shall be provided by the police department for the life of the animal. Recipient acknowledges that to receive reimbursement for the cost of feeding the Canine, Recipient must present any and all necessary documentation to the MPD's Deputy Chief to support the City's requirements for the reimbursement of funds.
6. Recipient agrees that the Canine is not being acquired with the intent to sell, transfer, lease, or otherwise dispose of the Canine to any person(s), dealer, retailer, auction, institute or any other entity.
7. Recipient agrees to care for the Canine in a humane and responsible manner and to provide it with secure, clean and adequate shelter, food, water and veterinary care in a manner consistent with law and/or veterinary recommended practices.
8. Recipient agrees that the Canine shall wear a collar or harness with identification tags or have an embedded identification microchip at all times.
9. That in exchange for the above agreement the City does hereby transfer ownership of the Canine to Recipient.
10. Recipient further acknowledges that no additional promise or agreement has been made as consideration for this Release and the signing thereof has not been induced by any representation of the party released, or by anyone in its behalf.

This Release shall bind the Recipient and the Recipient's heirs, next of kin, executors, administrators, successors or assigns and shall inure to the benefit of the party released, its employees, agents, servants, and successors or assigns.

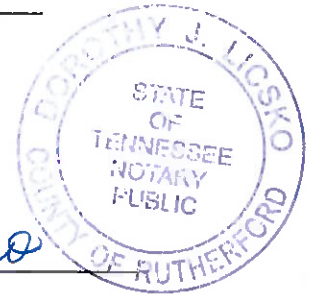
The Recipient hereby accepts the Canine in consideration of the promises set forth above.


Recipient of Canine

12/8/21
Date


Sworn to and subscribed before me, this 9 day of December, 2021


Notary Public



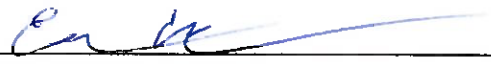
On behalf of the City of Murfreesboro:

Recommended by:


Captain, MPD Traffic and Special Services Section

12-8-21
Date

Approved by:


Deputy Chief of Police

12-8-21
Date


Chief of Police

12-8-21
Date

City Manager

Date

APPROVED AS TO FORM AND LEGALITY:

City Attorney

Date

FILED IN THE OFFICE OF THE CITY RECORDER:

Reporting and Compliance Manager

Date

City of Murfreesboro**Surplus Property Disposal Form**City Department Police DepartmentShort description of surplus property Police K9 Labrador Retriever

Check the proposed method of disposal.

Sell	<input type="checkbox"/>	Estimated value	
		Reserve value (Do not sell below this amt)	\$
Trade-In	<input type="checkbox"/>	Trade-in value	\$
Transfer	<input type="checkbox"/>	To whom?	
Donate	<input checked="" type="checkbox"/>	To whom? <u>Officer Blake Troutman</u>	Estimated value <u>\$0</u>
Throw away	<input type="checkbox"/>		
Recycle	<input type="checkbox"/>		

Describe the Surplus Property:

Approximate age	<u>11</u>	Estimated original cost	<u>\$6,000.00</u>
Seized Property?	<input type="checkbox"/>	Depr value (to be completed by FA Mgr if applicable)	\$ -

Condition of surplus property:

If **Sell**, complete and attach the appropriate Vehicle, Equipment, or Office Equipment, Furniture & Other Inspection Form.

If **Trade-In, Transfer, Donate, or Junk** describe the condition of the surplus property below, including Make, Model, and Serial Number as appropriate:

Check the method used to determine the estimated / reserve values of the surplus property. Attach documentation if estimated value is over \$1,000.

Trade-in value	<input type="checkbox"/>	Equipment dealer	<input type="checkbox"/>
Appraisal	<input type="checkbox"/>	Completed online auctions	<input type="checkbox"/>
Kelley Blue Book	<input type="checkbox"/>	Depreciated value	<input type="checkbox"/>
		Other (Describe)	

I request that the item described above be declared surplus property and that the disposal method be approved.

Signed	<u></u>	Date	<u>12-8-21</u>
	(Department Head)		

I have reviewed the above information and determined that it is appropriate.

Signed	<u></u>	Date	<u></u>
	(Fixed Assets Manager)		

I approve ☐ or disapprove ☐ that the above described property be determined surplus and disposed of as indicated.

Signed	<u></u>	Date	<u></u>
	(City Manager or Assist. City Manager)		

FIXED ASSETS MANAGER TO RETAIN ORIGINAL. COPY WILL BE SENT BACK TO DEPT.

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Master Services Agreement with Gresham Smith

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

Master Services Agreement with Gresham Smith engineering firm.

Staff Recommendation

Approval of the Master Services Agreement with Gresham Smith.

Background Information

The City currently has several Master Service Contracts with Professional Consultants providing a variety of services. Gresham Smith has provided professional services for many cities in several areas for a number of years. Services include traffic studies, fiber optic make ready/design, and civil design services. The proposed Master Service Agreement allows Staff to utilize Gresham Smith as needed for the development and implementation of smaller or specialized projects.

Council Priorities Served

Expand infrastructure

Engineering research and design services are critical to improvement of the City's streets enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The primary funding source of the City's professional service task orders is from State Street Aid, which is our local share of the State's gasoline tax.

Attachments

Master Services Agreement with Gresham Smith.

**AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES
TASK ORDER EDITION**

THIS AGREEMENT is effective as of _____, 2021 (Effective Date) between CITY OF MURFREESBORO (Owner) and **GRESHAM SMITH** (Engineer). From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement. Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope:

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, Engineer's Services, Engineer's compensation, and all other appropriate matters.

1.02 Task Order Procedure:

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of Compensation for each Task Order. With respect to the scope of Engineer's services, each specific task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, "Engineer's Services for Task Order," prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, "Engineer's Services for Task Order," as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer will provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General:

- A. Owner shall have the responsibilities set forth in Exhibit B, "Owner's Responsibilities," and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items..

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer's services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer's services, the Work, the performance of any Constructor, or in Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 - SCHEDULE FOR RENDERING SERVICES

3.01 Term:

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for [Click or tap here to enter text.](#) years from the Effective Date of this Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 Times for Rendering Services:

- A. The Effective Date of the Task Order and the times for performing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project or Engineer's Services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 - INVOICES AND PAYMENTS

- 4.01 Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall

submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments:

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Failure to Pay: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. 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; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. Disputed Invoices: If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. Sales or Use Taxes: Owner is exempt from state sales tax and similar fees, tariffs, duties, and similar levies required by law. Owner will provide Engineer with a tax exemption certificate upon request. Owner shall not be responsible for any taxes that are imposed on Engineer, and Engineer understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Owner.

ARTICLE 5 - OPINIONS OF COST

- 5.01 Opinions of Probable Construction Cost. Engineer's opinions (if any) of probable Construction Cost 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, Owner must employ an independent cost estimator.
- 5.02 INTENTIONALLY OMITTED
- 5.03 Opinions of Total Project Costs: The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance:

- A. Standard of Care: 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 Engineer's services.
- B. Technical Accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical

accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. Consultants: Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants 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.
- E. Compliance with Laws and Regulations, and Policies and Procedures:
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Engineer shall comply with the policies, procedures and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of each Task Order. Changes after the Effective Date of each Task Order to these Laws and Regulations or to Owner-provided written policies and procedures or the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Certifications: Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. General Conditions: The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2013 Edition) unless both parties mutually agree in a Task Order to use other general conditions.
- H. Contractor Work Site Safety: Engineer shall not at any time supervise, direct, control, or have authority over any Constructor work, nor shall 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 Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Contractor Performance: Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Surety: Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

- K. Decisions: Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- L. Exclusions: Engineer's services do not include: (1) providing legal advice or representation; (2) 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, or (3) 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.
- N. Compliance: While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Design Without Construction Phase Services: For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase engineering and professional services. In such case, Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering or professional services, except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 Use of Documents:

- A. All Documents prepared by Engineer and its Consultants are instruments of service in respect to this Project, and Engineer and its Consultants shall retain an ownership and property interest therein of their respective documents (including the copyright and the right of reuse at their discretion) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form and signed or sealed by the Engineer or one of its Consultants.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the 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 Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific 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 Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants 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.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Electronic Transmittals:

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- D. If Owner and Engineer intend to transmit through a secure Specific Project website, then Owner and Engineer agree to use Engineer's digital document management software system (Newforma-Infoexchange) to which Engineer shall provide Owner and the Contractor access. Should Owner not agree to use Engineer's document management software or, at the request of the contractor, Owner directs Engineer to use a different such software for transmission and management of construction phase documentation, Engineer's fees and time schedules shall be equitably adjusted. The protocols governing such transmissions, shall be as set forth in Digital Modeling Execution Plan. Engineer's fee is based on the use of the Newforma software.

6.05 Insurance:

- A. At all times when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth below:
- | | | |
|----|--|-------------|
| 1. | Workers' Compensation: | Statutory |
| 2. | Employer's Liability: | |
| | Each Accident | \$1,000,000 |
| | Disease, Policy Limit | \$1,000,000 |
| | Disease, Each Employee | \$1,000,000 |
| 3. | General Liability: | |
| | Each Occurrence (Bodily Injury/Property Damage): | \$1,000,000 |
| | General Aggregate: | \$2,000,000 |
| 4. | Excess or Umbrella Liability: | |
| | Each Occurrence | \$3,000,000 |
| | General Aggregate | \$3,000,000 |

5.	Automobile Liability:	
	Combined Single Limit (Bodily Injury/Property Damage)	
	Each Accident	\$1,000,000
6.	Professional Liability:	
	Each Claim Made	\$1,000,000
	Annual Aggregate	\$1,000,000

- B. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor. This insurance shall be primary and non-contributory.
- D. Engineer shall deliver to Owner the certificates of insurance evidencing the coverages indicated in 6.05 A. Such certificates shall be furnished promptly after the issuance of a Task Order and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy but specifically excluding any property-in-transit coverage, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance (excluding any property-in-transit coverage) relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled until a prior written notice pursuant to the policy provisions has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. Under the terms of any Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Paragraph 6.05 A. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Paragraph 6.05 A will be supplemented to incorporate these requirements.

6.06 Suspension and Termination:

- A. Suspension:
 - 1. By Owner: Owner may suspend a Task Order for up to 90 cumulative days upon seven days written notice to Engineer.

2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order if Engineer's performance has been substantially delayed through no fault of Engineer, Owner has failed to pay Engineer for invoiced services and expenses as set forth herein, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.11.
- B. Termination for Cause – Task Order: The obligation to provide further services under a specific Task Order may be terminated:
1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement through no fault of the terminating party.
 2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - a. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 cumulative days for reasons beyond Engineer's control.
 - b. Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven 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 shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- C. Termination for Cause—Agreement: In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.
- D. Termination for Convenience by Owner: Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. Effective Date of Termination: The terminating party under Paragraph 6.06.B, C and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. Payments Upon Termination:
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement and for all expenses incurred through the effective date of termination, to the extent that the specific Task

Order (or Task Orders allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and to 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 Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 Lien Rights: Within 15 days after receipt of a written request from the Engineer, the Owner shall furnish any requested information as necessary and relevant for the Engineer to evaluate, give notice of, or enforce lien rights. Evaluation, notice and enforcement of lien rights shall be determined at the Engineer's discretion.

6.08 Controlling Law; Venue: The validity, construction and effect of this Contract and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in a court whose jurisdiction includes and encompasses Rutherford County, Tennessee.

6.09 Successors, Assigns, and Beneficiaries:

- A. 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 6.09.B 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.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 2. 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.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Contract Documents.

6.10 Claims and Dispute Resolution:

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures herein provided or exercising their rights under law. If the parties fail to resolve a dispute through negotiation, then either or both may invoke the mediation procedures provided herein.

- B. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect or as mutually agreed by the parties. Request for mediation shall be filed in writing with the other party to this Agreement and shall include a list of no less than three nor more than six names, addresses and qualifications of industry-experienced mediators which the filing party will accept to conduct the mediation. 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.
- C. If such mediation is unsuccessful in resolving a Dispute, then either party may seek to have the Dispute resolved by a court of competent jurisdiction. In the event of litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover in accordance with State law.
- D. Owner and Engineer 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 in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law in effect at the time this Agreement was executed, but in any case, not more than 10 years after the date of Substantial Completion of the Work. Owner and Engineer waive all claims and causes of action not commenced in accordance with this Paragraph 6.10 D.

6.11 Environmental Condition of Site with respect to each Task Order and Specific Project:

- A. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer’s scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Project affected thereby until such portion of the Specific Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer’s services under the Specific Task Order, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating the Task Order for cause on 7 days’ notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which

are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.12 Allocation of Risk:

- A. Indemnification by Engineer: To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, consultants, and employees from costs, losses, and damages arising out of or relating to the Project, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, employees, or Consultants.
- B. Indemnification by Owner: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, employees, and consultants from and against any and all costs, losses, and damages (including but not limited to reasonable fees and charges of all professionals, and all court or other dispute resolution costs) to the extent caused by the negligence or willful misconduct of Owner or Owner's officers, directors, partners, employees, consultants or contractors with respect to this Agreement or the Project.
- C. Environmental Indemnification: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any project Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. Mutual Waiver: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, insurers, partners, and consultants, 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, any Task Order or a Specific Project. To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of this Paragraph, the Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, or any of them, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to any Task Order, any Specific Project or this Agreement from any cause or causes, including but not limited to any

such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them.

- G. Limitation of Liability: To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Task Order, a Specific Project or this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under such Task Order.

6.13 Records Retention: Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.14 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. Survival: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. Applicability to Task Orders: The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment of such Specific Project.
- G. Non-Exclusive Agreement: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for

the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other owners for the same or different services contemplated hereunder.

- H. Photographic or Artistic Representations: Engineer shall have the right to include photographic or artistic representations of the design of the project described in each Task Order ("Project") among the Engineer's promotional and professional materials. Engineer shall be given reasonable access to the completed Project to make such representations. However, Engineer's material shall not include Owner's confidential or proprietary information if Owner has previously advised engineer in writing of the specific information considered by Owner to be confidential or proprietary. Owner shall provide professional credit for Engineer in Owner's promotional materials for the Project.
- I. Force Majeure: The Engineer shall not be liable for failure to perform its services under this Agreement or meet any schedule of performance of services to the extent that any delay or impediment arises from reasonably unforeseeable causes beyond the reasonable control of the Engineer. Examples of such causes include acts of God or of the public enemy, acts of the Owner or third parties, fires, floods, pandemics or epidemics, quarantine restrictions, strikes or labor actions, boycotts, freight embargoes, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, and unusually severe weather. The Engineer and its consultants shall not be required to perform any services that would require or may result in exposure of their employees to hazardous or unsafe conditions.

6.15 Special Provisions: Listed as follows or None as stated below:

Click or tap here to enter text.

ARTICLE 7 - DEFINITIONS

- 7.01 Defined Terms. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. Additional Services – The services to be performed for or furnished to Owner by Engineer in accordance with a Task Order but which are not included in Basic Services for that Task Order.
 2. Agreement – This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
 3. Basic Services – The services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, as specified in the task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order.
 4. Change Order – A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 5. Change Proposal – A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 6. Constituent of Concern – Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of

- any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
7. Construction Contract – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 8. Construction Contract Documents – Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
 9. Construction Contract Price – The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
 10. Construction Contract Times – The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
 11. Construction Cost – The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
 12. Consultants – Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer’s independent professional associates, consultants; subcontractors; or vendors.
 13. Contractor – The entity or individual with which Owner enters into a Construction Contract.
 14. Day - The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
 15. Documents – Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
 16. Drawings – That part of the Construction Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
 17. Effective Date – The date indicated in this Agreement and in each Task Order on which each becomes effective, but if no such date is indicated, the date on which this Agreement or a Task Order is signed and delivered by the last of the parties to sign and deliver.
 18. Engineer – The individual or entity named as such in this Agreement.
 19. Laws and Regulations; Laws or Regulations – Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 20. Owner – The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the

- same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
21. Record Drawings – Drawings depicting the completed Specific Project or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
 22. Resident Project Representative – The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be included in a Task Order as set forth in each Task Order.
 23. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
 24. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
 25. Site – Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
 26. Specifications – The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative requirements and procedural matters applicable to the Work.
 27. Specific Project – The total specific undertaking of to be accomplished for Owner as set forth by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
 28. Subcontractor – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
 29. Substantial Completion – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
 30. Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 31. Task Order – A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
 32. Total Project Costs – The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, Owner's

costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to .

33. Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.
34. Work Change Directive – A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion or revision in the Work.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits & Attachments Included:

Exhibit A, Engineer's Services

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative-
- Not Included

Exhibit E, Notice of Acceptability of Work-- Not Included

Exhibit F, Amendment to Task Order (Form)

Attachment 1, Task Order (Form)

- 8.02 Total Agreement: This Agreement, (together with the Exhibits included above) 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. Amendments to Task Orders shall be in writing, based upon the format provided in Exhibit F, "Amendment to Task Order (Form)." An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit F to this Agreement.

- 8.03 Designated Representatives: With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

- 8.04 Engineer's Certifications: Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04: "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution; "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive

Owner of the benefits of free and open competition; and "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, the Effective Date of which is indicated on page 1.

OWNER: CITY OF MURFREESBORO

Designated Representative (8.03)

By: _____

Name: _____

Title: _____

Title: _____

Date: _____

Phone: _____

Email: _____

Address for Giving Notices: _____

ENGINEER: GRESHAM SMITH

Designated Representative (8.03)

By:  _____

Name: Jody Vance, P.E.

Title: PRINCIPAL

Title: Principal

Date: 12/07/2021

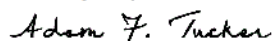
Phone: 615.770.8579

Email: Jody.vance@greshamsmith.com

Address for Giving Notices: 222 Second Avenue South, Suite 1400, Nashville, TN 37201-2308

APPROVED AS TO FORM

DocuSigned by:

 _____

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Attorney

EXHIBIT A – ENGINEER’S SERVICES

- A. Services to be provided under this contract will be authorized in writing for each Specific Project. Each Work Authorization will indicate the specific tasks and functions to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by City to issue any Work Authorization.
- C. Engineer shall not be obligated to perform any prospective Work unless and until City and Engineer agree as to the particulars of the Specific Project, Engineer’s Services, Engineer’s compensation, and all other appropriate matters.
- D. Services provided in Work Authorization may include the following.

PART 1 - BASIC SERVICES

- 1. Fiber Optic installation design services including design for communications lines and signal interconnections, These services may also include related utility make ready tasks or utility permitting required for installation of projects.
- 2. Utility Coordination services including those provided during project designs and/or construction. Tasks may include direct coordination with utilities, deconfliction meetings between multiple utilities, during project design,
- 3. Roadway engineering services including design for new roadway segments, widening, realignment, spot improvements, intersection improvements, and roundabout design
- 4. Traffic impact study services including traffic study review, independent studies, and other study-related tasks
- 5. Traffic engineering-related services including signal design, design review, warrant studies, timing studies, and signal-system improvements
- 6. Structural engineering including retaining wall design, bridge/culvert design, bridge/culvert rehabilitation design, and other structural-related tasks
- 7. Environmental documentation services including assistance with NEPA documents and SWPP related permitting, and other study-related tasks.
- 8. Third party review of designs and/or plans by others. These services may be provided for the City in assistance of overall plans reviews on City projects produced by others.
- 9. Other general services that may be included in order to complete the above tasks may include, but not be limited to, grant writing, data collection, surveying, ROW and construction plans, management for ROW appraisal and acquisition services, ROW and utility certifications, utility design, pole load analysis, bid book and specifications, construction cost estimate, bidding phase

10. services, conducting preconstruction and progress meetings, construction inspections, material testing, processing of pay requests, change orders, and project close-out documents.
11. Each specific Task Order may include Basic services that do not fit into those described above. Such services should be expressly stated in the specific Task Order itself.

PART 2 – PAYMENT TO ENGINEER FOR SERVICES

1. City shall pay Engineer for services in accordance with one or more of the following methods:

- a. Negotiated Lump Sum .
- b. Standard hourly Rates (shall be negotiated within specific Task Orders)

EXHIBIT B – OWNER’S RESPONSIBILITIES

Article 2 of the Agreement is supplemented to include the following agreement of the parties unless expressly stated otherwise in a Task Order.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement with respect to each Task Order, the Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner’s requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner’s procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner’s construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner’s bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer’s possession) of all design and construction standards, Owner’s standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner’s legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction or investigation at or adjacent to the Site.
- D. Following Engineer’s assessment of initially-available Specific Project information and data and upon Engineer’s request, obtain, furnish or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Utility and topographic mapping and surveys; all surveys will be provided in hard copy in addition to digital format.
 - 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing

- surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical or cultural studies as to the Specific Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purposes Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- O. Place and pay for advertisement for Bids in appropriate publications.
- P. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- Q. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

EXHIBIT C – PAYMENTS TO ENGINEER FOR SERVICES AND EXPENSES

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE A.2 – OWNER'S RESPONSIBILITIES

C2.01 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)

C2.02 Explanation of Compensation Methods

A. Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses, and Consultant charges.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses.
2. Standard Hourly Rates 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.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of July 1) to reflect equitable changes in the compensation payable to Engineer.

C2.03 Reimbursable Expenses

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount **includes** the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of N.A.
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of N.A..
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 Serving as a Witness

- A. For services performed by Engineer's employees as witnesses giving testimony, not including expert witness testimony which shall be done under a separate agreement, in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of (TBD at time of service) times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

EXHIBIT C - APPENDIX 1

Reimbursable Expenses and Charges Schedule

Reimbursable expenses and charges for services performed are:

Printing Rates	Charge Rate Per Copy/Print
Print on White bond - 8.5 x 11	\$ 0.10
Print on White Bond - 8.5 x 14	\$ 0.15
Print on White bond - 11 x 17	\$ 0.19
Print on White bond - 11 x 17 - folded	\$ 0.21
Print on White bond - 12 x 18 Small Format	\$ 0.23
Print on Colored bond - Blue	\$ 0.13
Print on Colored bond - Canary	\$ 0.13
Print on Colored bond - Green	\$ 0.13
Print on Colored bond - Natural	\$ 0.13
Print on Colored bond - Pink	\$ 0.13
Print Color - 8.5 x 11	\$ 0.50
Print Color - 8.5 x 14	\$ 0.75
Print Color - 11 x 17	\$ 1.00
Marketing Color - 8.5 x 11	\$ 0.70
Marketing Color - 11 x 17	\$ 1.40
Marketing Color - 12 x 18	\$ 1.40
Marketing Color - 8.5 x 11 - FULL BLEED	\$ 1.40
Marketing Color - 11 x 17 - FULL BLEED	\$ 1.40
Marketing Color-Full Bleed	\$ 1.40
Print on Bond - 11 x 17	\$ 0.45
Print on Bond - 12 x 18	\$ 0.50
Print on Bond - 15 x 21	\$ 1.00
Print on Bond - 17 x 22	\$ 1.15
Print on Bond - 18 x 24	\$ 1.15
Print on Bond - 22 x 34	\$ 1.20
Print on Bond - 24 x 36	\$ 1.25
Print on Bond - 30 x 42	\$ 1.35
Print on Bond - 34 x 44	\$ 1.65
Print on Bond - 36 x 48	\$ 1.85
Color Bond Prints - 22 x 34 in Set	\$ 2.50
Color Bond Prints - 24 x 36 in Set	\$ 2.50
Color Bond Prints - 30 x 42 in Set	\$ 2.50
Color Bond Prints - 34 x 44 in Set	\$ 2.50
Color Bond Prints - 36 x 48 in Set	\$ 2.50

Office Services Charges:

Cell Phone	\$0.20	Per Minute
Long Distance	\$0.12	Per Minute
Faxes	\$1.00	Per Page

EXHIBIT C – APPENDIX 2

Standard Hourly Rates Schedule

- A. Standard Hourly Rates:
1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C 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 Article C2.
- B. Schedule: Hourly rates for services performed on or after the date of the Agreement are:

Principal	\$TBD
Project Manager - Architecture	\$TBD
Project Coordinator – Architecture	\$TBD
Senior Designer	\$TBD
Senior Engineer	\$TBD
Project Manager – Engineering	\$TBD
Project Coordinator – Engineering	\$TBD
CADD Operator	\$TBD
Drafter	\$TBD
Administrative Support	\$TBD

EXHIBIT F – AMENDMENT TO TASK ORDER

Amendment No. Click or tap here to enter text.

1. Background Data: Click or tap here to enter text.

Effective Date of Task Order Agreement: Click or tap here to enter text.

Owner: Click or tap here to enter text.

Engineer: GRESHAM SMITH

Specific Project/Task Order: Click or tap here to enter text.

2. Description of Modifications: *(Check only those that are applicable. Refer to paragraph numbers used in the Agreement or previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.)*

☐ a. Engineer shall perform or furnish the following Additional Services: Click or tap here to enter text.

☐ b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: Click or tap here to enter text.

☐ c. The responsibilities of Owner are modified as follows: Click or tap here to enter text.

☐ d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: Click or tap here to enter text.

☐ e. The schedule for rendering services is modified as follows: Click or tap here to enter text.

☐ f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: Click or tap here to enter text.

3. Agreement Summary

a. Original Task Order amount: \$Click or tap here to enter text.

b. Net change for prior amendments: \$Click or tap here to enter text.

c. This amendment amount: \$Click or tap here to enter text.

d. Adjusted Task Order amount: \$Click or tap here to enter text.

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Task Order and the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is Click or tap here to enter text..

OWNER: Click or tap here to enter text.

ENGINEER: Choose an item.

By: _____

By: Click or tap here to enter text.

Title: _____

Title: Click or tap here to enter text.

Date: _____

Date: Click or tap here to enter text.

ATTACHMENT 1

TASK ORDER

Task Order No. [Click or tap here to enter text.](#)

In accordance with paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [Click or tap here to enter text.](#) ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- A. Effective Date of Task Order: [Click or tap here to enter text.](#)
- B. Owner: [Click or tap here to enter text.](#)
- C. Engineer: GRESHAM SMITH
- D. Specific Project (title): [Click or tap here to enter text.](#)
- E. Specific Project (description): [Click or tap here to enter text.](#)

2. Services of Engineer

A. The specific services to be provided or furnished by Engineer under this Task Order are: *(Select one of the following 3 options.)*

- ☐ set forth in Part 1 – Basic Services of Exhibit A, “Engineer’s Services for Task Order,” modified for this specific Task Order, and attached to and incorporated as part of this Task Order.
- ☐ as follows: [Click or tap here to enter text.](#)
- ☐ the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference *(Check all that apply)*:
 - ☐ Study and Report Services (Exhibit A, Paragraph A1.01)
 - ☐ Preliminary Design Phase (Exhibit A, Paragraph A1.02)
 - ☐ Final Design Phase (Exhibit A, Paragraph A1.03)
 - ☐ Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
 - ☐ Construction Phase Services (Exhibit A, Paragraph A1.05)
 - ☐ **including Resident Project Representative (RPR) services**
 - ☐ **not including Resident Project Representative (RPR) services**
 - ☐ Post-Construction Phase Services (Exhibit A, Paragraph A1.06)
 - ☐ Commissioning Services (Exhibit A, Paragraph A1.07)

B. Resident Project Representative (RPR) Services – If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement or Exhibit D as modified and attached hereto is expressly incorporated in this Task Order by reference.

C. Designing to a Construction Cost limit – Under this Task Order, Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement of Exhibit D to the Agreement. Exhibit D is expressly incorporated by reference. The Construction Cost Limit is \$[Click or tap here to enter text.](#). The bidding or negotiating contingency to be added to the Construction Cost Limit is [Click or tap here to enter text.](#) percent.

D. Other Services – Engineer shall also provide the following services: Click or tap here to enter text.

3. **Additional Services** – Additional Services that may be authorized or necessary under this Task Order are (select one of the options):

☐ •set forth as Additional Services in Part 2—Additional Services, of Exhibit A, “Engineer’s Services for Task Order,” modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

☐ as follows: Click or tap here to enter text.

☐ those services (and related terms and conditions) set forth in Paragraph A2.01 of Exhibit A, as attached to the Agreement referred to above, such paragraph being hereby incorporated by reference.

4. **Owner's Responsibilities**

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following: Click or tap here to enter text.

5. **Task Order Schedule** – In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish Click or tap here to enter text. review copies of the Report and other Study and Report Phase deliverables to Owner.	Within Click or tap here to enter text. days of the Effective Date of the Task Order.
Owner	Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.	Within Click or tap here to enter text. days of the receipt of Report and other Study and Report Phase deliverables from Engineer.
Engineer	Furnish Click or tap here to enter text. copies of the revised Report and other Study and Report Phase deliverables to Owner.	Within Click or tap here to enter text. days of the receipt of Owner’s comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Furnish Click or tap here to enter text. review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within Click or tap here to enter text. days of Owner’s authorization to proceed with Preliminary Design Phase services.
Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within Click or tap here to enter text. days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish Click or tap here to enter text. copies of the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within Click or tap here to enter text. days of the receipt of Owner’s comments regarding the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.

Engineer	Furnish Click or tap here to enter text. copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within Click or tap here to enter text. days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	Within Click or tap here to enter text. days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish Click or tap here to enter text. copies of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within Click or tap here to enter text. days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

5. **Payments to Engineer:** The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C. Owner shall pay Engineer for services rendered as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Part 1 of Exhibit A)	\$Click or tap here to enter text.	Click or tap here to enter text.
a. Study and Report Phase (A1.01)	\$ Click or tap here to enter text.	Click or tap here to enter text.
b. Preliminary and Final Design Phase (A1.02, A1.03)	\$Click or tap here to enter text.	Click or tap here to enter text.
c. Bidding or Negotiating Phase (A1.04)	\$Click or tap here to enter text.	Click or tap here to enter text.
d. Construction Phase (A1.05)*	\$Click or	Click or tap

	tap here to enter text.	here to enter text.
e. Resident Project Representative Services* (A1.05.A.2).	\$Click or tap here to enter text.	Click or tap here to enter text.
f. Post-Construction Phase (A1.06)	\$Click or tap here to enter text.	Click or tap here to enter text.
g. Commissioning Phase (A1.07)	\$Click or tap here to enter text.	Click or tap here to enter text.
h. Other Services (see A1.08, and 2.D above)	\$Click or tap here to enter text.	Click or tap here to enter text.
TOTAL COMPENSATION (lines 1.a-h)	\$Click or tap here to enter text.	
2. Additional Services (Part 2 of Exhibit A)	(N/A)	Click or tap here to enter text.

*Based on a Click or tap here to enter text.-month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

6. Consultants retained as of the Effective Date of this Task Order:

Click or tap here to enter text.

7. Other Modifications to Agreement:

Click or tap here to enter text.

8. Attachments:

Click or tap here to enter text.

9. Documents Incorporated by Reference:

Click or tap here to enter text.

10. Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated herein by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [Click or tap here to enter text.](#).

OWNER: [Click or tap here to enter text.](#)

Designated Representative (8.03)

By: _____

Name: _____

Title: _____

Title: _____

Date: _____

Phone: _____

Email: _____

Address for Giving Notices:

ENGINEER: Choose an item.

Designated Representative (8.03)

By: _____

Name: [Click or tap here to enter text.](#)

Title: [Click or tap here to enter text.](#)

Title: [Click or tap here to enter text.](#)

Date: _____

Phone: [Click or tap here to enter text.](#)

Email: [Click or tap here to enter text.](#)

Address for Giving Notices:

222 Second Avenue South, Suite 1400
Nashville, TN 37201-2308

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Dr. Martin Luther King Jr. Blvd. Phase 2, Sidewalk Project
Amendment No. 1 TDOT Contract

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

Amendment No. 1 to the Dr. Martin Luther King Jr. Blvd. Phase 2 with TDOT.

Staff Recommendation

Approve Amendment No. 1 to the agreement with TDOT.

Background Information

The City received a TDOT Transportation Alternative Project (TAP) Grant in 2018 for the development and implementation of a Sidewalk Project along Dr. Martin Luther King Jr. Blvd. from Middle Tennessee Blvd. to Minerva Drive. The TAP Grant award only covered 80% of construction cost and was capped at \$1,000,000. Since that time, the development of the construction plans and the easement requirements, a shortfall in funding required to meet the project deliver was identified.

The City through the TDOT's Multimodal Access Grant Program (MMAG) submitted an application and received an additional \$703,605 in state funds to offset the shortfall of the project. The MMAG program funds projects with a 95% state and 5% local match.

Council Priorities Served

Responsible budgeting

Improvements of roadway infrastructure with federal and state dollars allows local funds to be used for other community purposes.

Safe and Livable Neighborhoods

Sidewalks enhances the safety and operations of the City's roadway network.

Fiscal Impact

The City's 5% portion of the MMAG is estimated at \$37,032 and will be funded from

the FY18 CIP Budget for this project.

Attachments

1. Executed Agreement No. 180111 between the City and TDOT.
2. Amendment No. 1 to Agreement No. 180111 between the City and TDOT.

Agreement Number: 180111

Project Identification Number: 126616.00

Federal Project Number: TAP-1(395)

State Project Number: 75LPLM-F3-076

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this 15th day of Oct, 2018 by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and CITY OF MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

(Mercury Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Mercury Boulevard Sidewalks-Phase 2): Construction of sidewalks along Mercury Blvd (US 70S/SR-1) from Middle Tennessee Blvd to Apollo Drive. Project also includes ADA compliance, pedestrian signals, crosswalks and school flashing speed limit signals.

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.
- b) In the event this Agreement includes a Safe Routes to School Grant for non-infrastructure activities, a Detailed Grant Budget as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") shall provide line-item amounts as applicable only to expenses incurred during the period between the effectual date of this Agreement and the completion date shown in Section B.2(a) hereof. However, Notice to Proceed to Construction must be obtained as referenced in Section B.1(c). Expenditures, reimbursements, and payments under this Grant Agreement shall adhere to the Grant Budget. The Agency may vary from a Grant Budget line-item amount by up to fifteen percent (15%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Agreement amount detailed in the Grant Budget and provided that written approval of any such variance is received prior to the expenditure. The percentage of expenditure for non-infrastructure work versus

infrastructure work also cannot be changed. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Agreement.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by: Agency or Project
Preliminary Engineering by:	Agency	Agency
Environmental Clearance by:	Agency	Agency
Right-of-Way by:	Agency	Agency
Utility Coordination by:	Agency	Agency
Construction by:	Agency	Project

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) If this Agreement is funded with any Enhancement funds, then the Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed with the Construction Phase by **July 1, 2021**. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed with the Construction Phase by the aforesaid date, then the Department may terminate this Agreement in accordance with Section D.23.
- d) A full time employee of the Agency shall supervise the herein described and assigned phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of

this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) The Agency shall complete the herein assigned phases of the Project on or before **July 1, 2023**. The Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date. An extension of the aforesaid completion date of this Agreement may only be effected by a written amendment to the Agreement, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement. Otherwise, without an extension of the aforesaid completion date of this Agreement, the Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved

portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

- 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its contractor or agent during the Construction phase of the Project.
- e) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-

profit organization, the Agency shall transfer the land acquired to, or grant a conservation easement for the benefit of, a state agency or other governmental agency in perpetuity in accordance with the Agency's application.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

B.10 Safe Routes to School Requirements

- a) If the herein described project is funded with Safe Routes to School (SRTS) funds, Section B.10 shall apply.
- b) The Agency shall provide pre and post Parent Surveys and Student Tally Sheets for each school under this Agreement:
 - 1) The Pre Parent Surveys and Student Tally Sheets are to be completed and returned with this Agreement.
 - 2) The Post Parent Surveys and Student Tally Sheets are to be sent no later than six (6) months from the completion of the infrastructure as defined herein with the final reimbursement request.
 - 3) The final reimbursement shall not be paid until the Post Parent Surveys and Student Tally Sheets are received by the Department.
 - 4) These surveys and tallies are to be completed on those specific forms sent to the Agency with the detailed instruction letter. (Required forms and instructions are available at: www.saferoutesindo.org/resources)

- c) The Agency shall obtain prior approval from the Department before purchasing any equipment and/or products under this Agreement. If prior approval is received, procurement shall be made on a competitive basis, in accordance with applicable state and local laws and regulations provided that the procurement conforms to applicable federal law and the standards identified in 49CFR18.36.
- d) The Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Local Programs Development Manager, for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Agency's compliance with applicable federal procurement requirements.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A..

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost

incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.
- d) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-profit organization, the Department will reimburse the Agency for only 90% of the federal share of eligible costs until such time as the Agency transfers the land, or a conservation easement therein, to a state agency or another governmental agency as provided in Section B.5 (e).

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:
 - 1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
 - 2) **Litigation:**
There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;
 - 3) **Approval by Department:**
The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;
 - 4) **Conflict of Interests:**
There has been any violation of the conflict of interest provisions contained herein in D.16; or
 - 5) **Default:**
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State

and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then The Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

- c) In the event the Project is located on State Highway Right-of-Way, the Agency shall have the sole responsibility - at its own expense - of maintaining and keeping the project in good repair and in a safe and clean condition, including picking up litter that may accrue at the site.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

a) DBE Policy:

It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) DBE Obligation:

The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subcontractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

- a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.
- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties

Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.

- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provision:
 - 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail

and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.

- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the Project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) The Agency shall permit, and shall require its contractor, subcontractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any contractor, subcontractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the

audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- b) In the event that the Project herein described includes the state highway system, the Department may rescind its authorization for the location of the Project upon state highway right-of-way at any time by giving the Agency at least ninety (90) days advance written notice thereof, and the Agency shall be obligated to close the Project to public use and remove it at the Agency's expense and restore the premises to the satisfaction of the Department by or before the effective date of such termination.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.

- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of

funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Costs:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits

of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

- b) In the event the Agency is a private, non-profit organization, the liability of the Agency shall not be subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
 - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic	
\$1.00 - \$200,000	=	5 Years	
>\$200,000 - \$500,000	=	10 Years	
>\$500,000 - \$1,000,000	=	20 Years	

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

- c) In the event this Agreement is funded with Roadscapes funds, the facility on which this Project is being developed shall remain open to the public for not less than ten (10) years.
- d) In the event this Agreement involves the use of Enhancement funds to acquire land for the purpose of preserving historic battlefield sites, and the Agency is a private, non-profit organization, the Agency shall transfer the land acquired, or grant a conservation easement therein, to a state agency or other governmental agency in perpetuity in accordance with the Agency's application.

D.37 Federal Funding Accountability and Transparency Act:


- a) **If the Project is funded with federal funds the following shall apply:**
 - 1) The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170 and 2 CFR Part 25. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

Locally Managed Enhancement Agreement


IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF MURFREESBORO

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

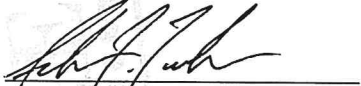
By: 
Shane McFarland
Mayor

Date

By: 
John C. Schroer
Commissioner

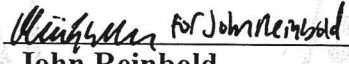
OCT 01 2018
Date

APPROVED AS TO
FORM AND LEGALITY

By: 
Adam Tucker
Attorney

9/10/2018
Date

APPROVED AS TO
FORM AND LEGALITY

By:  for John Reinbold
John Reinbold
General Counsel

9-27-18
Date

EXHIBIT "A"**CONTRACT No.: 180111****PROJECT IDENTIFICATION No.: 126616.00**

PROJECT DESCRIPTION: (Mercury Boulevard), From Middle Tennessee Blvd to Apollo Drive in Murfreesboro (Mercury Boulevard Sidewalks-Phase 2): Construction of sidewalks along Mercury Blvd (US 70S/SR-1) from Middle Tennessee Blvd to Apollo Drive. Project also includes ADA compliance, pedestrian signals, crosswalks and school flashing speed limit signals. The purpose of the project is not location dependent. The purpose of the project shall be accomplished in accordance with the project application, budget, and/or scope of work on which approval of the project was based and AASHTO standards. The application, budget, and /or scope of work may be amended from time to time and when amended will serve as the revised project standard.

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: Bicycle and Pedestrian Facilities

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
CONST	TAP	80%	0%	20%	\$ 1,073,332.25
CONST- CEI	TAP	80%	0%	20%	\$ 117,778.50
CONST - TDOT ENGINEERING SERVICES	TAP	80%	0%	20%	\$ 58,889.25

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said Federal and/or State funds is ruled ineligible at any time.

LEGISLATIVE AUTHORITY: Section 1122 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) established TAP in 23 U.S.C. 213.

PROJECT FUNDING AND SCOPE LIMITATIONS: Once the project is completed per the application and description above, all remaining federal funds will revert to the Department. Project scope revisions and /or additions outside the enhancement activity are prohibited. Limited project scope revisions consistent with the awarded activity must be reviewed and approved by the Department.

TDOT ENGINEERING SERVICES (TDOT ES): In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

Amendment Number: 1
Agreement Number: 180111
Project Identification Number: 126616.00
Federal Project Number: TAP-1(395)
State Project Number: 75LPLM-F3-076

THIS AGREEMENT AMENDMENT is made and entered into this _____ day of _____, 20____ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF MURFREESBORO (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"SR-1(Mercury Boulevard), From Middle Tennessee Boulevard to Apollo Drive in Murfreesboro (Mercury Boulevard Sidewalks-Phase 2)"

1. The language of Agreement # 180111 dated October 1, 2018 Exhibit A is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment 1.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF MURFREESBORO

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

Signature:

By

Signature:

Email: smcfarland@murfreesborotn.gov

Email: TDOT.COMMISSIONER'S.Office@tn.gov

**APPROVED AS TO
FORM AND LEGALITY**

**APPROVED AS TO
FORM AND LEGALITY**

Signature: Adam F. Tucker

Adam F. Tucker (Dec 8, 2021 09:38 CST)

By

Signature:

Email: atucker@murfreesborotn.gov

Email: TDOT.Legal.Attorneys@tn.gov

EXHIBIT "A" for AMENDMENT 1

AGREEMENT #: 180111

PROJECT IDENTIFICATION #: 126616.00

FEDERAL PROJECT #: TAP-1(395)

STATE PROJECT #: 75LPLM-F3-076

PROJECT DESCRIPTION: Mercury Boulevard Sidewalks - Phase 2: Construction of sidewalks along Mercury Boulevard (US 70S/SR-1) from Middle Tennessee Boulevard to Apollo Drive. Project also includes ADA compliance, pedestrian signals, crosswalks and school flashing speed limit signs.

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto

TYPE OF WORK: Pedestrian and Bicycle Facilities

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
RIGHT-OF-WAY	MMAG	0	95	5	\$200,000.00
CONSTRUCTION	S-TAP	80	0	20	\$1,073,332.00
CEI	S-TAP	80	0	20	\$117,779.00
TDOT ES	S-TAP	80	0	20	\$58,889.00
CONSTRUCTION	MMAG	0	95	5	\$540,637.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

LEGISLATIVE AUTHORITY: Section 1122 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) established TAP in 23 U.S.C. 213.

TDOT ENGINEERING SERVICES (TDOT ES): IN order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Master Services Agreement with Neel Schaffer, Inc.

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

Master Services Agreement with Neel Schaffer, Inc. for engineering services.

Staff Recommendation

Approval of the Master Services Agreement with Neel Schaffer Inc.

Background Information

On January 5, 2017, the City entered into a Master Service Agreement with Neel Schaffer, Inc. The Agreement allows staff to use Neel Schaffer periodically in the development and implementation of smaller specialized projects which include: Traffic Signal Optimization, Traffic Studies and Civil Design. The current contract expires on December 31, 2021. Staff proposes to enter into new Master Service Agreement with Neel Schaffer that will provide for continued assignments for their services.

Council Priorities Served

Expand infrastructure

Engineering services provide for improvements to City streets and enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The primary funding source of the City's professional service task orders is from State Street Aid, which is our local share of the State's gasoline tax.

Attachments

Master Services Agreement from Neel-Schaffer, Inc.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT, entered into as of this ____ day of _____, 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 affect 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

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-SCHAFER") for Professional Services dated _____, ("Agreement"), CITY hereby authorizes NEEL-SCHAFER 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: _____

APPROVED AS TO FORM

DocuSigned by:

Adam F. Tucker

Adam F. Tucker, City Attorney

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 ½" 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.
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: 12/16/2021

Item Title: Asphalt Purchases Report

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Report of asphalt purchases.

Staff Recommendation

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

Background Information

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

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

Council Priorities Served

Responsible budgeting

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

Maintain public safety

Maintaining safe drivability of roadways affected by water resources operations focuses on customer service.

Fiscal Impacts

The overall costs associated with asphaltic material purchases for these O&M projects are in the range of \$150,000 to \$175,000 per year. Costs are appropriately budgeted.

Attachments

Asphalt Purchases Report

MWRD - OPERATIONS & MAINTENANCE

Asphalt Quotes FY 2022

	Blue Water		Hawkins		Vulcan		Notes
	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	
Jul	\$65.00	\$75.00	\$59.00	\$66.50	\$58.39	\$67.35	
Aug	\$65.00	\$75.00	\$59.00	\$69.00	\$57.85	\$67.51	
Sep	\$65.00	\$75.00	\$59.00	\$66.50	\$57.81	\$67.46	
Oct	\$65.00	\$75.00	\$59.00	\$69.00	\$57.81	\$67.46	
Nov	\$65.00	\$75.00	\$60.00	\$67.50	\$57.81	\$67.46	
Dec	\$65.00	\$75.00					
Jan	\$65.00	\$75.00					
Feb	\$65.00	\$75.00					
Mar	\$65.00	\$75.00					
Apr	\$65.00	\$75.00					
May	\$65.00	\$75.00					
Jun	\$65.00	\$75.00					

MWRD OPERATIONS & MAINTENANCE

Asphalt Purchases FY 2022

[illegible]

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Purchase of Precast Manhole Structures

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Contract to purchase from Fortiline, Inc. d/b/a Fortiline Waterworks precast concrete manhole structures for Water Resources Operations and Maintenance construction work.

Staff Recommendation

Approve contract with Fortiline Waterworks for purchase of manhole structures.

Background Information

Water Resources Department is undertaking line improvements on Leaf Avenue, Harrison Avenue, Rose Avenue, Boston Street, and Clover Avenue. MWRD issued bids for the required supply of manholes for this project and the contract to complete the purchases is now presented to Council.

Council Priorities Served

Responsible budgeting

Maintaining the City's utility infrastructure through a proactive approach by replacing deteriorating water and sewer lines prior to the need for emergency repairs maintains reliable service, prevent outages, and avoids undue expenses.

Fiscal Impact

The expense, \$38,865, is funded by FY22 O&M Budget Water Line and O&M Budget Sewer Lines.

Attachments

Agreement for Precast Manhole Structures with Fortiline, Inc.

Agreement for Precast Manhole Structures

This Agreement is entered into and effective as of the ____ day of _____ 20__, by and between the City of Murfreesboro, a municipal corporation of the State of Tennessee (the "City"), and Fortiline, Inc. dba Fortiline Waterworks, a corporation of the State of South Carolina authorized to do business in Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document
- ITB-15-2022-"Precast Manhole Structures" issued November 23, 2021 (the "Solicitation");
- Contractor's Proposal, dated December 8, 2021 ("Contractor's Proposal");
- Contractor's Price Proposal, dated December 8, 2021 (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor.

- a. Contractor shall provide the City with the goods specified in "ITB-15-2022 – Precast Manholes Structures" listed under "Bid Specifications" of the ITB.
- b. In undertaking the work set forth herein, Contractor must comply with all applicable federal, state, and local laws and regulations, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Contractor is solely responsible for any and all taxes imposed upon Contractor and acknowledges it cannot claim exemption from taxes by virtue of any municipal exemption from taxation.
- c. The goods must be delivered within 120 days of the execution of this contract to the City of Murfreesboro's Water Resources Department's Operations and Maintenance Facility located at 1725 South Church Street, Murfreesboro, TN 37130. The City's contact person for this contract, Donald Hughes (dhughes@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 ITB. Should the Contractor fail to deliver items on or before the required date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- e. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Invitation to Bid.

- f. Every delivery made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City.

2. **Term.**

The term of this Agreement commences on the Effective Date, December 16, 2021, and expires on April 16, 2022, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. **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-15-2022 – Precast Manhole Structures," which reflects a total price of \$38,865.01. Invoices will be sent to: Water Resources Department, 1725 S. Church St., Murfreesboro, TN 37133-1739.

4. **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

5. **Insurance.** During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (2) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

6. **Warranty.** Every item supplied by Contractor shall meet the warranty requirements set by the manufacturer. In addition to any express or implied warranty available to the City, the City may request that the Contractor replace or repair any defective goods or correct performance by written notice to the Contractor. In that event, the Contractor shall take corrective action within the amount of time specified by the City in the written notice. Exercise of this option shall not impair the City's other warranty rights and shall not relieve the Contractor of any liability to the City for damages for the breach of any covenants of the Contract by the Contractor.
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.
8. **Notices.** Notice of assignment of any rights to money due to Contractor under this Agreement must be mailed first class mail or hand delivered to the following:
- If to the City of Murfreesboro:
 - City Manager
 - City of Murfreesboro
 - 111 West Vine Street
 - Murfreesboro, TN 37130
 - If to Contractor:
 - Kyle Stetson, Branch Manager
 - Fortiline, Inc.
 - 15850 Dallas Parkway
 - Dallas, TX 75248
 - Kyle.stetson@fortiline.com
9. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and

agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.

12. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, 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 Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
18. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
19. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
20. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
21. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
22. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

IN WITNESS WHEREOF, the parties enter into this agreement as of _____, 20__ (the "Effective Date").

CITY OF MURFREESBORO

CONTRACTOR

By: _____
Shane McFarland, Mayor

By: _____
Kyle Stetson, General Market Manager

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Minutes of City Council Meetings

Department: Finance

Presented by: Jennifer Brown

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

Review and approval of City Council meeting minutes.

Staff Recommendation

Approve minutes as listed.

Background Information

City Council meetings are available on the City's website for reference to actions taken and discussion made as items are considered. In accordance with Meeting procedures, Council approves meeting minutes in order for these to become the official minutes of the meeting.

Attachments

November 17, 2021 (Regular Meeting)
November 18, 2021 (Regular Meeting)

November 17, 2021

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in regular session in the Business Center at the Murfreesboro Municipal Airport at 10:00 a.m. on Wednesday, November 17, 2021, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Jennifer Brown, City Recorder/
Finance Director
Darren Gore, Assistant City Manager
Angela Jackson, Executive Director/
Community Services
Chris Griffith, Executive Director/
Public Infrastructure
Sam Huddleston, Executive Director/
Development Services
Michelle Emerson, City Engineer
Nate Williams, Parks and Recreation Director
Randolph Wilkerson, Employee Services Director
Kim Williams, City Schools Finance Director
Karen Lambert, Grant Coordinator
Joshua Miller, Administrative Assistant

Mayor McFarland commenced the meeting with a prayer followed by the Pledge of Allegiance.

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated November 17, 2021 here with regards
to purchase of property at 312 South Church Street.)

Mr. Sam Huddleston, Executive Director of Development Services, presented the request to approve the Contract for Purchase and Lease-Back of Real Estate with M.A. Smitty, in the amount of \$669,500 plus closing costs of approximately \$5,000, for property located at 312 South Church Street.

Mr. Wade made a motion to approve the Contract for Purchase and Lease-Back of Real Estate with M.A. Smitty, in the amount of \$669,500 plus closing costs of approximately \$5,000, for property located at 312 South Church Street. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Budget Director was presented to the Council:

(Insert letter dated November 17, 2021 here with regards
to Fiscal Year 2022 Budget Amendment Ordinance.)

An ordinance, entitled "ORDINANCE 21-O-40 amending the 2021-2022 Budget Appropriations (2nd Amendment)," was read to the Council and offered for passage on first

reading upon motion made by Vice-Mayor Scales Harris, seconded by Mr. LaLance. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Kirt Wade
Shawn Wright
Bill Shacklett
Shane McFarland

Nay: None

The following letter from the Parks and Recreation Director was presented to the Council:

(Insert letter dated November 17, 2021 here with regards to Warner's Athletic Construction Change Order No. 3 for Soccer Park Turf.)

Mr. Nate Williams, Parks and Recreation Director, presented the request to approve Change Order No. 3 with Warner's Athletic Construction Company in the amount of \$40,099, funded through the 2019 Loan, for turf work at the Richard Siegal Soccer Park.

Mr. Martin made a motion to approve Change Order No. 3 with Warner's Athletic Construction Company in the amount of \$40,099, funded through the 2019 Loan, for turf work at the Richard Siegal Soccer Park. Vice-Mayor Scales Harris seconded the motion and all members of the Council voted "Aye".

The following letter from the Assistant City Manager was presented to the Council:

(Insert letter dated November 17, 2021 here with regards to Salem Highway Basin Sewer Study Results.)

Mr. Darren Gore, Assistant City Manager, presented Council with four potential scenarios which were studied to determine the best course of action regarding the future of new sewer connections in the Salem Highway corridor. Council engaged in discussion with Mr. Gore regarding the scenarios and it was decided to follow staff's recommendation and pursue scenario #4, which would come with an improvement cost of approximately \$6.35 Million and 3,724 new sanitary sewer connections. Mr. Gore advised that Engineering Proposal's for implementing scenario #4 would be forthcoming.

Mayor McFarland announced that Item No. 7 on the Agenda, Food Distribution Permit, would be heard at this time.

The following letter from the City Attorney was presented to the Council:

(Insert letter dated November 17, 2021 here with regards to regulation of Food Sharing Events on Public Property.)

Mr. Adam Tucker, City Attorney, presented Council with a draft Ordinance that would regulate food sharing events on public property for discussion. The draft Ordinance regulated what locations could be used for food distribution, permitting by the City,

enforcement mechanisms and certification requirements. Council discussed the need to address sanitation issues with food distribution, the possibility of requiring prepacked meals rather than utilizing a buffet style, having fees for permits set by Resolution rather than by this Ordinance, the approach the City wanted to take regarding the homeless situation, the upcoming formation of an MPD homeless taskforce, intended uses of City property being inconsistent with feeding the homeless at those locations, and holding a meeting on December 6, 2021, to discuss these issues with community representatives.

Due to a previously scheduled conflicting meeting, Mayor McFarland had to leave near the end of these discussions.

The following letter from the City Engineer was presented to the Council:

(Insert letter dated November 17, 2021 here with regards to Speed Cushion Pilot Program Report.)

Ms. Michelle Emerson, City Engineer, presented Council with results from the Speed Cushion Pilot Program that was installed at Alexander Boulevard. Ms. Emerson engaged in discussion regarding the success of the program in the residential neighborhood, the appropriate places to consider installing more speed cushions, and the proposal to come back with applicants for other locations to include in budget discussions. Council expressed their desire for Speed Cushions to only be recommended by the Engineering Department and to not be brought up at Planning Commission discussions.

The following letter from the City Manager was presented to the Council:

(Insert letter dated November 17, 2021 here with regards to Employee Handbook Restatement.)

Mr. Craig Tindall, City Manager, presented Council with a proposed restatement of the current Employee Handbook, he clarified that the handbook, in its current state, is cumbersome, redundant, and intimidating to new employees. Mr. Tindall stated that the restatement would separate the handbook into policies and directives, without making any substantive changes. He proposed that the restated handbook be presented to Council for approval incrementally over the next few Council Workshops.

The following letter from the Budget Director was presented to the Council:

(Insert letter dated November 17, 2021 here with regards to September 2021 Dashboard packet.)

The September 2021 Dashboard update, which included Financial, Building & Codes, Risk Management, Construction Data, City Schools Cash Flow Statements, and Revenue & Expenditure Budget Comparison Reports, was presented to Council with no discussion taking place.

There being no further business, Vice-Mayor Scales Harris adjourned this meeting at 12:02 p.m.

SHANE MCFARLAND – MAYOR

ATTEST:

JENNIFER BROWN - CITY RECORDER

November 18, 2021

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in regular session at its regular meeting place in the Council Chambers at City Hall at 6:00 p.m. on Thursday, November 18, 2021, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright

The following representatives of the City were also present:

Craig Tindall, City Manager
Adam Tucker, City Attorney
Jennifer Brown, City Recorder/
Finance Director
Michael Bowen, Chief of Police
Mark Foulks, Chief of Fire and Rescue
Sam Huddleston, Executive Director/
Development Services
Trey Duke, City Schools Director
Randolph Wilkerson, Employee Services Director
Ron Duggin, Project Development Director
Jim Kerr, Transportation Director
Matthew Blomeley, Assistant Planning Director
Bill Terry, Public Safety IT Manager
Joshua Miller, Administrative Assistant

Council Member Bill Shacklett commenced the meeting by introducing Mr. Cliff Sharp and his wife Mrs. Jane Sharp of Greenhouse Ministries who extended invitations to come and tour the new Greenhouse Ministries Building. Mr. Sharp led those gathered with a prayer followed by the Pledge of Allegiance.

Mayor McFarland proclaimed that, in the City of Murfreesboro, November 18, 2021, would be known as a day to honor Captain Houston Lee Douglas of the Murfreesboro Fire and Rescue Department. Captain Douglas was instrumental in creating the Chaplaincy program in the Department and with his retirement the program would now be known as the Captain Houston Lee Douglas Chaplaincy Program. Mayor McFarland congratulated Captain Douglas, and Chief Foulks presented him with a shadow box containing memorabilia from his years with the department.

Mayor McFarland recognized Ms. Arianna Isbell of Blackman Middle School who recently competed and came first in the Girls Long Jump at the AAU Junior Olympic National Championships in Houston Texas.

The Consent Agenda was presented to the Council for approval:

1. Mandatory Referral for Drainage Easement Abandonment on Mayoral Court (Planning)
2. Mandatory Referral for Drainage Easement Abandonment on Southpointe Way (Planning)

3. Mandatory Referral for Right-of-Way Abandonment on Robert Rose Drive (Planning)
4. Agreement for Prisoner Processing (Police)

(Insert letters from Planning (3)
& Police Departments here.)

Mr. Wade made a motion to approve the Consent Agenda. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards
to approval of Minutes of City Council Meetings.)

Mr. Martin made a motion to approve the minutes as written and presented for the public comment meeting held on November 4, 2021 and the regular meeting held on November 4, 2021. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Budget Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards
to Fiscal Year 2022 Budget Amendment Ordinance.)

An ordinance, entitled "ORDINANCE 21-O-40 amending the 2021-2022 Budget Appropriations (2nd Amendment)," which passed first reading on November 17, 2021, was read to the Council and offered for passage on second and final reading, upon motion made by Mr. Wade, seconded by Mr. LaLance. Upon roll call said ordinance was passed on second and final reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert ORDINANCE 21-O-40 here.)

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to holding a public hearing to consider Plan of Services, annexation and zoning of approximately 9.1 acres located along Franklin Road and Veterans Parkway [2021-504 & 2021-416].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 21-R-PH-31 adopted by the City Council on September 30, 2021, to consider (1) a Plan of Services for and annexation of approximately 9.1

acres located along Franklin Road and Veterans Parkway and (2) zoning of approximately 9.1 acres located along Franklin Road and Veterans Parkway to Highway Commercial (CH) District and Planned Residential Development (PRD) District (The Villas at Veterans PRD), Wright Family Real Estate Partnership, applicant(s). [2021-504 & 2021-416]. Notice of said public hearing was published in the November 2, 2021 edition of a local newspaper as follows:

(Insert notice here.)

Mayor McFarland declared the public hearing open and invited those present who wished to speak for or against the Plan of Services and annexation for approximately 9.1 acres along Franklin Road and Veterans Parkway, step forward to the podium.

There was no one present who wished to speak for or against the Plan of Services and annexation and, after ample time had been given, Mayor McFarland declared the public hearing closed.

The following RESOLUTION 21-R-PS-31 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wade. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 21-R-PS-31 here to adopt a Plan of Services for approximately 9.1 acres located along Franklin Road and Veterans Parkway, Wright Family Real Estate Partnership, applicant(s) [2021-504].)

The following RESOLUTION 21-R-A-31 was read to the Council and offered for adoption upon motion made by Mr. Wright, seconded by Mr. LaLance. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 21-R-A-31 here to annex approximately 9.1 acres located along Franklin Road and Veterans Parkway, and to incorporate the same within the corporate boundaries of the City of Murfreesboro, Tennessee, Wright Family Real Estate Partnership, applicant(s) [2021-504].)

Mr. Matthew Blomeley, Assistant Planning Director, presented the recommendation of the Planning Commission to approve rezoning approximately 9.1 acres located along Franklin Road and Veterans Parkway and introduced Mr. Matt Taylor, SEC, Inc., who gave a presentation on the proposed plans for the development.

Mayor McFarland then declared the public hearing to zone approximately 9.1 acres located along Franklin Road and Veterans Parkway as Highway Commercial (CH) District and Planned Residential Development (PRD) District (The Villas at Veterans PRD), simultaneous with annexation, open and invited those present who wished to speak for or against the zoning request, step forward to the lectern.

There was no one present who wished to speak for or against the zoning request and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 21-OZ-31 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 9.1 acres located along Franklin Road and Veterans Parkway as Highway Commercial (CH) District and Planned Residential Development (PRD) District (The Villas at Veterans PRD), simultaneous with annexation; Harney Homes, LLC, applicant(s) [2021-416]," was read to the Council and offered for passage on first reading upon motion made by Mr. Wade, seconded by Mr. Wright. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to holding a public hearing to consider amending the Shelton Square PRD zoning for approximately 242 acres located along Blackman Road [2021-417].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 21-R-PH-32 adopted by the City Council on September 30, 2021, to consider a proposed amendment to approximately 242 acres in the Planned Residential Development (PRD) District (Shelton Square PRD) located along Blackman Road, Shelton Square, LLC, applicant(s). [2021-417]. Notice of said public hearing was published in the November 2, 2021 edition of a local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Assistant Planning Director, presented the recommendation of the Planning Commission to approve amending the Shelton Square PRD zoning on approximately 242 acres located along Blackman Road and introduced Mr. Matt Taylor, SEC, Inc., who gave a presentation on the proposed changes to the development.

Mayor McFarland then declared the public hearing to consider a proposed amendment to approximately 242 acres in the Planned Residential Development (PRD) District (Shelton Square PRD) located along Blackman Road open and invited those present who wished to speak for or against the zoning request, step forward to the lectern.

There was no one present who wished to speak for or against the zoning request and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 21-OZ-32 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 242 acres in the Planned Residential Development (PRD) District (Shelton Square PRD) located along Blackman Road as indicated on the attached map, Shelton Square, LLC, applicant(s) [2021-417]," was read to the Council and offered for passage on first reading upon motion made by Mr. Wade, seconded by Mr. LaLance. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

Abstain: Ronnie Martin

The following letter from the Assistant Planning Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to scheduling a public hearing for December 16, 2021 for a zoning application [2021-424] for approximately 82.5 acres located along Veals Road, and scheduling public hearings for January 6, 2022 for an annexation petition and plan of services [2021-512] for approximately 19 acres located along Florence Road, zoning application [2021-423] for approximately 16.7 acres and 2.1 acres along Florence Road, annexation petition and plan of services [2021-511] for approximately 25 acres along New Salem Highway, and zoning application [2021-422] for approximately 2.8 acres located along New Salem Highway.)

The following RESOLUTION 21-R-PH-39.1 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wright. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 21-R-PH-39.1 fixing the time for holding a Public Hearing with respect to the proposed amendment of the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, constituting a part of said Ordinance, as heretofore amended and as now in force and effect, so as to consider (1) adoption of a Plan of Services along Veals Road and Double Spring Road and rights-of-way of approximately 2,400 linear feet of Veals Road and 2,430 linear feet of Double Springs Road and (2) zoning of approximately 82.5 acres located along Veals Road to be rezoned from Single-Family Residential Six (RS-6) District, Single-Family Residential Ten (RS-10), District and Single-Family Residential Twelve (RS-12) District to Planned Residential Development (PRD) District (Graystone PRD) and approximately 123 acres located along Veals Road and Double Springs Road to be zoned Planned Residential Development (PRD) District, simultaneous with annexation, Hall Family Real Estate Partnership and Meritage Homes, applicant(s) [2021-510 & 2021-424].)

The following RESOLUTION 21-R-PH-41 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wright. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 21-R-PH-41 fixing the time for Public Hearings to consider (1) adoption of a Plan of Services for and annexation of approximately 19 acres located along Florence Road and (2) zoning of approximately 16.7 acres to be zoned Single-Family Residential Six (RS-6) District and approximately 2.1 acres to be zoned Commercial Fringe (CF) District, located along Florence Road; which have been proposed to be annexed to the City of Murfreesboro Sharon Arnette, Cynthia Williams, Deborah Cohen and Alcorn Properties, Inc., applicant(s) [2021-512 & 2021-423].)

The following RESOLUTION 21-R-PH-42 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Mr. Wright. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris

Rick LaLance
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 21-R-PH-42 fixing the time for Public Hearings to consider (1) adoption of a Plan of Services for and annexation of approximately 25 acres located along New Salem Highway and (2) zoning of approximately 2.8 acres located along New Salem Highway to be zoned Highway Commercial (CH) District and approximately 22.2 acres to be zoned Single-Family Residential Eight (RS-8) District; which have been proposed to be annexed to the City of Murfreesboro, Salem Properties, Inc., applicant [2021-511 & 2021-422].)

The following letter from the City Schools Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to Fiscal Year 2022 City Schools Budget Amendment #4.)

The following RESOLUTION 21-R-34 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Vice-Mayor Scales Harris. Upon roll call said resolution was adopted by the following vote:

Aye: Madelyn Scales Harris
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright
Shane McFarland

Nay: None

(Insert RESOLUTION 21-R-34 here amending the 2021-2022 Murfreesboro City Schools Budget (4th Amendment.)

The following letter from the Project Development Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to Contract for Design of Fire Administration Building.)

Mr. Ron Duggin, Project Development Director, presented the request to approve the Contract with CMH Architects in the amount of \$498,550 for design of the new Fire Administration Building, funded by the CIP.

Mr. LaLance made a motion to approve the Contract with CMH Architects in the amount of \$498,550 for design of the new Fire Administration Building, funded by the CIP. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following letter from the Employee Services Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to Stop Loss Insurance for Health Insurance Claims.)

Mr. Randolph Wilkerson, Employee Services Director, presented the request to approve the Agreement with BlueRe of Tennessee for purchase of stop loss insurance in the approximate amount of \$880,000, paid for from premiums made to the Health Insurance Fund.

Mr. LaLance made a motion to approve the Agreement with BlueRe of Tennessee for purchase of stop loss insurance in the approximate amount of \$880,000, paid for from premiums made to the Health Insurance Fund. Mr. Wade seconded the motion and all members of the Council voted "Aye".

The following letter from the Finance Director/City Recorder was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to Retail Liquor Certificate of Compliance – NW Broad Liquor & Spirits.)

Ms. Jennifer Brown, City Recorder/Finance Director, presented the request to consider a Retail Liquor Certificate of Compliance for Hitendra Patel at NW Broad Liquor & Wine, 1150 NW Broad Street. Ms. Brown indicated that the application was in order and recommended approval.

Mr. Martin made a motion to approve a Retail Liquor Certificate of Compliance for Hitendra Patel at NW Broad Liquor & Spirits, 1160 NW Broad Street, Suite B. Mr. Wright seconded the motion and all members of the Council voted "Aye".

The following letter from the Public Safety IT Manager was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to purchase of Dell Desktop Computers.)

Mr. Bill Terry, Public Safety IT Manager, presented the request of the Police Department to approve the Contract with Waypoint Business Solutions, LLC in the amount of \$127,858, funded by the CIP, for the purchase of 115 Dell Desktop Computers.

Mr. LaLance made a motion to approve the Contract with Waypoint Business Solutions, LLC in the amount of \$127,858, funded by the CIP, for the purchase of 115 Dell Desktop Computers. Mr. Martin seconded the motion and all members of the Council voted "Aye".

The following letter from the Public Safety IT Manager was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to purchase of Mobile Data Terminals.)

Mr. Bill Terry, Public Safety IT Manager, presented the request of the Police Department to approve the Contract with Insight Public Sector, Inc. in the amount of \$228,750, funded by the CIP, for the purchase of 75 mobile data terminals for police vehicles.

Mr. LaLance made a motion to approve the Contract with Insight Public Sector, Inc. in the amount of \$228,750, funded by the CIP, for the purchase of 75 mobile data terminals for police vehicles. Mr. Wright seconded the motion and all members of the Council voted "Aye".

The following letter from the Public Safety IT Manager was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to purchase of CLEAR Proflex Software.)

Mr. Bill Terry, Public Safety IT Manager, presented the request of the Police Department to approve the Contract with Thomson Reuters in the amount of \$65,635, funded by the Department's Operating Budget, for the software subscription services related to the CLEAR Proflex investigation software.

Mr. Wade made a motion to approve the Contract with Thomson Reuters in the amount of \$65,635, funded by the Department's Operating Budget, for the software subscription services related to the CLEAR Proflex investigation software. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the Transportation Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to Downtown Parking and Mobility Study – Professional Services Task Order.)

Mr. Jim Kerr, Transportation Director, introduced representatives from Neel-Shaffer, Inc. who gave a brief summary of the proposed study and presented the request to approve the Professional Services Task Order No. 17 with Neel-Schaffer, Inc. in the amount of \$235,775, funded primarily by the Economic Development's Contractual Services Budget, for the Downtown Parking and East-West Mobility Study.

Mr. Shacklett made a motion to approve Professional Services Task Order No. 17 with Neel-Schaffer, Inc. in the amount of \$235,775, funded primarily by the Economic Development's Contractual Services Budget, for the Downtown Parking and East-West Mobility Study. Mr. LaLance seconded the motion and all members of the Council voted "Aye".

The following letter from the City Recorder/Finance Director was presented to the Council:

(Insert letter dated November 18, 2021 here with regards to Beer Permit Application for TN Golf Station, 1276 NW Broad Street.)

Mr. Martin made a motion to approve the Beer Permit for TN Golf Station, 1276 Northwest Broad Street (New Location), pending Building and Codes approval. Mr. Wade seconded the motion and all members of the Council voted "Aye".

Upon recommendation of Mayor McFarland, Mr. Wade made a motion to appoint Mr. Gabe Frazier to fill the vacancy left by Mr. Boyd Evans (term expires October 1, 2024) to the Gateway Commission. Mr. Wright seconded the motion. A roll call vote was conducted and all members of the Council voted "Aye".

The City Recorder/Finance Director announced that there were no statements to consider.

Mr. Craig Tindall, City Manager, stated that the next City Council meeting would be held on December 2, 2021.

Mr. Rick LaLance asked that Council consider the requirements for stubs in planned developments and that the Planning Commission was encountering requests to forgo stubs for certain developments.

There being no further business, Mayor McFarland adjourned this meeting at 7:14 p.m.

ATTEST:

SHANE MCFARLAND – MAYOR

JENNIFER BROWN - CITY RECORDER

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Rezoning property along Bridge Avenue
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Rezone approximately 9.4 acres located along the south side of Bridge Avenue west of New Salem Highway.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

Background Information

City Church presented a zoning application [2021-418] for approximately 8.4 acres located along the south side of Bridge Avenue to be rezoned from RS-10 (Single-Family Residential District 10) to CF (Commercial Fringe District) and approximately one acre to be rezoned from H-I (Heavy Industrial District) to CF. During its regular meeting on October 13, 2021, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 2, 2021, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Expand Infrastructure

During the development of this property, the property owner will be required to donate right-of-way for the realignment of South Molloy Lane, which is identified as a planned road improvement on the Major Transportation Plan.

Attachments:

Ordinance 21-OZ-33

ORDINANCE 21-OZ-33 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 8.4 acres located along Bridge Avenue from Single-Family Residential Ten (RS-10) District to Commercial Fringe (CF) District and approximately 1 acre from Heavy Industrial (H-I) District to Commercial Fringe (CF) District; City Church, applicant(s) [2021-418].

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

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

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

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

Passed:

1st reading _____
2nd reading _____

Shane McFarland, Mayor

ATTEST:

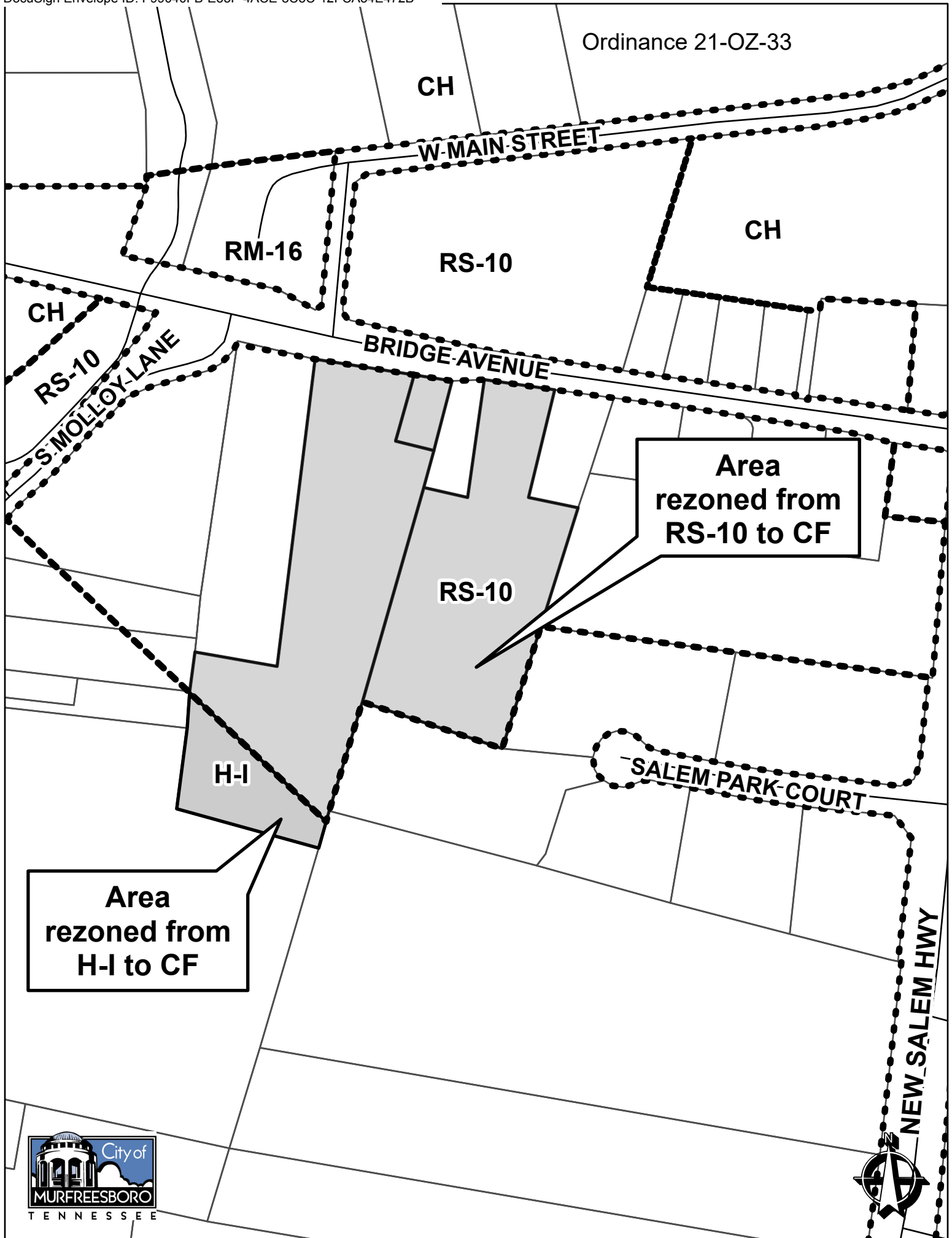
Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

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Adam F. Tucker
City Attorney

SEAL



COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Zoning for property located north of Dejarnette Lane
[Second Reading]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Zoning of approximately 19.2 acres located north of Dejarnette Lane.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the zoning request.

Background Information

Providence Christian Academy presented to the City a zoning application [2021-420] for approximately 19.2 acres north of Dejarnette Lane to be zoned PND (Planned Institutional District). During its regular meeting on October 13, 2021, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 2, 2021, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Establish Strong City Brand

Murfreesboro is known for its high-quality public and private schools. Building upon that reputation, this rezoning will enable the continued expansion of an existing private school.

Attachments:

Ordinance 21-OZ-34

ORDINANCE 21-OZ-34 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 9.5 acres located north of DeJarnette Lane to Planned Institutional Development (PND) District (Providence Christian Academy Athletic Facility PND), which have been proposed to be annexed to the City of Murfreesboro, Tennessee, and to re-zone approximately 9.5 acres from Single-Family Residential Fifteen (RS-15) District to Planned Institutional Development (PND) District; Providence Christian Academy, applicant(s) [2021-420].

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

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

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

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

Passed:

Shane McFarland, Mayor

1st reading _____

2nd reading _____

ATTEST:

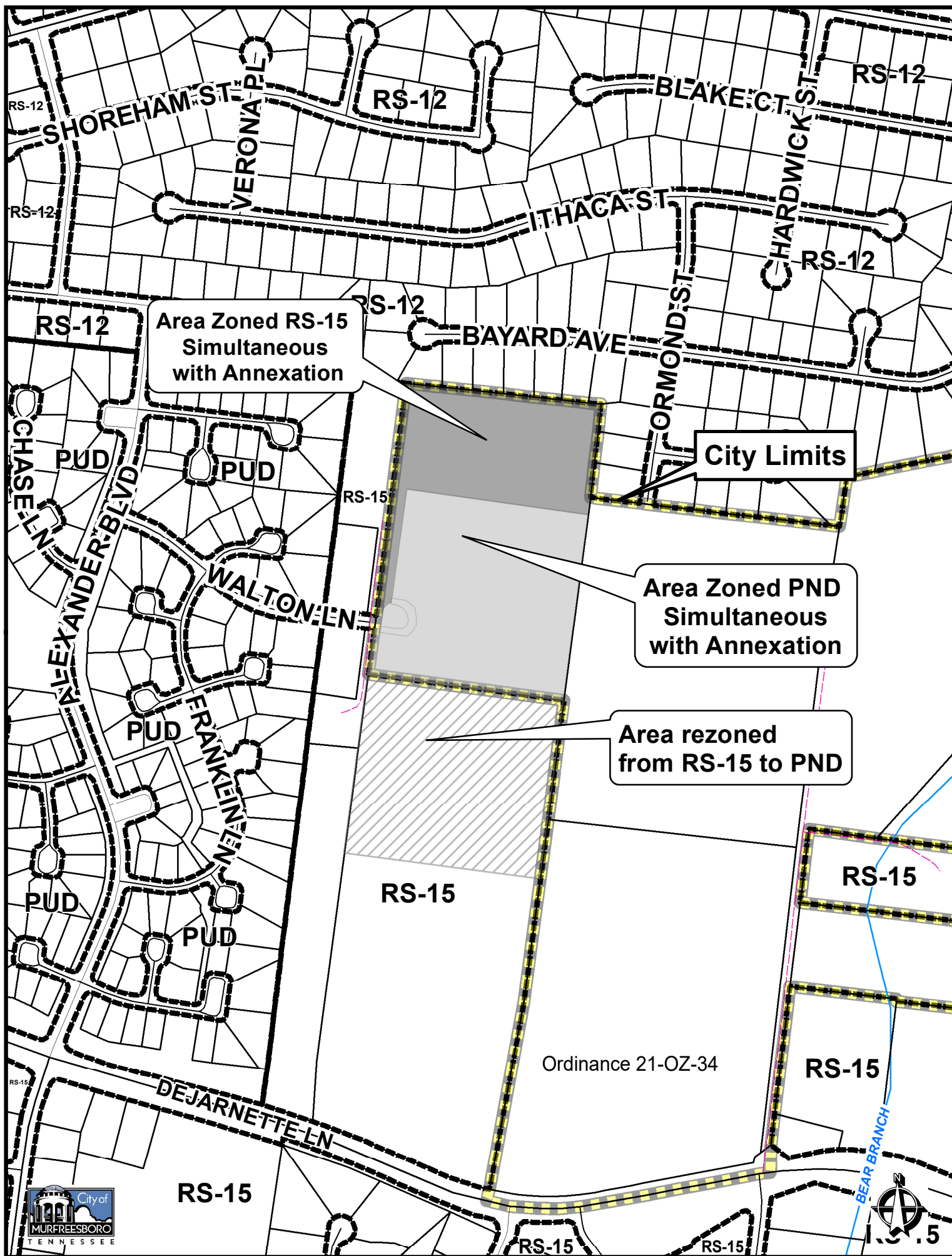
APPROVED AS TO FORM:

Jennifer Brown
City Recorder

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

SEAL



COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Zoning for property located south of South Rutherford Boulevard
[Second Reading]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Zoning of approximately 2.4 acres located south of South Rutherford Boulevard and east of the CSX railroad tracks.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the zoning request.

Background Information

James Allen Huskey presented to the City a zoning application [2021-421] for 2.4 acres south of South Rutherford Boulevard to be zoned H-I (Heavy Industrial District) simultaneous with annexation. During its regular meeting on October 13, 2021, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 2, 2021, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

Having all of Huskey Truss' contiguous properties within one jurisdiction and one zoning district will simplify future expansions of their facilities.

Attachments:

Ordinance 21-OZ-35

ORDINANCE 21-OZ-35 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 2.4 acres located south of South Rutherford Boulevard as Heavy Industrial (H-I) District, simultaneous with annexation; James Allen Huskey, applicant(s) [2021-421].

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

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

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

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

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

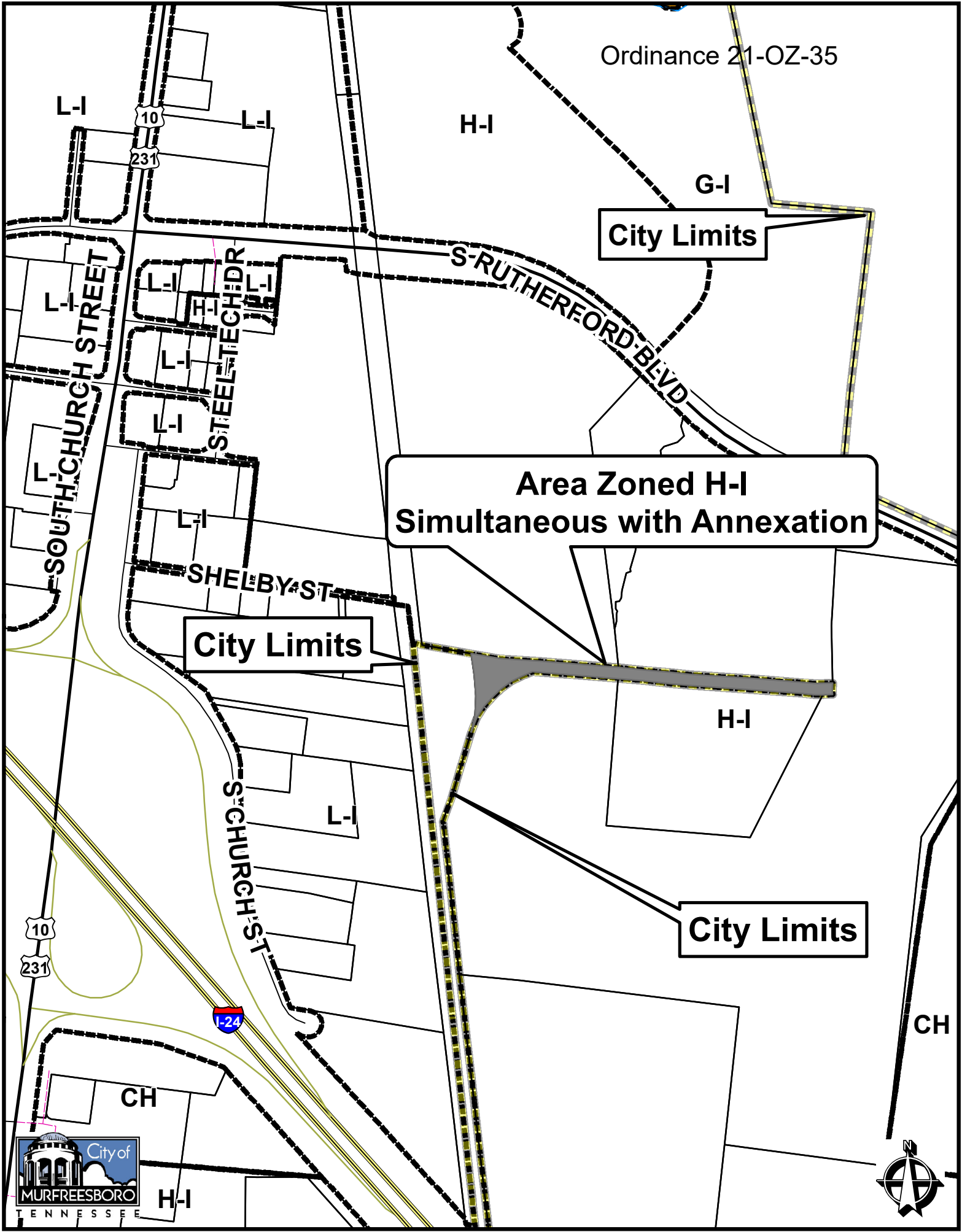
APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

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Adam F. Tucker
City Attorney

SEAL



Ordinance 21-OZ-35

H-I

G-I

City Limits

S RUTHERFORD BLVD

Area Zoned H-I
Simultaneous with Annexation

City Limits

SHELBY ST

H-I

City Limits

CH



COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Rezoning property along Franklin Road
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Rezone approximately 9.4 acres located along the north side of Franklin Road west of Fortress Boulevard.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

Background Information

Lennar Homes of Tennessee, LLC presented a zoning application [2021-419] for approximately 29.1 acres located along the north side of Franklin Road to be rezoned from RS-12 and RS-15 (Single-Family Residential Districts) to RS-8 and approximately 4.5 acres to be rezoned from RS-15 to CF (Commercial Fringe District). During its regular meeting on October 13, 2021, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 2, 2021, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

This rezoning will enable the development of commercial outparcels along Franklin Road, which, upon development, could create jobs for the community and generate tax revenue for the City.

Attachments:

Ordinance 21-OZ-36

ORDINANCE 21-OZ-36 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 29.1 acres located along Franklin Road from Single-Family Residential Twelve (RS-12) District and Single-Family Residential Fifteen (RS-15) District to Single-Family Residential Eight (RS-8) District and approximately 4.5 acres from Single-Family Residential Fifteen (RS-15) District; Lennar Homes of Tennessee, LLC, applicant(s) [2021-419].

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

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

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map shall be zoned and approved as Single-Family Residential Eight (RS-8) and Commercial Fringe (CF) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

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

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

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Adam F. Tucker
City Attorney

SEAL

Ordinance 21-OZ-36

City Limits

SMITTY DRIVE

SCHROER DRIVE

PICCADILLY DRIVE

RS-12

Area rezoned
from
RS-12 to RS-8

PRD

PUD

FOUNDRY CIRCLE

RS-15

Area rezoned
from
RS-15 to RS-8

City Limits

Area rezoned
from
RS-15 to CF

W. Clearview Drive

FRANKLIN ROAD

City Limits

PCD

CF

RUCKER LANE

RS-15



COUNCIL COMMUNICATION

Meeting Date: 12/02/2021

Item Title: Amending the Zoning Ordinance regarding the City Core Overlay District (CCO)
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Ordinance amending the CCO regulations in the Zoning Ordinance.

Staff Recommendation

Enact the ordinance amendment.

The Planning Commission recommended approval of this ordinance amendment.

Background Information

The Planning Department presented an ordinance amendment [2021-801] to revise the CCO regulations in Section 24 of the Zoning Ordinance. Also included is a revision to Section 13. During its regular meeting on October 13, 2021, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On December 2, 2021, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

The proposed revisions to the CCO regulations seek to remove certain regulatory hurdles for the development and redevelopment of the area in and around downtown.

Establish Strong City Brand

Development and redevelopment in the CCO will contribute to the City's vision for having a healthy and vibrant downtown.

Attachments:

Ordinance 21-O-38

ORDINANCE 21-O-38 amending Murfreesboro City Code Appendix A—Zoning, Sections 13 and 24, dealing with Planned Development Regulations and City Core Overlay District Regulations, City of Murfreesboro Planning Department, applicant [2021-801].

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

SECTION 1. Appendix A, Section 13, Planned Development Regulations, of the Murfreesboro City Code is hereby amended at subsection (B)(8), by deleting subsection (B)(8) in its entirety and substituting in lieu thereof the following:

(B)(8) *Relationship to the Subdivision Regulations, Design Guidelines and the other zoning regulations.* The planned development approval may provide for such exceptions from the Subdivision Regulations, Design Guidelines, and from district and overlay district zoning regulations governing use, density area, bulk, parking, architecture, landscaping, and open space as may be necessary or desirable to achieve the objectives of the proposed planned development, provided such exceptions are consistent with the standards and criteria contained in this section and have been specifically identified and requested in the application for a planned development. Unless the application for a planned development contains a clear statement of exceptions to them, the standards and criteria of the Subdivision Regulations, Design Guidelines, and district and overlay district zoning regulations will apply to all planned developments. The specific zone district used as a comparison for the planned development shall be the most like zone district to the planned development, as determined by the Planning Director.

SECTION 2. Appendix A, Section 24, Overlay District Regulations, of the Murfreesboro City Code is hereby amended at Article VI, CCO, City Core Overlay District, by deleting subsection the article in its entirety and substituting in lieu thereof the following:

ARTICLE VI. CCO, CITY CORE OVERLAY DISTRICT

- (A) *District description.*
 - (1) *Purposes of the overlay district.* The purposes of the City Core Overlay (CCO) district are: to promote infill development that is compatible with existing development patterns; to encourage new development patterns in areas where existing patterns are inconsistent or unestablished; and to promote reinvestment in Downtown Murfreesboro and surrounding neighborhoods.
 - (2) *District delineation.* The CCO district includes areas in and around Downtown Murfreesboro as shown on the official Zoning Map of the City of Murfreesboro.
 - (3) *Subarea Plans within the CCO:* The CCO includes the study areas of the North Highland Avenue and Historic Bottoms planning studies. These planning studies informed the writing of the CCO regulations and are of significant value. To the extent possible, developments within the CCO also located within the study areas of the North Highland and Historic Bottoms planning studies shall attempt to honor the recommendations of those plans.

(B) *Application of regulations.*

- (1) *Official zoning map.* The CCO district shall overlay land located as shown on the official zoning map of the City.
- (2) *Conflicts with other regulations.* Where there is a conflict between the provisions of this subsection and those of the underlying zoning district, the provisions of this subsection shall apply. Where there is a conflict between the provisions of this subsection and those of the Historic (H-1) District, the H-1 regulations shall apply. Where there is a conflict between the provisions of this subsection and those of any overlay district other than the H-1 District, the more restrictive regulations shall apply.
- (3) *Extension and reconstruction of lawfully established non-conforming structures.* The requirements set forth in this subsection shall apply to all new development in the CCO district from the effective date of this subsection. Notwithstanding the requirements of Section 28 – Nonconformities of the Zoning Ordinance, a lawfully-established pre-existing structure that does not comply with the regulations set forth in this Section may be extended or reconstructed one (1) time in accordance with the zoning standards in effect on September 30, 2019. All additional extensions and reconstructions shall comply with the terms of this subsection and Section 28 – Nonconformities of the Zoning Ordinance.
- (4) *Planned developments.* The regulations set forth in this subsection shall not prevent a property owner from seeking planned development zoning when such zoning is necessary or desirable to promote the purposes of the CCO district. However, to the extent possible, they should adhere to the regulations of the CCO, Design Guidelines, and other base zoning districts that best approximate the proposed development type. Exceptions to any of the above applicable regulations, including the CCO regulations, shall be explicitly noted in the planned development application.
- (5) *Use regulations.* Land uses in the CCO district shall be as permitted by the underlying zoning district, with the following exceptions:
 - (a) For properties having underlying zoning that permits two-family dwellings, duplex residential units shall not be required to have a shared wall.
 - (b) For properties having underlying zoning that permits accessory apartments, a Special Use Permit shall not be required, provided that the following standards are satisfied:
 - [1] only one accessory apartment shall be allowed upon a lot zoned for single-family purposes;
 - [2] the accessory apartment shall be designed so that to the degree reasonably feasible, the appearance of the building remains that of a one-family residence. In general, any new entrances in an existing structure shall be located on the side or in the rear of the building;
 - [3] if attached to or located within the principal structure, the accessory apartment shall be designed and constructed to allow it to be part of the principal structure at such time as the use of the accessory apartment discontinues;
 - [4] the design and size of the accessory apartment shall

- conform to all applicable standards in the health, building, and other codes; and
- [5] the accessory apartment shall not exceed seven hundred (700) square feet of floor area.
- [6] except for bona fide temporary absences, the owner(s) of the lot upon which the accessory apartment is created shall occupy at least one of the dwelling units on the premises.
- (c) The following uses listed on Chart 1 USES PERMITTED of the Zoning Ordinance and which may be otherwise permitted by right or by special use permit in the underlying zones shall not be permitted uses in the CCO district:

OTHER HOUSING

Fraternity/Sorority
Mobile Homes
Motel

INSTITUTIONS

Airport/Heliport
Morgue
Pet Cemetery

COMMERCIAL

Amusements, Commercial Outdoor excluding Motorized
Amusements, Commercial Outdoor Motorized
Boat Rental, Sales, or Repair
Campground, Travel-Trailer Park
Carnivals
Crematory
Drive-in Theater
Fireworks Retailer
Fireworks Seasonal Retailer
Greenhouse or Nursery
Ice Retail
Iron Work > 3,000 square feet of floor area
Kennels
Liquor Store
Livestock, Auction
Lumber, Building Material
Manufactured Home Sales
Motor Vehicle Sales (Automobiles)
Motor Vehicle Sales (Other than Automobiles)
Pawn Shop
Pet Crematory
Pet Funeral Home
Radio and Television Transmission Towers
Restaurant, Drive-in
Sheet Metal Shop
Shopping Center, Community
Shopping Center, Regional
Salvage and Surplus Merchandise
Taxidermy Studio
Towing
Vehicle Sales (Non-Motorized)
Vehicle Wash
Veterinary Hospital
Wholesaling

Wireless Telecommunications Tower
Wrecker Service
Wrecker Storage Yard

INDUSTRIAL (Manufacture, Storage, Distribution of:)
Abrasive Products
Asbestos Products
Animal or Poultry Slaughter, Stockyards, Rendering
Automobile Dismantlers and Recyclers
Automobile Manufacture
Automobile Parts and Components Manufacture
Automobile Seats Manufacture
Bakery Goods, Candy > 3,000 square feet of gross floor area
Boat Manufacture
Bottling Works
Canned Goods
Chemicals
Composting Facility
Contractor’s Storage, Indoor
Contractor’s Yard or Storage, Outdoor
Cosmetics
Custom Wood Products > 3,000 square feet of gross floor area
Electrical or Electronic Equipment, Appliances, and Instruments
Fabricated Metal Products and Machinery > 3,000 square feet of gross floor area
Fertilizer
Food and Beverage Products, including animal slaughter, stockyards, rendering, but not including brewery
Furniture and Fixtures > 3,000 square feet of gross floor area
Jewelry > 3,000 square feet of gross floor area
Leather and Leather Products > 3,000 square feet of gross floor area
Leather and Leather Products, Tanning and Finishing
Lumber and Wood Products
Mobile Home Construction
Musical Instruments > 3,000 square feet of gross floor area
Office/Art Supplies > 3,000 square feet of gross floor area
Paints
Paper Mills
Paper Products
Petroleum, Liquified Petroleum Gas, and Coal Products
Petroleum and Coal Products
Refining
Pharmaceuticals
Photographic Film Manufacture
Pottery, Figurines, and Ceramic Products > 3,000 square feet of gross floor area
Primary Metal Distribution and Storage
Primary Metal Manufacturing
Rubber and Plastic Products
Rubber and Plastic Manufacture
Saw Mills
Scrap Processing Yard
Scrap Metal Processors
Scrap Metal Distribution and Storage
Secondary Material Dealers
Silverware and Cutlery > 3,000 square feet of gross floor area

Small Moulded Metal Products
Sporting Goods
Stone, Clay, Glass, and Concrete Products > 3,000 square feet of gross floor area
Textile, Apparel Products, Cotton–Factoring, Grading > 3,000 square feet of gross floor area
Textile, Apparel Products, Cotton Gin
Tire Manufacture
Tobacco Products
Toiletries > 3,000 square feet of gross floor area
Transportation Equipment
Warehousing,
Transporting/Distributing

TRANSPORTATION AND PUBLIC UTILITIES
Garbage or Refuse Collection Service
Freight Terminal, Service Facility
Refuse Processing, Treatment, and Storage
Landfill
Railroad Switching Yard, Terminal, Piggyback Yard
Taxicab Dispatch Station

OTHER
Junkyard
Recycling Center
Self-Service Storage Facility
Temporary Mobile Recycling Center

- (d) *Lawfully-established non-conforming uses.*
Notwithstanding the requirements of Section 28 of the Zoning Ordinance, a structure devoted to a lawfully-established pre-existing use that is not permitted in the CCO or in the base zoning district may be extended or reconstructed one (1) time and the use allowed to resume upon extension or reconstruction, provided that such extension or reconstruction is only within the boundaries of the existing tract or lot of record. All other terms of Section 28 of the Zoning Ordinance regarding non- conforming uses will apply to the CCO District.

- (C) *Off-street parking.* Off-street, on-site parking requirements shall not apply to properties with underlying CBD (Central Business District) zoning. In all other areas in the CCO district, parking shall be provided in accordance with the requirements of Section 26 of the Zoning Ordinance, provided that the following standards for the number of required parking spaces shall apply:
 - (1) *Parking for single-family residential structures (detached and zero-lot line maximum two units attached).* Within the CCO district, one (1) off-street on-site parking space shall be required for each single- family detached or attached dwelling unit with one bedroom, and two (2) off-street on-site parking spaces shall be required for each single-family detached or attached dwelling unit with two or more bedrooms.
 - (2) *Parking for single-family residential attached townhouse structures.* Within the CCO district, where striped on-street parking is located directly in front of the property, one (1) off-street on-site parking space shall be required for each single-family attached townhouse dwelling unit with one bedroom, and two (2) off-street on-site parking spaces shall be required for each single-family residential

attached townhouse dwelling unit with two or more bedrooms. Where there is no striped on-street parking located directly in front of the property, one (1) off-street on-site parking space shall be required for each bedroom provided in each single-family residential attached townhouse.

- (3) *Parking for two-family, three-family, four-family, and multi-family residential structures.* Within the CCO district, one (1) off-street on-site parking space shall be required for each bedroom provided in each two-family, three-family, four-family, and multi-family dwelling unit.
 - (4) *Parking for commercial uses and mixed-uses.* Within the CCO district, parking for commercial uses shall be provided in accordance with the requirements of Section 26 and Chart 4 of the Zoning Ordinance with the following exceptions:
 - (a) The number of required on-site off-street parking spaces may be reduced by fifty (50) percent if striped on-street parking is available along the street fronting the property.
 - (b) The number of required on-site off-street parking spaces may be reduced by up to seventy-five (75) percent if the property is located within seven hundred fifty (750) feet of a parking lot where parking is freely and publicly available to the users as determined by the Planning Director.
 - (c) The Planning Director has the authority to consider and approve further parking exceptions in the CCO in cases where there is a change of use at an existing building where the new use requires more parking than the previous use and where a property's pre-existing physical conditions severely limit most permitted uses. The applicant must demonstrate that adequate off-site or on-street parking is available for the proposed use. The Planning Director shall determine what information (e.g., parking counts, business hours of operation, etc.) must be provided by the applicant in order to make such a determination. If an off-site parking agreement with a private property owner is proposed, then all requirements for off-site parking arrangements noted in Section 26 must be met.
 - (5) *Bicycle parking.* Designated bicycle parking shall be provided at a ratio of one (1) space for every fifteen hundred (1500) square feet of floor area for non-residential developments. Bicycle parking structures and facilities shall be readily accessible and well-maintained. Bicycle parking structures may be located on the public sidewalk, provided that the sidewalk can still comply with minimum accessibility requirements.
- (D) *Design standards.* Development in the CCO district shall be subject to the standards set forth in this Article and the Murfreesboro Design Guidelines, with the following exceptions:
- (1) *Setbacks for principal buildings.* Minimum side and rear setbacks shall be consistent with those of the underlying zoning district. Front setbacks shall be determined as follows:
 - (a) For non-residential developments where public sidewalks exist, structures shall be built no greater than 10' from the rear edge of the public sidewalk or the front property line. If no sidewalk exists, the structure shall be built to the average front setback of all structures on the same block face, provided that no structure shall be built more than twenty (20) feet behind the front property line. For the purposes of this section, 'block face' shall mean within the same block on the same street side as the subject property and shall exclude vacant lots. No structure shall be built in the public right-of-

- way.
- (b) For residential developments, the structure shall be built to the average front setback of all structures on the same block face, provided that no structure shall be built more than twenty-five (25) feet behind the front property line. For the purposes of this section, “block face” shall mean within the same block on the same street side as the subject property and shall exclude vacant lots. No structure shall be built in the public right-of-way.
- (2) *Building height for principal residential buildings.* A residential principal building in the CCO district shall have a height no greater than fifty (50) percent over that of the highest contiguous building. However, a principal building shall be permitted to have a height of 35’, regardless of the heights of contiguous buildings. Within the CCO, however, projections for rooftop patios, such as stairwells and the like, as well as other common rooftop projections such as chimneys, may be allowed up to an additional 10’ higher than the maximum building heights listed above. For the purposes of this section, the term “contiguous buildings” shall refer to any buildings on parcels that share a common property line with the subject property excluding parcels to the rear of the subject property and vacant lots without a principal structure. Building height shall be measured as described as the definition of “Building Height” in Section 2 of the Zoning Ordinance.
 - (3) *Building height for non-residential and mixed-use principal buildings.* A building height in the CCO district shall have a maximum height of the underlying zone district.
 - (4) *Lot coverage.* Maximum lot coverage shall be based on land use as follows:
 - (a) For non-residential developments, multi-family residential, and mixed-use developments maximum lot coverage shall be one hundred (100) percent within the CBD and seventy-five (75) percent in all other areas of the CCO.
 - (b) For all other types of residential developments, maximum lot coverage shall be fifty (50) percent.
 - (5) *Parking.* For all uses other than single-family detached residential, on-site parking shall not be located at the front of any building and shall be located at the rear or side of a building, in an underground garage, or within a parking garage.
 - (a) *Parking garages.* A parking garage with frontage on any public right-of-way shall include ground-level commercial or office uses accessible from the public sidewalk. Parking garages shall follow the design standards set forth in the Murfreesboro Design Guidelines.
 - (b) *Access to private parking lots.* A private parking lot located to the rear of a building shall be accessed via an alley or rear driveway where practical.
 - (6) *Building architecture and design.*
 - (a) Single-family detached residential structures and single-family residential attached zero-lot line structures (maximum of two units attached) shall be constructed of exterior materials that are consistent with a traditional urban residential area. Such materials may include brick, stone, or cementitious siding. Other traditional, authentic materials and construction types such as stucco and board-and-batten may be approved by the Planning Commission (or by the Planning Director for plans that do not require Planning Commission approval). To reduce the prominence and visibility of front facing garages, a front facing garage

even with the front wall of the balance of the structure shall not exceed more than 50% of the width of the front building façade. A front-facing garage recessed behind the front wall of the balance of the structure shall not exceed more than 60% of the width of the front building façade.

- (b) Non-residential buildings, mixed use buildings, and all other types of residential buildings consisting of three or more dwelling units, including but not limited to multi-family residential and single-family residential attached townhouse buildings, shall be subject to the architectural standards set forth in the Murfreesboro Design Guidelines.
- (7) *Building entrances.* Building entrances shall be oriented to the primary street frontage. For corner lots, entrances shall be either oriented to the street with the higher functional classification or angled and oriented to the street intersection.
- (8) *Service areas.* Service areas, solid waste enclosures and/or carts, and utility boxes shall be clearly identified on the development plans and shall be located at the rear of the principal structure and shall not be visible from the public right-of-way. Provisions for solid waste management shall comply with the minimum requirements set forth in Section 18 of the Zoning Ordinance. To the extent possible, all mechanical equipment shall be roof mounted and screened; when not possible such equipment shall be located to the rear of the structure and shall not be visible from the public right-of-way. Use of private residential patio space for these various service areas is discouraged.
- (9) *Accessory structures.* Accessory structures shall be designed as follows:
 - (a) *Location.* Accessory structures shall be located to the rear or side of the principal structure in accordance with Section 25 of the Zoning Ordinance.
 - (b) *Height.* In no case shall an accessory structure have a height greater than that of the principal structure.
 - (c) *Building architecture and design.* An accessory structure shall be constructed in a style and of material(s) consistent with that (those) of the principal structure.
- (10) *Open space.*
 - (a) The following shall be exempt from this subsection: Industrial uses (as listed in Chart 1); single-family detached structures, and zero-lot line (maximum two units attached) and two-family residential uses; and all property in the CBD zone.
 - (b) A minimum of fifteen (15%) open space shall be required for all other uses and properties in the CCO not listed in (a) above. For the purposes of this section open space is defined as all landscape areas or natural areas greater than two-hundred square-feet.
- (11) *Formal Open Space.*

For the purposes of this section, formal open space is defined as planned and structured areas, including but not limited to formally designed landscape areas, streetscape furnishings, plaza areas, rooftop patios, and recreational improvements available for common use. Formal open space of 5% of the lot area shall be required for the following uses:

 - (a) Single-family attached residential developments of 8 dwelling units or more; Developments containing fewer than 8 units shall provide private patios, balconies, or open space of at least 50 square feet with a minimum 5' of depth for each unit.

- (b) Multi-family residential developments of 8 dwelling units or more;
 - (c) Commercial developments on parcels 1.5 acres or greater;
 - (d) Mixed-Use developments containing 8 or more dwelling units or on parcels 1.5 acres or greater.
- (12) *F.A.R., O.S.R., and L.S.R.* The open space and formal open space requirements above notwithstanding, there shall be no F.A.R., O.S.R., and L.S.R. requirements for properties and developments located within the CCO.
- (E) *Streetscape Standards.* To promote harmonious development and walkability throughout the CCO district, the following streetscape standards shall apply:
 - (1) *Sidewalks and other improvements in the public ROW..* The developer shall be responsible for installing sidewalks and other improvements in the public ROW in accordance with all adopted City standards and plans, including but not limited to the Subdivision Regulations, Street Design Specifications, Design Guidelines, the Expanded Main Street District Revitalization Master Plan, and the Tree Management Ordinance. The Development Services Division in consultation with the Public Works Division shall have the authority to collect a payment in lieu of installation or construction in cases where the City deems immediate installation or construction impractical or undesirable.
 - (2) *Sidewalk location.* In cases where a public sidewalk or any portion thereof is located on private property, a sidewalk easement permanently dedicated to the City of Murfreesboro shall be recorded.
 - (3) *Public utility easements.* If a public utility easement along the front property line prevents the planting of trees due to conflicts with utility lines, drainage ways, or other necessary infrastructure components, the applicant shall provide an alternative planting arrangement that satisfies the minimum planting requirements set forth in this section.
- (F) *Landscaping, screening, and buffering requirements.* Properties with underlying CBD (Central Business District) zoning or single-family detached, single-family zero-lot line (maximum 2 units attached), or two-family dwellings shall be exempt from the landscaping, screening, and buffering requirements set forth in this subsection. For all other properties in the CCO district, landscaping shall be required as provided in Section 27 of the Zoning Ordinance; provided, however, within the CCO district subsections Section 27 (C)(3), (J), (K), and (L) shall not apply and instead the following subsection shall apply:
 - (1) *Changes to existing buildings, structures and developments.* The requirements of this section shall be applicable to existing buildings, structures, and developments under the following circumstances:
 - (a) if an existing building, structure or development is expanded by seventy-five (75) percent or more, then the entire building, structure or development shall comply with the requirements of this subsection; if expanded by less than 75 percent, only the expansion area shall comply.
 - (b) if the estimated cost of a renovation of an existing building, structure, or development equals seventy-five (75) percent or more of the total appraised value of the existing building, structure, or development (including land), then the entire building, structure or development including parking area shall comply with the requirements of this subsection;
 - (c) if there is a change in use of an existing building,

- structure, or development, that requires a special use permit or the rezoning of the property, then the entire building, structure, or development including parking area shall be required to comply with the requirements of this subsection;
- (d) if there is an increase in density of a residential development or a change in use of an existing building, structure or development from a residential use to a nonresidential use then the entire building, structure, or development including parking area shall be required to comply with the requirements of this subsection; or,
 - (e) if the number of parking spaces for an existing building, structure or development is expanded by fifty percent (50%) or more, or the area of the parking lot is expanded by fifty percent (50%) or more, then the area of the parking lot expansion shall comply with the requirements of this subsection.
- (2) *Alternative landscaping arrangements.* For projects being reviewed administratively, the Planning Director shall have the authority to permit an alternative landscaping arrangement where such an arrangement provides at least the minimum number of plantings specified in this section and satisfies the intent of the Zoning Ordinance. For projects requiring Planning Commission review and approval, the Planning Commission shall have the authority to permit such an alternative landscaping arrangement.
- (3) *Required perimeter landscaping.* Perimeter landscaping yards shall be required around all properties in the CCO district except properties with buildings permitted to be constructed to the edge of the sidewalk or property line(s). In cases where a building has been constructed to the sidewalk or property lines, perimeter landscaping yards shall be installed along the remaining boundaries of the site where practical. Where the building is set back less than 5' from the front property but not on the front property line, an alternative landscape plan must be submitted to achieve the general landscaping goals of this section. A perimeter landscaping yard shall have a minimum width of:
- (a) five (5) feet on a front planting yard and three (3) feet on other planting yards where the site is two (2) acres or less; or
 - (b) eight (8) feet on a front planting yard and five (5) feet on other planting yards where the site is greater than two (2) acres.
- (4) *Shared planting yards.* Along a side or rear property line, the requirement for perimeter landscaping may be satisfied by the creation and maintenance of a single planting yard with the adjacent property owner. The number of trees shall be the same as required as if it was only one perimeter landscaping yard for the common planting yard. Both property owners shall present and execute an enforceable written agreement for the perpetual maintenance of the planting yard and record it in the Rutherford County Register of Deeds office at no expense to the City. The agreement shall be binding on any successor owner of either property.
- (5) *Specifications for planting yards.* Unless otherwise specified in this subsection, the following specifications shall apply to planting yards in the CCO district:
- (a) Planting yards shall contain one shade tree every fifty (50) linear feet, excluding any vehicular access way. Ornamental trees may be substituted for up to sixty percent (60%) of

- otherwise required shade trees. Ornamental trees shall be planted not more than thirty (30) linear feet from another tree. Only ornamental trees may be planted under overhead utility lines. These trees shall be generally equally distributed along the property lines, but they are not required to be at absolute equal intervals. This will allow for some flexibility in design while discouraging long intervals without trees.
- (b) Lots within the CCO district having one hundred and fifty (150) linear feet or less of lot frontage may also meet the requirement for perimeter landscaping in front planting yards as specified below. Shrubs required to be planted within a front planting yard under this provision may be planted anywhere within the front planting yard and may be mass planted to achieve a more naturalistic appearance. Ground cover is not considered a shrub. Shrubs shall be of at least two different types (small, medium, or large being the types) and at least fifty percent (50%) of the shrubs shall be evergreen. The shrubs shall have a minimum height of eighteen (18) inches from ground level at the time of planting.
- [1] With a five (5) foot front planting yard, no trees are required, but one shrub is required for every ten (10) square feet of planting yard.
- [2] With an eight (8) foot front planting yard, one (1) shade tree or (2) two ornamental trees are required, and one shrub is required for every eight (8) square feet of planting yard.
- (6) *Diversity of species.* No one tree species shall comprise more than sixty (60) percent of the total number of trees.
- (7) *Distance between trees and rights-of-way/parking lots.* All trees shall be planted no closer than two and one half (2.5) feet from any public right-of-way or parking lot. In all circumstances, care shall be taken to avoid damage to trees from automobiles that may overhang the planting yard.
- (8) *Landscape requirements for new parking lots.*
- (a) Off-street parking areas with multiple access aisles shall be designed and constructed with landscape islands dividing at least every twelve (12) parking spaces in a row. Such islands shall have a minimum width of nine (9) feet from face of curb to face of curb with a minimum 7' planting area width and shall have a minimum depth equal to the depth of the adjacent parking stall(s). In addition to being designed with landscape islands dividing the rows, large parking areas with multiple rows of parking aisles shall be divided into sub-lots (sub-areas) containing no more than thirty-six spaces along either side of an aisle. Such sub-lots shall be divided by cross-access aisles allowing for cross circulation between aisles. The minimum width of such cross- access aisles shall be twenty-two (22) feet.
- (b) All landscape islands shall be designed and constructed to include continuous curbing around their perimeter and shall be backfilled with topsoil to a depth of thirty (30) inches and shall be free of rock, debris, inorganic compositions, and chemical residues detrimental to plant life. All such landscape islands shall be planted with shade trees or, in appropriate circumstances, ornamental trees.
- (c) The stormwater drainage plan and landscaping plan shall be coordinated so the landscaping plan enhances stormwater drainage.

- (9) *Base of building landscaping requirements.* The following base of building landscape requirements shall apply to all buildings, with the exception of industrial, single- family residential detached, single-family residential attached zero lot line (maximum 2 units attached), and two-family residential uses.
- (a) A three (3) foot minimum width landscape strip shall be provided along the front and sides adjacent to the base of buildings or separated from the building by a sidewalk. Such strip shall be planted with shrubs, trees, or other landscape materials. However, no such landscape strip shall be required within five (5) feet of a building entrance or in such a manner as to block access to a door or other significant building element or within an area used for outdoor seating for a restaurant use.
 - (b) The base of building landscaping requirement shall not apply to portions of the building adjacent to maneuvering areas and loading areas that are not visible from a public right-of-way
 - (c) In the case of existing buildings, the base of building landscaping requirement along the side of a building shall not be required if it will cause the width of an access drive along the side of the building to be reduced to less than twenty-two (22) feet.
 - (d) Where the building is setback less than 5’ from the front property line but not on the front property line, an alternative landscape plan must be submitted to achieve the general base of building landscaping goals of this section. However, base of building plantings shall not be required along the front or side of a structure built to the edge of a sidewalk or a property line.
- (10) *Screening requirements.* Service areas, mechanical equipment, trash containers, dumpsters, and similar unaesthetic site elements shall be screened with the use of plant material, fences, or walls to reduce potential negative impacts. Stormwater management areas including detention or retention areas shall be landscaped. Such areas may be planted in a manner conducive to stormwater management with appropriate vegetation upon approval by the City Engineer.

Passed:

Shane McFarland, Mayor

1st reading _____

2nd reading _____

ATTEST:

Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

Adam F. Tucker
City Attorney

SEAL

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: FY22 Budget Amendment Ordinance

Department: Administration

Presented by: Erin Tucker

Requested Council Action:

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

Summary

Amendment to the City's FY22 Budget

Staff Recommendation

Amend Ordinance 21-O-43 on first reading.

Background Information

The increased workload in the Legal Department shows a need to increase the headcount and restructure the attorneys to include a Deputy City Attorney – Public Safety. Staff requests the Deputy City Attorney position be reclassified from 127 to 128. The addition to the Legal Department will have a budget impact of \$65,000 for the remaining six months and an increase to the position count by 1.

In addition, based on high demand and low supply of Solid Waste Drivers and associated concerns involving future recruitment and present retention, staff believes a payroll and pay grade adjustment is warranted to maintain adequate staffing numbers to meet expected levels of service in solid waste curbside pick-up. Adjusting payroll and pay grades for Equipment Operators and Transit Operators maintains internal equity for closely related job positions.

The following departments require budget amendments based on these classification adjustments:

Solid Waste

For Solid Waste Driver personnel payroll adjustments in the amount of \$66,000 associated with moving their job class from pay grade 106 to pay grade 108 for the six months remaining in FY22.

Streets

For Equipment Operator personnel payroll adjustments in the amount of \$21,600 associated with moving their job class from pay grade 106 to pay grade 107 for the six months remaining in FY22.

Transportation

For Transit Operator personnel payroll adjustments in the amount of \$14,400

associated with moving their job class from pay grade 106 to pay grade 107 for the six months remaining in FY22.

Council Priorities Served

Responsible budgeting

The budget amendments reflect the increased expenses for the specified departments.

Fiscal Impact

Total impact to the General Fund Unassigned Fund Balance is \$167,000.

Attachments

1. November 12, 2021 Memo from Darren Gore to Craig Tindall requesting FY22 pay grade adjustments
2. Ordinance 21-O-43, and Exhibits A and B



... creating a better quality of life

MEMORANDUM

DATE: November 12, 2021
TO: Craig Tindall
FROM: Darren Gore
CC: Randolph Wilkerson, Raymond Hillis, Erin Tucker, Chris Griffith, Jennifer Brown, Gary Whitaker, Doug Swann, Cheryl Sharp
SUBJECT: FY22 Personnel Request, Solid Waste Operators and Solid Waste Driver Pay Grade Adjustments

SUMMARY

Based on high demand and low supply of Solid Waste Drivers and associated concerns involving future recruitment and present retention, staff is requesting that Solid Waste Drivers be moved from Pay Grade 106 to 108. To maintain internal equity, staff is also requesting that Transit Operators and Equipment Operators be moved from Pay Grade 106 to 107. These requested moves would involve hourly rate of pay adjustments to most of the personnel holding these positions.

ANALYSIS

Staff reviewed all employees in pay grades 106 through 109, reviewing their time of service in their current positions as compared to their current hourly rate of pay. Using a best-fit analysis, Solid Waste Drivers were integrated into pay grade 108 and compared to all other job titles in that same grade. In like manner, Equipment Operators and Transit Operators were integrated into pay grade 107 and compared to all other job titles.

Integrating solid waste drivers into pay grade 108 has minimal effect on the internal equity of other positions in that pay grade. 3 of 31 employees identified as "others" in pay grade 108 are recommended to be adjusted to allow for the integration of solid waste drivers.

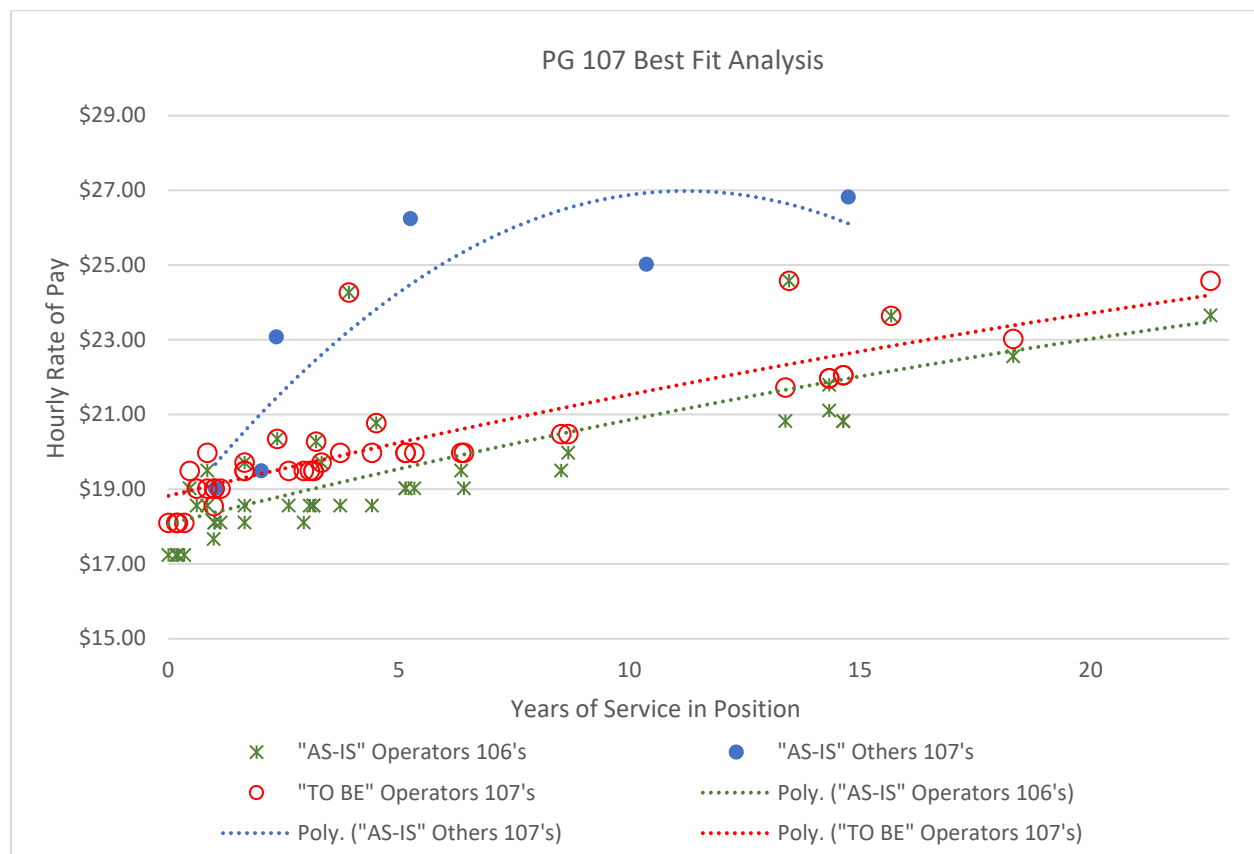
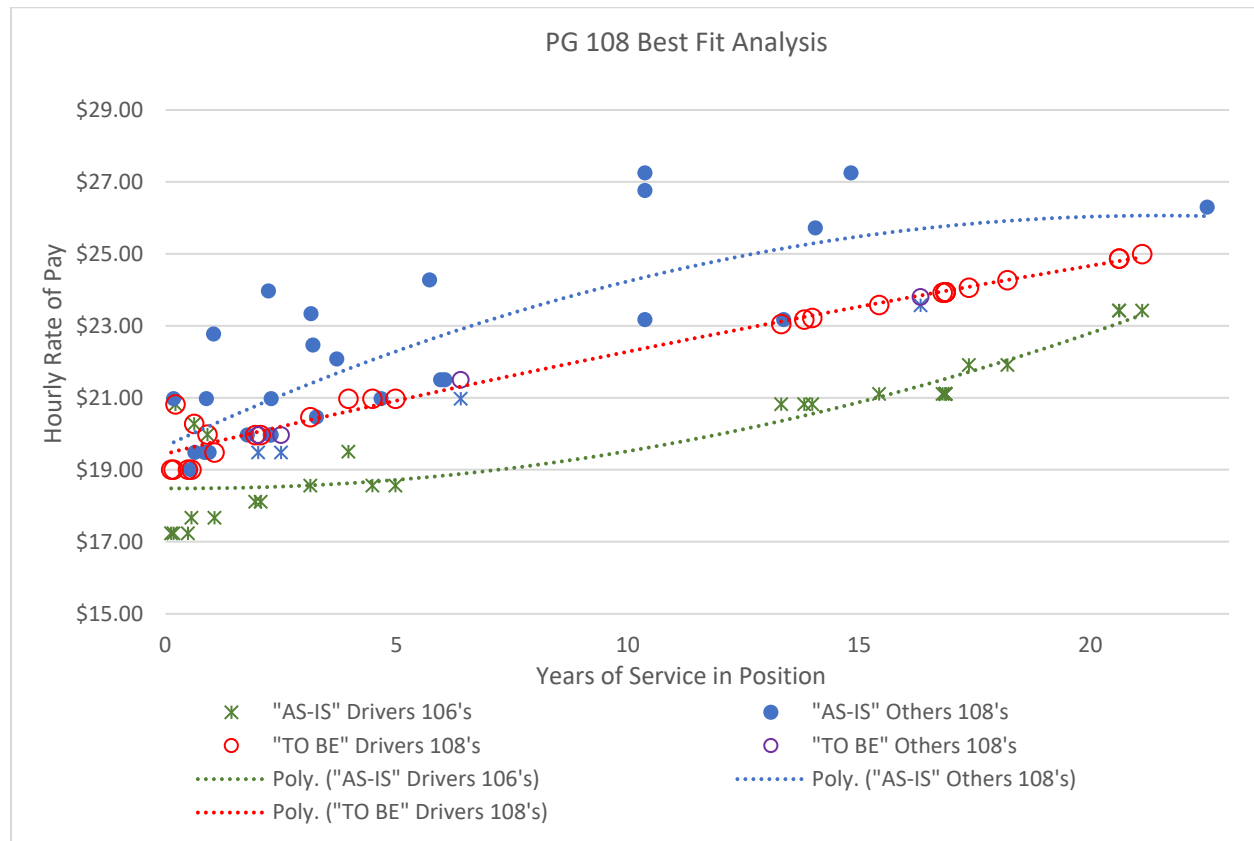
Integrating transit operators and equipment operators into pay grade 107 has no effect on internal equity of other positions in that pay grade. The following table summarizes the employees affected, average adjustments and budget impact.

Position	Employees Affected	Average Hourly Rate Adjustment	Average Annual Salary Adjustment	Effect on 6 mos. of FY22 General Fund Payroll Budget	Effect on 6 mos. Of FY22 MWRD Payroll Budget
Solid Waste Drivers	25 of 28	\$1.89	\$4,401 (10.6%)	\$55,011	\$0
Transit & Equipment Operators	35 of 43	\$0.71	\$1,823 (4.6%)	\$29,983	\$1,919
Others in PG108	3 of 31	\$0.50	\$1,016 (2.5%)	\$0	\$1,524
Totals				\$84,994	\$3,443

Water Resources Department

300 NW Broad Street * P.O. Box 1477 * Murfreesboro, TN 37133-1477 * Office: 615 890 0862 * Fax: 615 896 4259
TTY 615 848 3214 * www.murfreesborotn.gov

The following graphs display the best-fit analysis used to determine personnel adjustments and overall impact to the budget.



The legend and associated graph series distinguish “AS-IS” conditions or current hourly rates. The “TO-BE” condition illustrates the proposed adjustment to current hourly rates. Where there is an overlap between the “AS-IS” versus “TO-BE”, no adjustment is recommended.

RECOMMENDATION

Approve a budget amendment to fund the recommended personnel payroll adjustments.

FISCAL IMPACT

\$84,994 to the general fund payroll budget for half the fiscal year; \$169,987 annualized. \$3,443 to MWRD’s payroll budget for half the fiscal year; \$6,885 annualized.

ORDINANCE 21-O-43 amending the 2021-2022 Budget (3rd Amendment).

WHEREAS, the City Council adopted the 2021-2022 Budget by motion; and,

WHEREAS, the City Council adopted an appropriations ordinance, Ordinance 21-O-13, on June 9, 2021 to implement the 2021-2022 Budget; and,

WHEREAS, it is now desirable and appropriate to adjust and modify the 2021-2022 Budget by this Ordinance to incorporate expenditure decisions made during the 2021-2022 fiscal year.

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

SECTION 1. The 2021-2022 Budget adopted by the City Council is hereby revised and amended as shown on Exhibit A, attached hereto.

SECTION 2. That this Ordinance take effect immediately upon and after its passage upon second and final reading, as an emergency Ordinance, an emergency existing, and it being imperative to provide for the necessary expenses, general and special, of said City of Murfreesboro for the Fiscal Year 2021-2022 at the earliest practicable time, the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

ATTEST:

Jennifer Brown
City Recorder

Shane McFarland, Mayor

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

43A2035E54F0401...
Adam F. Tucker
City Attorney

SEAL

Exhibit A

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>General Fund</u>				
<u>Revenues</u>				
				<u>\$ -</u>
<u>Expenditures</u>				
	<u>Unassigned</u>			
Legal	Salaries and benefits	\$ 272,467.50	\$ 337,467.50	\$ 65,000.00
Solid Waste	Salaries and benefits	\$ 3,272,644.75	\$ 3,338,644.75	\$ 66,000.00
Street	Salaries and benefits	\$ 3,702,498.00	\$ 3,724,098.00	\$ 21,600.00
Transportation	Salaries and benefits	\$ 1,336,827.75	\$ 1,351,227.75	\$ 14,400.00
				<u>\$ 167,000.00</u>
CHANGE IN ASSIGNED FUND BALANCE (CASH)		\$ (5,342,356.00)	\$ (5,342,356.00)	\$ -
CHANGE IN UNASSIGNED FUND BALANCE (CASH)		\$ (3,123,978.00)	\$ (3,290,978.00)	\$ 167,000.00
TOTAL CHANGE IN FUND BALANCE (CASH)		\$ (8,466,334.00)	\$ (8,633,334.00)	(167,000.00)

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Airport Fund</u>				
<u>Revenues</u>				
	Federal Grant	\$ 1,045,350.00	\$ 1,123,350.00	\$ 78,000.00
				<u>\$ 78,000.00</u>
<u>Expenditures</u>				
	Airfields	\$ 2,513,425.00	\$ 2,591,425.00	\$ 78,000.00
				<u>\$ 78,000.00</u>
CHANGE IN FUND BALANCE (CASH)		\$ (1,512,879.00)	\$ (1,512,879.00)	-

City of Murfreesboro					
Authorized Full Time Position Counts FY 2019 to FY 2022					
	Actual	Actual	Estimated	Adopted	Budget Amendment
Department	FY 2019	FY 2020	FY 2021	FY 2022	FY 2022
Mayor and Council	7	7	7	7	7
City Manager's Office	11	13	11	11	11
Finance and Tax	18	18	19	21	21
Legal	7	9	9	9	10
City Court	6	6	6	7	7
Purchasing	2	2	2	3	3
Information Technology	17	20	22	24	24
Communications	5	6	6	6	6
Human Resources	7	10	10	11	11
Facilities Maintenance	11	11	12	13	13
Fleet Services	16	16	17	20	20
Police	326	351	369	376	376
Fire & Rescue	235	236	238	241	241
Building & Codes	26	26	25	25	25
Planning	14	14	15	15	15
Community Development	1	1	3	3	3
Transportation	24	25	27	27	27
Engineering	14	14	14	15	15
Street	51	51	51	51	51
Civic Plaza	1	1	1	1	1
Parks and Recreation	84	90	89	89	89
Golf Course	15	15	15	15	15
Solid Waste	42	43	46	47	47
Airport	3	3	4	4	4
Risk Management	3	0	0	0	0
	946	988	1018	1041	1042

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Plan of Services, Annexation, and Zoning for property located along Veals Road
[Public Hearings Required]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Annexation of approximately 123 acres and zoning of approximately 205.5 acres located along Veals Road and Double Springs Road.

Staff Recommendation

Conduct a public hearing and approve the Plan of Services and the requested annexation.

Conduct a public hearing and enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the plan of services, annexation, and the zoning request.

Background Information

The Hall Family Real Estate Partnership has initiated a petition of annexation [2021-510] for approximately 123 acres located along the north side Veals Road and along the west side of Double Springs Road. The City developed its plan of services for this area. Additionally, Meritage Homes presented to the City a zoning application [2021-424] for approximately 205.5 acres along the north side of Veals Road to be zoned PRD (Planned Residential District). During its regular meeting on October 13, 2021, the Planning Commission conducted a public hearing on the annexation and plan of services and then voted to recommend their approval. During its regular meetings on November 3, 2021 and November 17, 2021, the Planning Commission conducted a public hearing on the zoning request and then voted to recommend its approval.

Council Priorities Served

Expand Infrastructure

The proposed development plan includes the construction of a 0.5-mile segment of the Irby Lane extension, which is identified on the Major Transportation Plan as MTI

#19. This 0.5-mile segment would be funded and constructed by private developers, not the City. This roadway is seen as an important north-south linkage between Bradyville Pike and John Bragg Highway, two State highways.

Attachments:

1. Resolution 21-R-PS-39
2. Resolution 21-R-A-39
3. Ordinance 21-OZ-39
4. Maps of the area
5. Planning Commission staff comments from 10/13/2021 and 11/03/21 meetings
6. Planning Commission minutes from 10/13/2021, 11/03/21, and 11/17/21 meetings
7. Plan of services
8. Graystone PRD pattern book
9. Other miscellaneous exhibits

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
OCTOBER 13, 2021
PROJECT PLANNER: MARINA RUSH**

4.h. Annexation petition and plan of services [2021-510] for approximately 123 acres located along Veals Road and Double Springs Road, and rights-of-way of approximately 2,400 linear feet of Veals Road and 2,430 linear feet of Double Springs Road, Hall Family Real Estate Partnership applicant.

The Hall Family Real Estate Partnership, represented by Matt Taylor of SEC, Inc., has submitted a petition requesting its property be annexed into the City of Murfreesboro. The subject property is approximately 123 acres and is located along the north side of Veals Road and the west side of Double Springs Road. The study area is undeveloped with the exception of one single-family dwelling.

Attached are maps illustrating the annexation study area. The subject parcels are identified as follows:

- Tax Map 112, Parcel 016.04- 75 acres
- Tax Map 112, Parcel 016.00 - 5 acres
- Tax Map 112, Parcel 016.02 -42.84 acres
- Tax Map 112, Parcel 016.03- 0.21 acre

The annexation study includes the rights-of-way along Veals Road for approximately 2,400 linear feet and Double Springs Road for approximately 2,430 linear feet. At its September meeting, the Rutherford County Road Board voted to grant its consent for these rights-of-way to be annexed. The study area is located within the City of Murfreesboro's Urban Growth Boundary. It is contiguous with the existing City limits to the west and to the south.

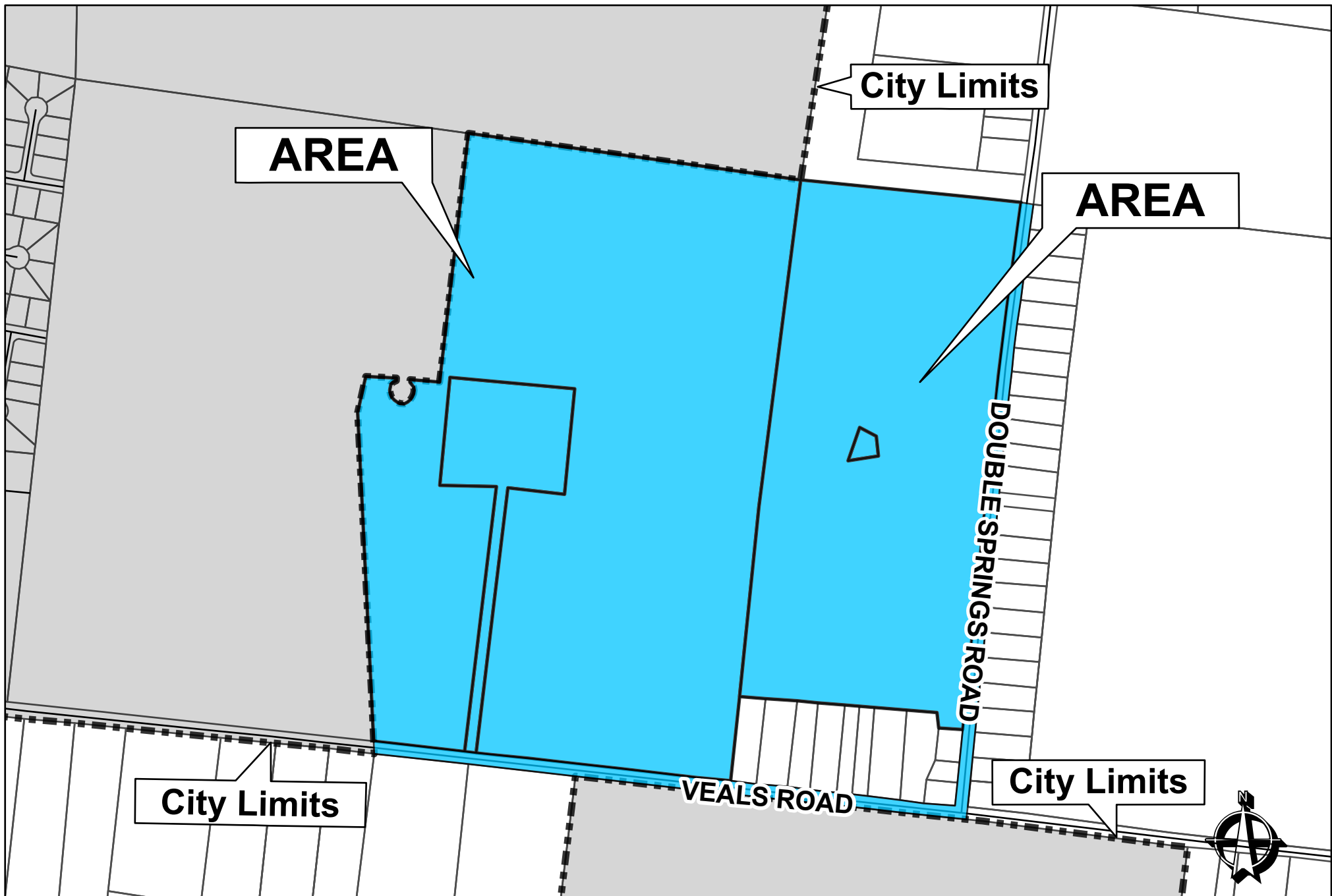
A month after the annexation petition was submitted, Meritage Homes submitted a zoning request for PRD zoning for the subject property simultaneous with annexation. The proposed PRD, which also includes the portion of the Hall property to the West already inside the City limits, contains a total of 403 single-family residential units, including a mixture of attached and detached dwellings, for an approximate density of 2.0 dwelling units/acre. It is the applicant's intention for the zoning application to "catch up" with the annexation petition during the course of the Planning Commission and City Council review process.

Staff is in the process of preparing a Plan of Services for the proposed annexation. At the time of the publication of this agenda, it was not complete. It will be completed and distributed to the Planning Commission members in advance of the October 13th Planning Commission meeting. Staff will have

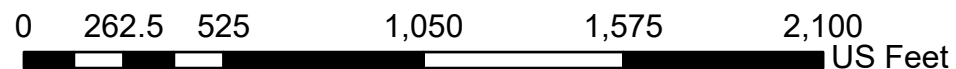
additional comments on the plan of services at the Planning Commission meeting.

Action Needed:

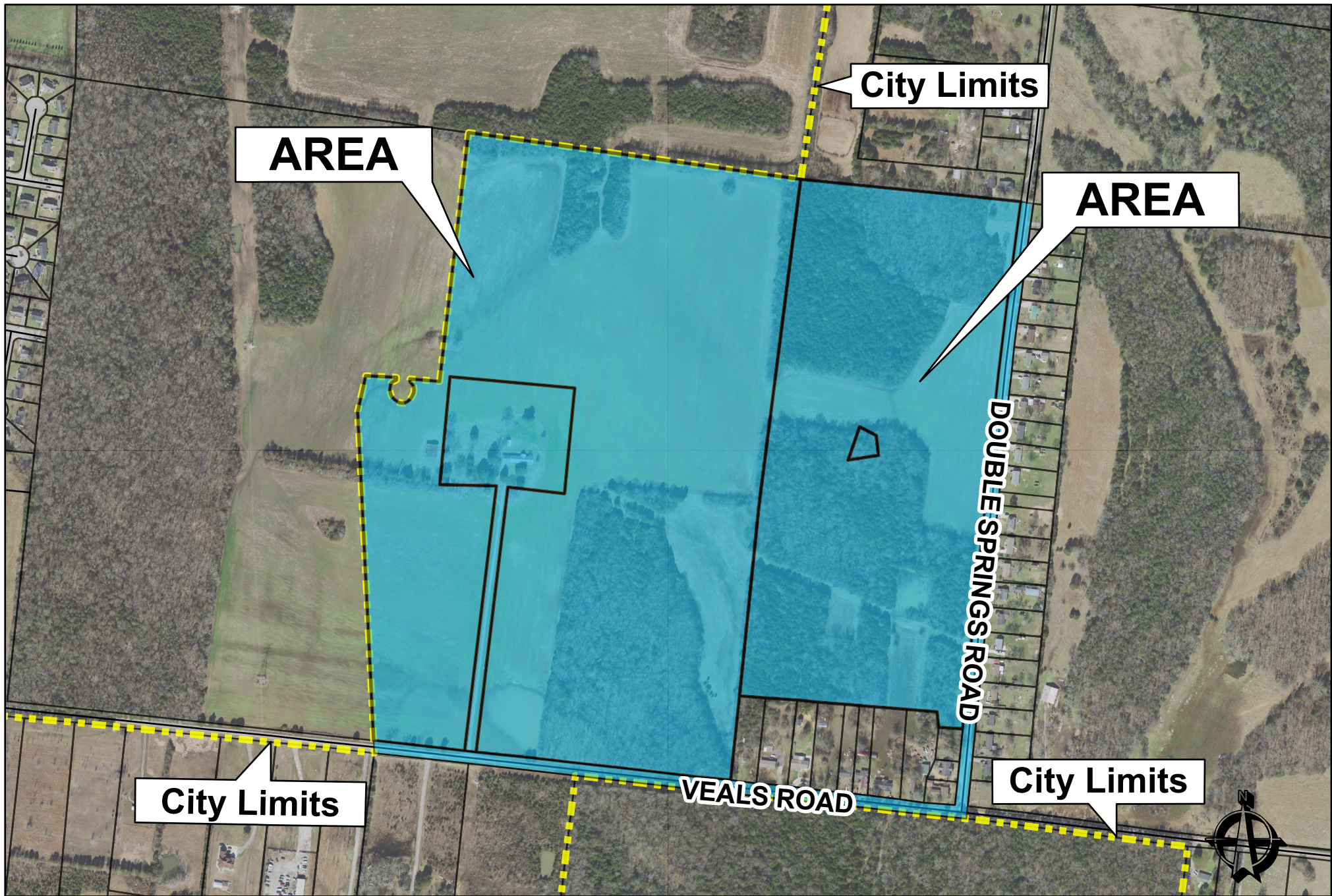
The Planning Commission will need to conduct a public hearing and then discuss this matter, after which it will need to formulate a recommendation to the City Council.



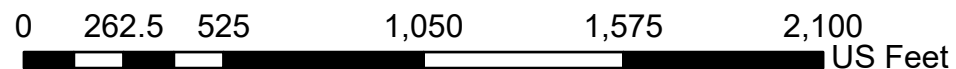
Annexation Request for Property
along Veals Road and Double Springs Road



Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov



Annexation Request for Property
along Veals Road and Double Springs Road



Planning Department
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PETITION FOR ANNEXATION BY THE CITY OF MURFREESBORO

The undersigned is the only owner / are all of the owners of the property identified in the attached legal description (including street address and tax map / parcel number), and hereby petitions the City of Murfreesboro to annex such property into the City.

Signatures must be by owners or those with an appropriate written Power of Attorney from an owner. If the owner is not an individual (eg. corporation, trust, etc.), list the entity's name, the name of the individual signing on behalf of the entity and the status of the individual (eg. president, trustee, partner). If you are signing this Petition based on a Power of Attorney, you must also attach a copy of the Power of Attorney.

1. Stephanie Hall Bryan
 Printed Name of Owner (and Owner's Representative, if Owner is an entity)
 Signature: Stephanie Hall Bryan Status: SELF Date: 3-11-21
2671 Covington Place Avon, Ohio 44011
 Mailing Address (if not address of property to be annexed)

2. Marsha Hall Morris
 Printed Name of Owner (and Owner's Representative, if Owner is an entity)
 Signature: Marsha Hall Morris Status: SELF + GP Date: 3-11-21
5623 Covington Dr Charles Town IN 47111
 Mailing Address (if not address of property to be annexed)

3. _____
 Printed Name of Owner (and Owner's Representative, if Owner is an entity)
 Signature: _____ Status: _____ Date: _____

Mailing Address (if not address of property to be annexed)

4. Hall Family Real Estate Partnership
 Printed Name of Owner (and Owner's Representative, if Owner is an entity)
 Signature: Marsha Hall Morris Status: general partner Date: 3-11-21
5623 Covington Dr Charles Town IN 47111
 Mailing Address (if not address of property to be annexed)

(Attach additional signature pages if necessary)

Legal Description is attached: _____ Yes

Power of Attorney applies and is attached: _____ Yes _____ No

PETITION FOR ANNEXATION BY THE CITY OF MURFREESBORO

The undersigned is the only owner / are all of the owners of the property identified in the attached legal description (including street address and tax map / parcel number), and hereby petitions the City of Murfreesboro to annex such property into the City.

Signatures must be by owners or those with an appropriate written Power of Attorney from an owner. If the owner is not an individual (eg. corporation, trust, etc.), list the entity's name, the name of the individual signing on behalf of the entity and the status of the individual (eg. president, trustee, partner). If you are signing this Petition based on a Power of Attorney, you must also attach a copy of the Power of Attorney.

1. _____
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signature: _____ Status: _____ Date: _____

Mailing Address (if not address of property to be annexed)

2. _____
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signature: _____ Status: _____ Date: _____

Mailing Address (if not address of property to be annexed)

3. Susan Hall Woody
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signature: Susan Hall Woody Status: Self Date: 3-11-2021

1523 E. Lynn Dr Beaver Creek OH 45432
Mailing Address (if not address of property to be annexed)

4. _____
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signature: _____ Status: _____ Date: _____

Mailing Address (if not address of property to be annexed)

(Attach additional signature pages if necessary)

Legal Description is attached: _____ Yes

Power of Attorney applies and is attached: _____ Yes _____ No

Consent for Annexation of Public Rights-of-Way by the City of Murfreesboro

The City of Murfreesboro, Tennessee has initiated an annexation study of the following public rights-of-way as shown on the attached Exhibits, which specifically includes:

- that section of Veals Road beginning at approximately the east property line of 3200 Veals Road eastward to the eastern right-of-way line of Double Springs Road totaling approximately 2,400 linear feet ("County Right-of-Way"), such section being a portion of the prescriptive/platted right-of-way for Veals Road shown in the current Rutherford County Highway Department Road Book.; and
- that section of Double Springs Road beginning at the southern property line of 724 Double Springs Road southward to the southern property line of 1126 Double Springs Road totaling approximately 2,430 linear feet ("County Right-of-Way"), such section being a portion of the prescriptive/platted right-of-way for Double Springs Road shown in the current Rutherford County Highway Department Road Book.

The undersigned, a duly authorized official of Rutherford County, Tennessee, hereby certifies that, at a public meeting held on September 2, 2021 and in furtherance of the requirements set forth in Tenn.Code Ann. § 6-51-1014, the Rutherford County Highway Commission consented to the annexation of the County Right-of-Way by the City of Murfreesboro, Tennessee.

WITNESS MY HAND this 7th day of September 2021.



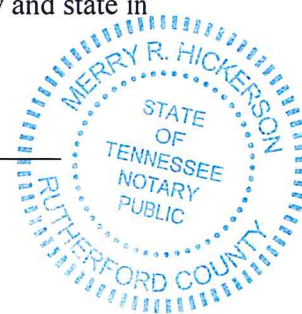
Greg Brooks
Rutherford County Road Superintendent

Sworn to and subscribed before me, a notary public in and for said county and state in Murfreesboro, Tennessee on the 7th day of September, 2021

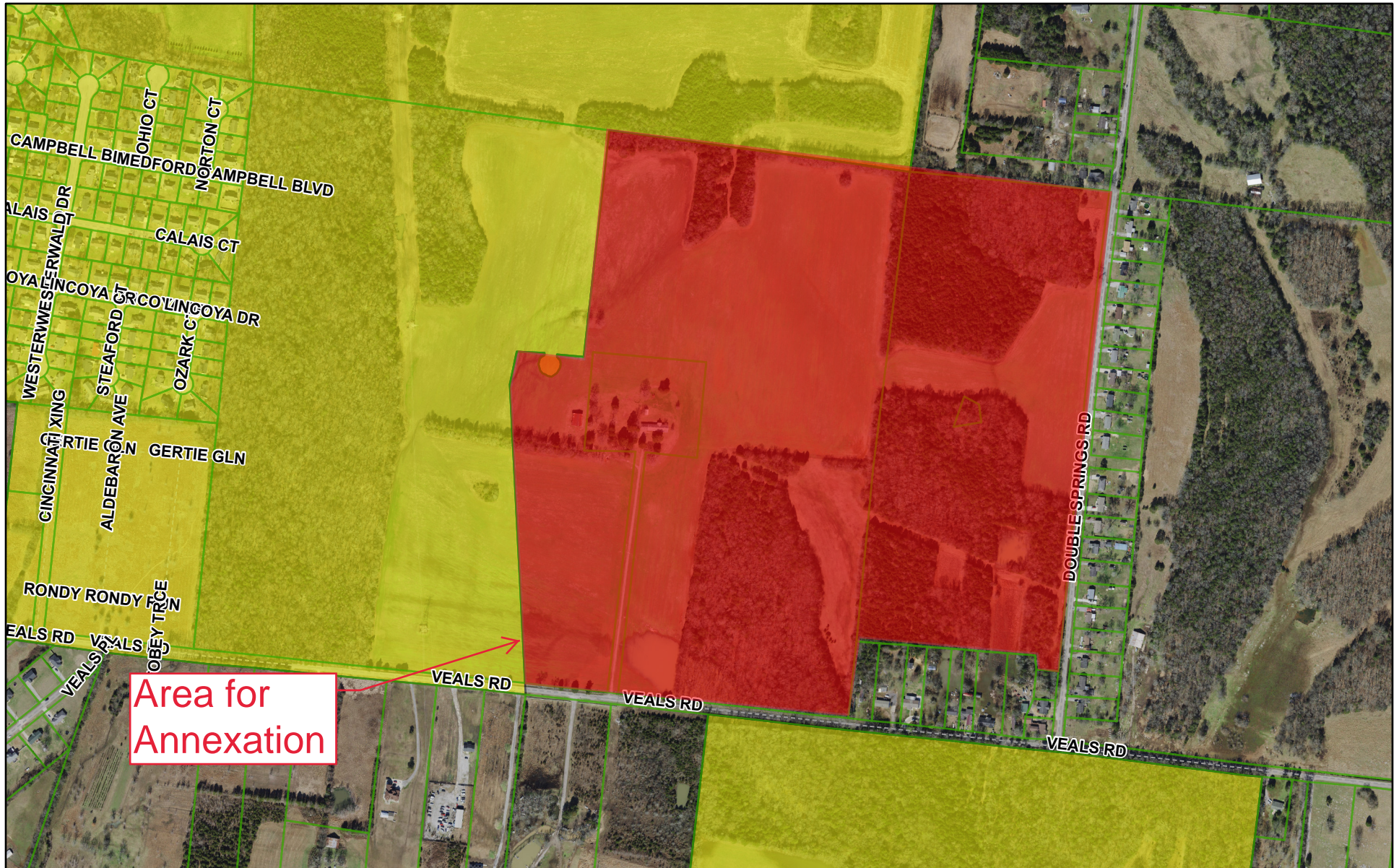


NOTARY PUBLIC

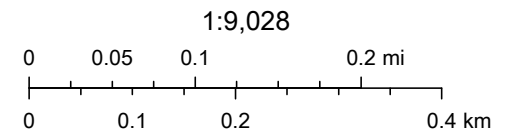
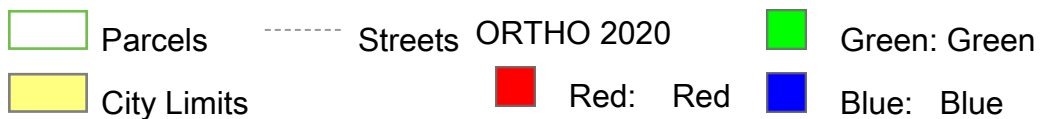
My Commission Expires: 7-23-2024



Murfreesboro GIS Data



8/12/2021, 5:31:37 AM



Esri Community Maps Contributors, Esri, HERE, Garmin, SafeGraph,

City Of Murfreesboro IT Department

Esri Community Maps Contributors, Tennessee STS GIS, BuildingFootprintUSA, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA | Murfreesboro Water Resources Department, City of Murfreesboro, TN |

MINUTES OF THE MURFREESBORO PLANNING COMMISSION OCTOBER 13, 2021

6:00 P.M.

CITY HALL

MEMBERS PRESENT

Kathy Jones, Chair
Ken Halliburton, Vice-Chair
Jami Averwater
Rick LaLance
Warren Russell
Chase Salas
Shawn Wright

STAFF PRESENT

Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Marina Rush, Principal Planner
Holly Rush, Principal Planner
Joel Aguilera, Planner
Carolyn Jaco, Recording Assistant
Roman Hankins, Assistant City Attorney
David Ives, Deputy City Attorney
Sam Huddleston, Executive Dir. Dev. Services

1. Call to order

Chair Kathy Jones called the meeting to order at 6:00 p.m.

2. Determination of a quorum

Chair Jones determined that a quorum was present.

3. Approve minutes of the September 15, 2021, Planning Commission meeting.

Mr. Warren Russell moved to approve the Minutes of the September 15, 2021 meeting; the motion was seconded by Mr. Chase Salas and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Chase Salas
Shawn Wright

Nay: None

4. Public Hearings and Recommendations to City Council:

Zoning application [2021-418] for approximately 8.4 acres located along Bridge Avenue to be rezoned from RS-10 to CF and approximately 1 acre to be rezoned from H-I to CF, City

MINUTES OF THE MURFREESBORO PLANNING COMMISSION OCTOBER 13, 2021

Chair Kathy Jones opened the public hearing.

1. **Mr. Dale Jackson, 1563 & 1565 Westridge Drive** – wanted to know if Parkwood Drive, Westridge Drive, and Woodcrest Drive be widened with this proposal?

There being no one else to speak for or against the request, Chair Kathy Jones closed the public hearing.

Mr. Maguire stated that there would not be any changes to Mr. Jackson's property. However, he explained the rights-of-way would be improved and a pipe would be placed along the north side for drainage.

There being no further discussion, Mr. Warren Russell moved to approve the annexation petition subject to all staff comments; the motion was seconded by Ms. Jami Averwater and carried by the following vote:

Aye: Kathy Jones

Ken Halliburton

Jami Averwater

Rick LaLance

Warren Russell

Chase Salas

Shawn Wright

Nay: None

Annexation petition and plan of services [2021-510] for approximately 123 acres located along Veals Road and Double Springs Road, and rights-of-way of approximately 2,400 linear feet of Veals Road and 2,430 linear feet of Double Springs Road, Hall Family Real Estate Partnership applicant. Ms. Marina Rush presented the Staff Comments regarding this item, a copy which is maintained in the permanent files of the Planning Department and incorporated into these Minutes by reference.

MINUTES OF THE MURFREESBORO PLANNING COMMISSION OCTOBER 13, 2021

Chair Kathy Jones opened the public hearing. No one came forward to speak for or against the annexation petition; therefore, Chair Kathy Jones closed the public hearing.

Mr. Matt Taylor (design engineer) was in attendance to represent the application.

There being no further discussion, Vice-Chairman Ken Halliburton moved to approve the annexation petition and plan of services subject to all staff comments; the motion was seconded by Mr. Rick LaLance and carried by the following vote:

Aye: Kathy Jones

Ken Halliburton

Jami Averwater

Rick LaLance

Warren Russell

Chase Salas

Shawn Wright

Nay: None

Proposed amendment to the Zoning Ordinance [2021-801] pertaining to Section 13: Planned Development Regulations and Section 24: Overlay District Regulations, Article VI. CCO, City Core Overlay District, City of Murfreesboro Planning Department applicant. Ms.

Holly Smyth presented the Staff Comments regarding this item, a copy which is maintained in the permanent files of the Planning Department and incorporated into these Minutes by reference.

Chair Kathy Jones opened the public hearing. No one came forward to speak for or against the request; therefore, Chair Kathy Jones closed the public hearing.

Mr. Rick LaLance announced he would abstain from the vote at this time. He has not been able to review all the details of the amendment. He would be better prepared at the City Council level to support the amendment.

RESOLUTION 21-R-PS-39 to adopt a Plan of Services for approximately 123 acres located along Veals Road and Double Spring Road and rights-of-way of approximately 2,400 linear feet of Veals Road and 2,430 linear feet of Double Spring Road, Hall Family Real Estate Partnership, applicant(s) [2021-510].

WHEREAS, the Owner(s) of the territory identified on the attached map as the “Area to be Annexed” have either petitioned for annexation or given written consent to the annexation of such territory; and

WHEREAS, a proposed Plan of Services for such territory was prepared and published as required by T.C.A. §6-51-102 and T.C.A. §6-51-104; and

WHEREAS, the proposed Plan of Services was submitted to the Murfreesboro Planning Commission on September 1, 2021 for its consideration and a written report, at which time the Planning Commission held a public hearing and thereafter recommended approval of the Plan of Services to the City Council; and,

WHEREAS, a Public Hearing on the proposed Plan of Services was held before the City Council of the City of Murfreesboro, Tennessee on December 16, 2021, pursuant to a Resolution passed and adopted by the City Council on October 21, 2021, and notice thereof published in The Murfreesboro Post, a newspaper of general circulation in said City, on November 30, 2021; and,

WHEREAS, the Plan of Services for the territory identified on the attached map as the “Area to be Annexed” establishes the scope of services to be provided and the timing of such services and satisfies the requirements of T.C.A. §6-51-102.

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

SECTION 1. That, pursuant to authority conferred by T.C.A. Sections 6-51-101, et seq., the Plan of Services attached hereto for the territory identified on the attached map as the “Area to be Annexed” is hereby adopted as it is reasonable with respect to the scope of services to be provided and the timing of such services.

SECTION 2. That this Resolution shall take effect upon the effective date of the Annexation Resolution with respect to the territory, **Resolution 21-R-A-39**, the public welfare and the welfare of the City requiring it.

Passed: _____

Shane McFarland, Mayor

ATTEST:

Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker

43A2039ESTF9401

Adam F. Tucker
City Attorney

SEAL

Resolution 21-R-PS-39

City Limits

Area to be annexed

DOUBLE SPRINGS ROAD

VEALS ROAD

City Limits

Area to be annexed

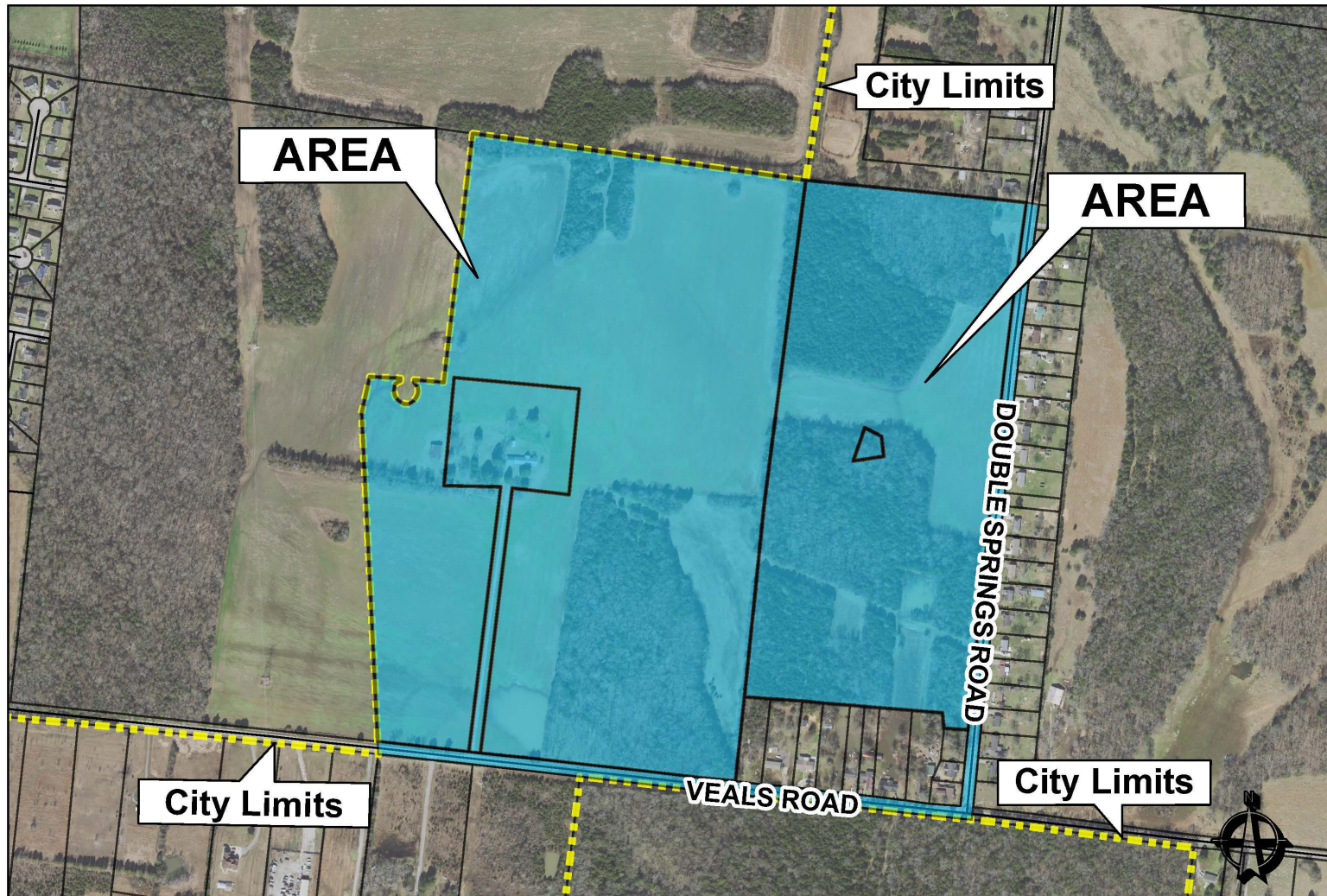


**ANNEXATION REPORT FOR PROPERTY LOCATED ALONG
VEALS ROAD AND DOUBLE SPRINGS ROAD
INCLUDING PLAN OF SERVICES
(FILE 2021-510)**

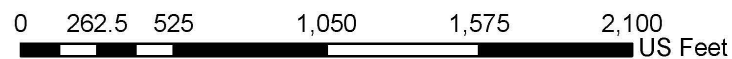


**PREPARED FOR THE
MURFREESBORO PLANNING COMMISSION
OCTOBER 13, 2021**

(SEWER MAP UPDATED FOR DECEMBER 16, 2021 CITY COUNCIL MEETING)



Annexation Request for Property
along Veals Road and Double Springs Road



Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

INTRODUCTION

OVERVIEW

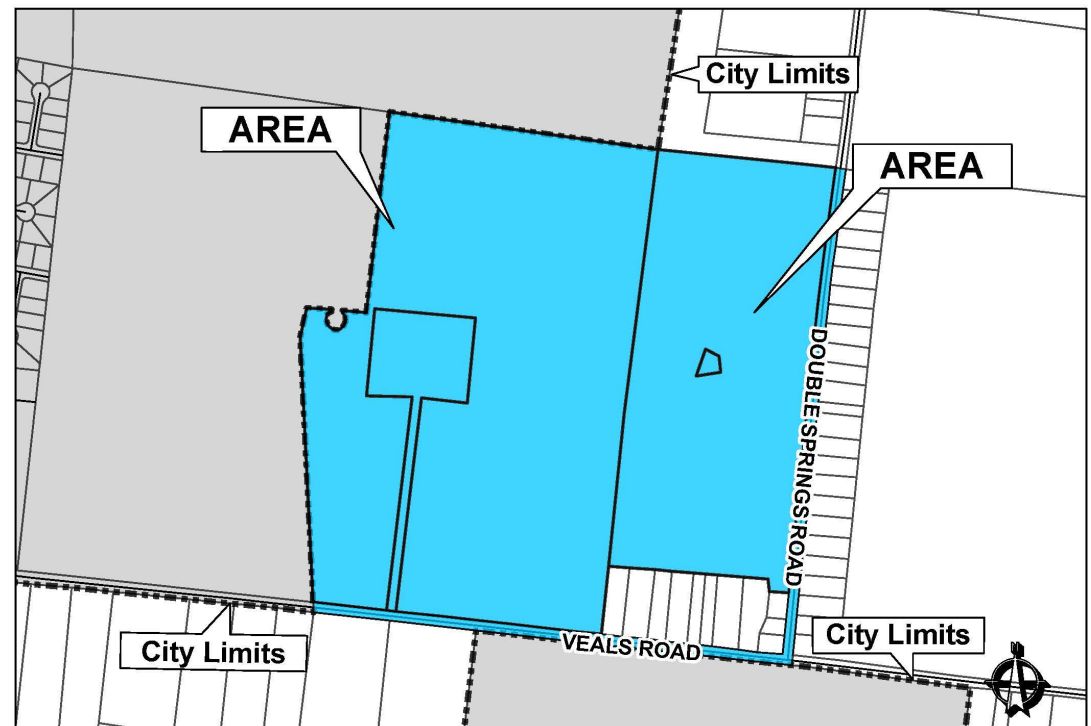
The Hall Family Real Estate Partnership is requesting to annex their property, located along Veals Road, into the City of Murfreesboro. The subject property is approximately 123 acres and located along the north side of Veals Road and along the west side of Double Springs Road. The study area is undeveloped with the exception of one single-family dwelling.

The map illustrates the annexation study area. The subject parcels are identified as follows:

- Tax Map 112, Parcel 016.04 = 75.00 acres
- Tax Map 112, Parcel 016.00 = 5.00 acres
- Tax Map 112, Parcel 016.02 = 42.84 acres
- Tax Map 112, Parcel 016.03 = 0.21 acre

The annexation study area includes the rights-of-way (ROW) along Veals Road for approximately 2,400 linear feet and Double Springs Road for approximately 2,430 linear feet. At its September meeting, the Rutherford County Road Board voted to grant its consent for these rights-of-way to be annexed.

The study area is located within the City of Murfreesboro's Urban Growth Boundary and is contiguous with the City limits to the north, west, and south.



Annexation Request for Property
along Veals Road and Double Springs Road

0 262.5 525 1,050 1,575 2,100
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

CITY ZONING

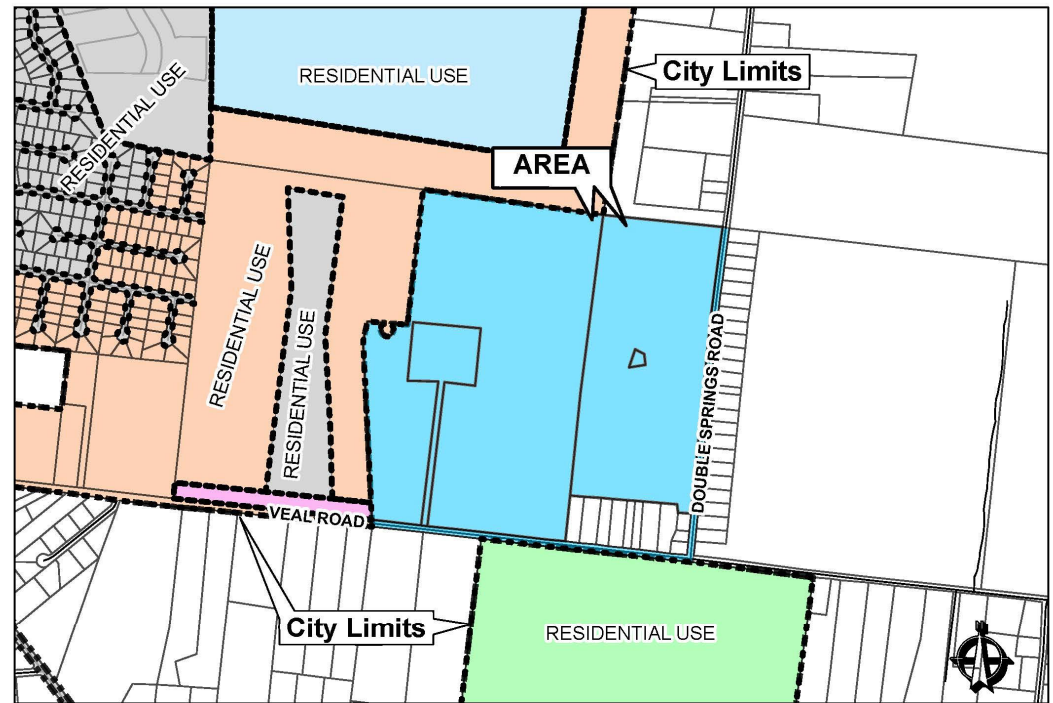
The adjacent zoning on the properties to the north and west are RS-10, RS-6, and RS-12 (Single-family residential districts). The properties to the northeast, east and southwest are zoned RM (Medium-density residential district) and in the unincorporated portion of Rutherford County. They are primarily single-family residences on large lots.

After the annexation petition was submitted to the City of Murfreesboro, a zoning request for the study area was submitted by Meritage Homes for Planned Residential District (PRD) zoning for a total of 403 single-family residential units. The proposed PRD zoning includes the annexation study area plus the portion of the Hall property located to the west, which is already inside the City limits. The 403 single-family residential units includes a mixture of attached and detached dwellings, for an approximate density of 2.0 dwelling units/acre.



PRESENT AND SURROUNDING LAND USE

The study area is currently developed with one single-family residence and the remainder is vacant agricultural or woodlands. There is also a cemetery located within the study area. The surrounding land uses are single family residential to the northeast, east, and south. The properties to the northwest and west are vacant, and the properties further to the west are developed with single family residences.



Annexation Request for Property
along Veals Road and Double Springs Road

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

TAXES AND REVENUE

The first City tax bill for all property annexed during the calendar year of 2021 will be due on December 31, 2022. City taxes are calculated upon the property appraisal and assessment of the Rutherford County Property Assessor's Office. The current tax rate for the City of Murfreesboro is \$1.2894/\$100.00 assessed value. Residential property is assessed at a rate of 25% of its appraised value, and commercial property is assessed at a rate of 40% of its appraised value. The property is vacant. Table I below shows total assessment and estimated City taxes that would be collected if the property were to be annexed in its present state.

Table I
Estimated Taxes from Site

Owner of Record	Tax Map and Parcel	Acres	Land Value	Improvements Value	Total Assessment	Estimated City Taxes
Hall Family Real Estate	112 - 016.04	75	\$134,200	\$0.00	\$34,875	\$449.68
	112 - 016.00	5	\$ 62,100	\$133,900	\$50,400	\$649.86
	112 - 016.02	42.84	\$ 61,500	\$0.00	\$15,375	\$198.25
	112 - 016.03	0.21	\$ 23,700	\$0.00	\$ 5,925	\$76.40
	TOTAL: \$1,374.19					

These figures are for the property in its current state and assessed at the residential rate of 25 percent. After this property is rezoned and when it is developed, an improvement value will be added, which will result in an increase to the City and County taxes.

The City of Murfreesboro is also projected to receive additional revenue from state-shared taxes. Table II below shows the 2021-2022 per capita state revenue estimates for the City of Murfreesboro once the proposed development is built out. The study area, along with the portion of the Hall property already inside the City limits, is proposed to be developed with 403 single-family residential units, a combination of detached and attached homes (townhomes).

Table II
Per Capita State Revenue Estimates

General Fund	Per Capita Amount
State Sales Tax	\$89.00
State Beer Tax	\$0.50
Special Petroleum Products Tax (Gasoline Inspection Fee)	\$2.00
Gross Receipts (TVA in-lieu taxes)	\$11.80
<i>Total General Revenue Per Capita</i>	\$103.30
State Street Aid Funds	Per Capita Amount
Gasoline and Motor Fuel Taxes	\$38.50
<i>Total Per Capita (General and State Street Aid Funds)</i>	\$141.80
Total State-Shared Revenues (based on full build-out at 2.58 persons per dwelling unit for proposed 403 new units)	\$147,435.13

The per capita state revenue estimates apply only to new residents and will only be available after a certified census takes place.

PLAN OF SERVICES

POLICE PROTECTION

At present, the study area receives police service through the Rutherford County Sheriff's Department. If annexed, the Murfreesboro Police Department will begin providing services such as patrol, criminal investigation, community policing, traffic operations, canine, DARE and other community crime prevention programs to the subject parcels immediately upon the effective date of annexation.

This annexation will have no negative impact on the Murfreesboro Police Department. No additional costs to the department are expected. This property is located in Police Zone #5.

ELECTRIC SERVICE

Middle Tennessee Electric Membership (MTEMC) currently has service to the existing residence. MTEMC has the capacity to serve the proposed development. Any new electrical infrastructure installed will be required to adhere to MTEMC standards.

STREET LIGHTING

MTEMC can provide street lighting, as necessary, upon request by the City of Murfreesboro.

SOLID WASTE COLLECTION

The City will provide weekly curbside solid waste collection service immediately upon the effective date of annexation, as well as brush/debris removal every two to three weeks. The initial day of service will be Tuesday.

RECREATION

Murfreesboro's Parks and Recreation facilities will be immediately available to residents of the study area upon the effective date of annexation. Currently Murfreesboro has two multi-purpose facilities, one community center, a wilderness facility, over 1,000 acres of parks, a network of greenways, and recreational sports. These facilities and programs are wholly funded by the Murfreesboro taxpayers. Children who are residents of the City of Murfreesboro, attend Murfreesboro Elementary Schools, and receive free or reduced lunches also receive free or reduced recreational fees.

CITY SCHOOLS

The Murfreesboro City School (MCS) system serves grades kindergarten through sixth and is offered to students who are within the jurisdiction of the City of Murfreesboro. The study area will be located in the Black Fox Elementary School zone, if annexed. The Black Fox Elementary School capacity is 1,000 students. The current enrollment for Black Fox Elementary 2021-2022 is 898 students. Currently, there is one residence on the subject property and annexation in the property current state will have minimal impact on MCS. If 400 residential units were developed, it would result in an increase of enrollment estimated to be between 68 to 120 additional students.

BUILDING AND CODES

The property will come within the City's jurisdiction for code enforcement immediately upon the effective date of annexation. The City's Building and Codes Department will begin issuing building and construction permits and enforcing the codes and inspecting new construction for compliance with the City's construction codes immediately upon the effective date of annexation. The Building and Codes Department will also ensure that any new signs associated with the development of the property comply with the Sign Ordinance. No additional costs are expected.

PLANNING, ENGINEERING, AND ZONING SERVICES

The property will come within the City's jurisdiction for planning and engineering code enforcement immediately upon the effective date of annexation. As new development occurs, the Planning Commission will review all site plans, preliminary plats, and final plats. Among other duties, the Planning and Engineering Departments will inspect and monitor new construction of streets and drainage structures for compliance with the City's development regulations.

GEOGRAPHIC INFORMATION SYSTEMS

The property is within the area photographed and digitized as part of the City's Geographic Information Systems (G.I.S.) program.

STREETS AND ACCESS

The annexation study area has access to existing Veals Road and Double Springs Road and includes approximately 2,400 linear feet of Veals Road ROW and 2,430 linear feet of Double Springs Road ROW. Veals Road and Double Springs Road are both existing 2-lane, ditch section roadways. Upon annexation, the City will be responsible for operation and maintenance of these streets. Based on a 15-year repaving cycle, the annualized maintenance cost for Veals Road is \$3,500 and for Double Springs Road is \$3,600 with State Street Aid and General Fund as funding sources. The addition of the ROW will also result in approximately \$600 of capital cost for Veals Road and another \$600 for Double Springs Road with State Street Aid and General Fund as funding sources. Any new connections to Veals Road or Double Springs Road must be approved by the City Engineer. Additionally, development along Veals Road or Double Springs Road will require participation in construction of improvements to the roadway and ROW/easement dedication in accordance with the City's Substandard Street requirements.

No additional public roadways are included in the study area. Any new public roadways to serve the study area must be constructed to City Standards.

REGIONAL TRAFFIC & TRANSPORTION

The study area has access to Veals Road and Double Springs Road. The 2014 Level of Service Model in the proposed 2040 Major Transportation Plan shows both Veals Road and Double Springs Road to be operating at a Level of Service A in the study area using average daily traffic (ADT) counts. The 2040 Level of Service Model indicates that both Veals Road and Double Springs Road operate at a Level of Service B without the proposed improvements recommended in the 2040 Plan. With the improvements proposed in the 2040 Plan, these sections of roadway will both operate at a level of service B.

New development should comply with the City's Stormwater Quality Regulations by providing stormwater quality, streambank protection, and detention.

Improvements to and ROW and easement dedication for both Veals Road and Double Springs Road should be incorporated into the development plans.

PROPERTY AND DEVELOPMENT

The property drains to the ROW of Veals Road. A review of historic aerial photography and topography indicate closed depressions which pond water from time to time. These features may be associated with sinkholes and/or wetlands. The features should be evaluated to determine if sinkholes or wetlands are present and appropriate approvals and permits obtained for disturbance or modification during development.

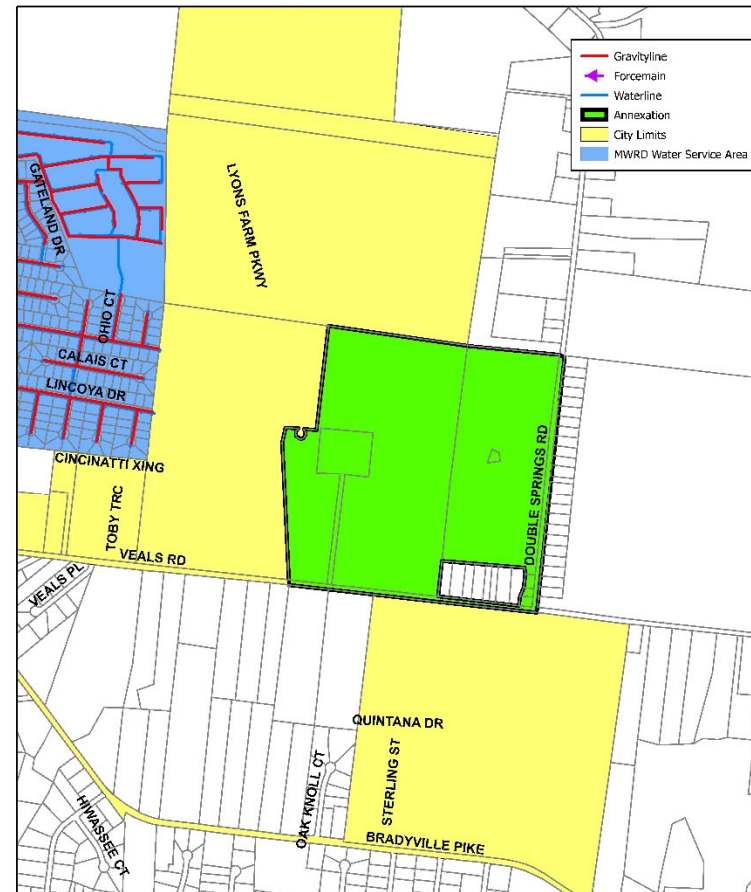
SANITARY SEWER SERVICE

The Murfreesboro Water Resources Department's (MWRD) current definition of "available" is defined as gravity sanitary sewer that is adjacent to the property line within an easement or in a public ROW. Currently, public sanitary sewer is unavailable to the requesting parcels and the gravity sewer mains in the area are at capacity and will not allow any additional connections.

The Developer will construct an On-site Sewage Treatment & Disposal system to serve the subdivision, often referred to as a "STEP System", as the means of sewage disposal. This system will be dedicated to MWRD to operate and maintain once the system is constructed by the developer and it is operational. At the September 25, 2018 meeting, the Murfreesboro Water Resources Board approved accepting this type system for the western portion of the Hall property and at the August 24, 2021 meeting the Board approved these properties to be combined with the western portion and for both to be served by the same system.

Being that this non-conventional system will not connect to existing public sewer infrastructure, the standard sewer connection fees will not apply for sanitary sewer connections within the subdivision.

All sewerage improvement may be installed in accordance with the applicable State Design Criteria and Regulations, the Department's Design Standards for STEP systems in addition to the Development Policies and Procedures of MWRD.



MURFREESBORO WATER RESOURCES DEPARTMENT

**Annexion Request for Property along
Veals Road and Double Springs Road**

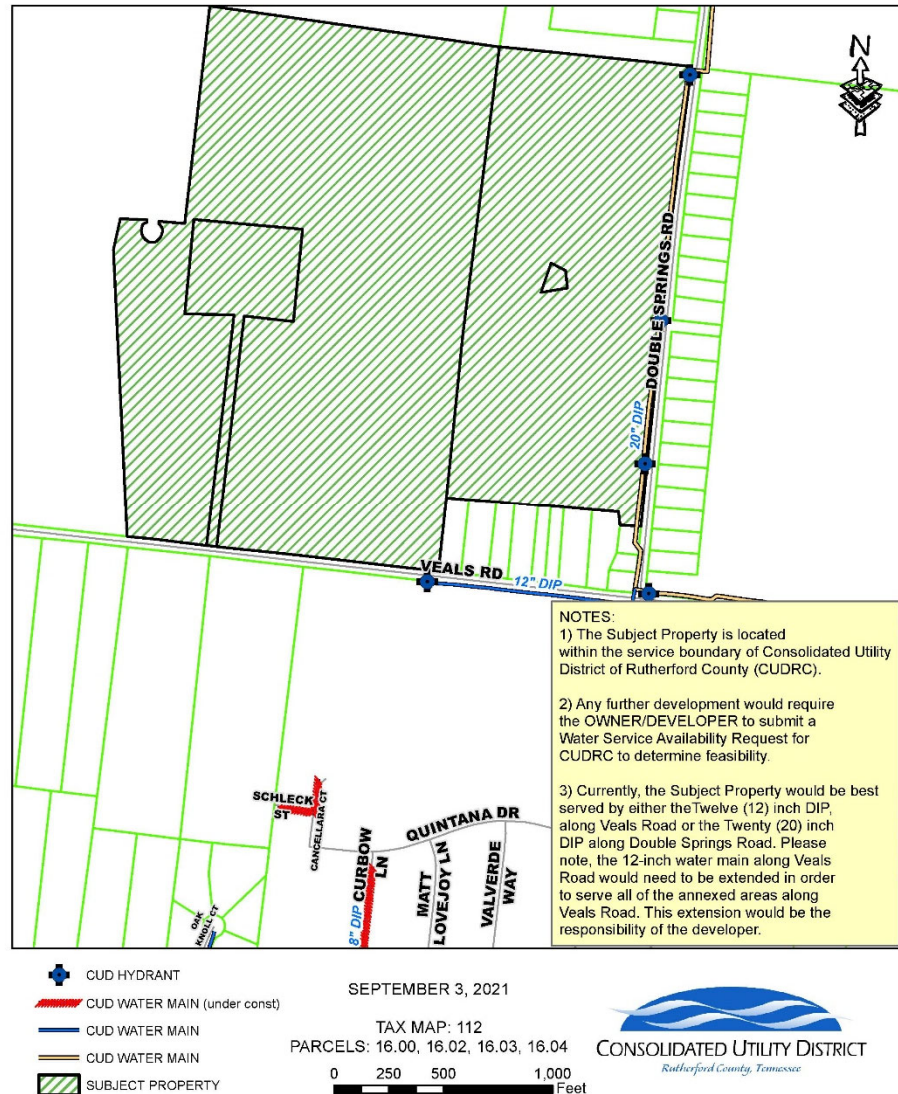


WATER SERVICE

The study area is located within Consolidated Utility District of Rutherford County's (CUDRC) service area. A 12-inch ductile iron water main (DIP) is located along Veals Road and a 20-inch DIP is location along Double Springs Road. Note the 12-inch water main along Veals Road would need to be extended in order to serve all of the annexed areas along Veals Road. This water line can serve the annexation study area and the future development, as illustrated in the attached exhibit and would be the responsibility of the developer to construct.

Prior to any future development, the developer of the property will be required to submit a Water Availability Application to determine feasibility and to complete CUD's Developer Packet through CUD's Engineering Department prior to entering the construction phase. Any new water line development must be done in accordance with CUD's development policies and procedures.

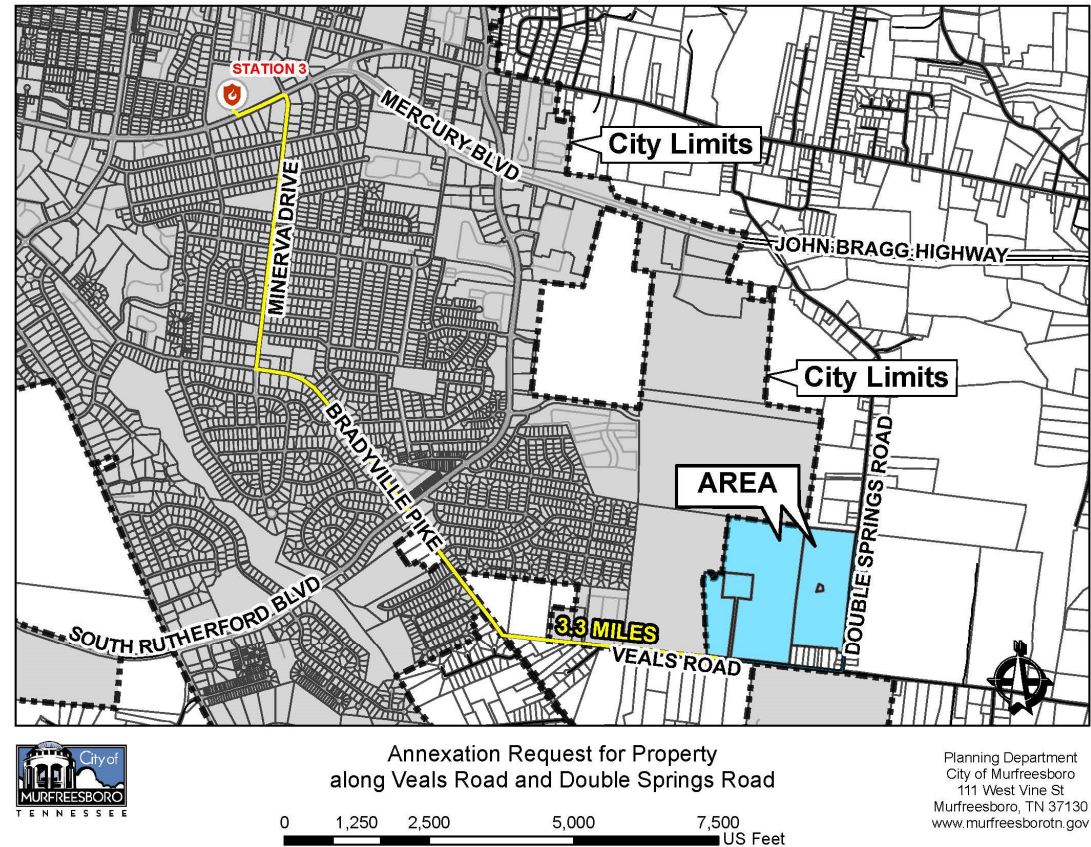
Hall Farm Veals Rd. & Double Springs Rd. Annexation Request



FIRE AND EMERGENCY SERVICE

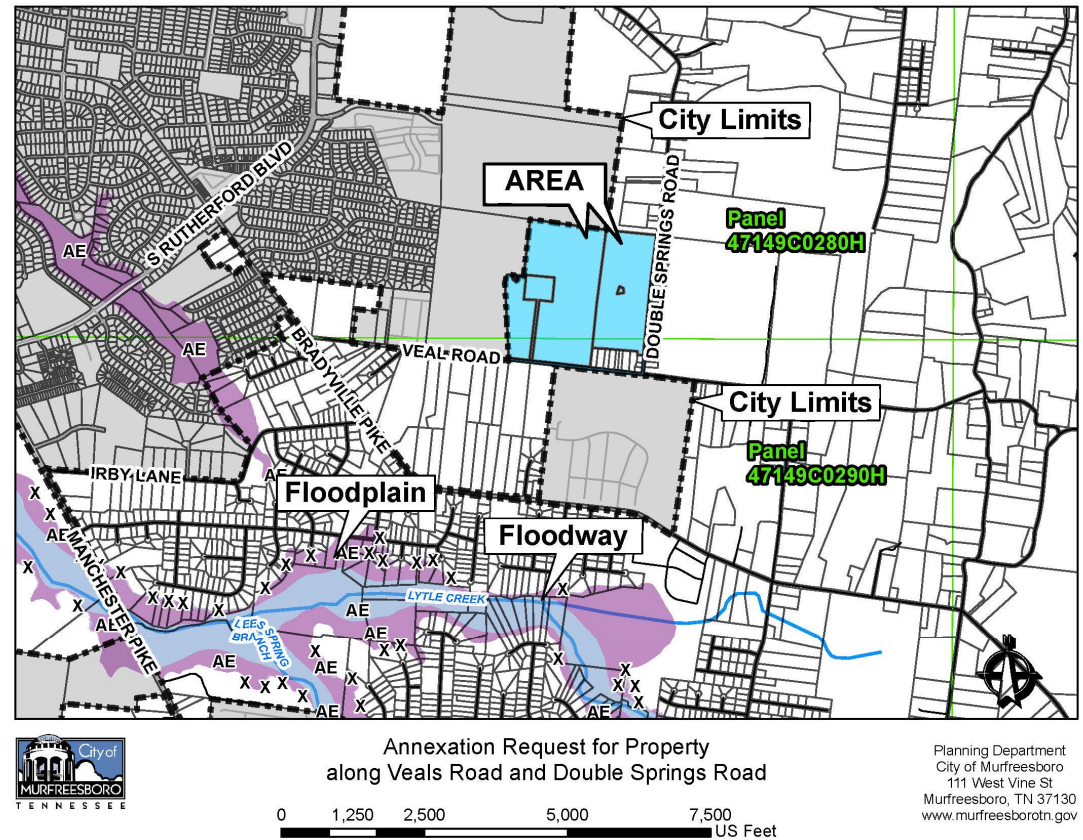
The Murfreesboro Fire and Rescue Department (MFRD) can provide emergency first responder and fire protection services to the study area at no additional expense immediately upon the effective date of annexation. Due to property access issues and limited fire hydrants and/or fire flows, fire protection service and emergency first responder services to the existing structure will be limited under present conditions. If access to the house is improved and fire protection is installed, then MFRD's standard emergency first responder services and ISO Class 1 fire protection can be provided. Alternately, if the structure is demolished prior to the effective date of annexation, then this will be a moot point and there will be no existing structures for which to provide fire protection services. For future development of the study area, required fire protection will need to be installed when it develops.

Currently the study area is located 3.3 miles from Fire Station #3 (1511 Doctor Martin Luther King Jr Blvd.). The yellow line on the adjacent map represents the linear distance range from the nearest fire station.



FLOODWAY

The study area is not located within a floodway or 100-year floodplain as delineated on the Flood Insurance Rate Maps (FIRM) developed by the Federal Emergency Management Agency (FEMA). The nearest floodway is the Lytle Creek floodway, located approximately one mile south of the study area and depicted on the adjacent map.



DRAINAGE

Public Drainage System

Public drainage facilities available to the study area are located within the ROW of Veals Road and Double Springs Road. The drainage facility within both roadways will become the responsibility of the City upon annexation. Routine maintenance for these facilities is included within the expected annual maintenance costs for the public roadway. State Street Aid and Stormwater Utility Fee are anticipated sources for funding the public drainage facilities operation and maintenance.

No additional public drainage facilities are included in the study area. Any new public drainage facilities proposed to serve the study area in the future must meet City standards.

Regional Drainage Conditions

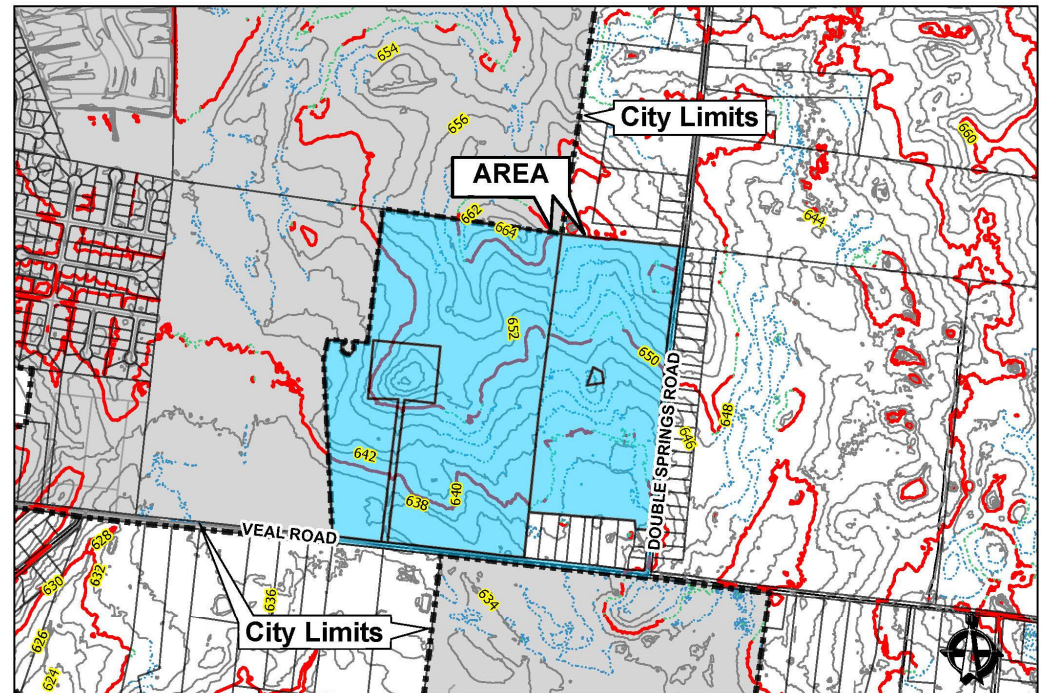
The study area drains to the ROW of Veals Road. An absence of surface streams indicates most properties are poorly drained or internally drained to sinkholes or slowly draining closed depressions.

Stormwater Management and Utility Fees

Upon annexation, stormwater management services provided by the City of Murfreesboro will be available to the study area and existing and new improvements will be subject to the Stormwater Utility Fee. The property is

currently developed with a single-family residence and will generate approximately \$39 per year in revenue for the Stormwater Utility Fee. The subject property is proposed to be developed with approximately 400 residential units. Based on this development scenario, it is anticipated that the site will generate approximately \$15,600 annually in revenue for the Stormwater Utility Fund upon full buildout.

The red lines on the adjacent map represent ten-foot contours. The grey lines represent two-foot intervals.



Annexation Request for Property
along Veals Road and Double Springs Road

0 500 1,000 2,000 3,000
US Feet

Planning Department
City of Murfreesboro
111 West Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

ANNEXATION FOLLOW-UP

The Murfreesboro City Council will be responsible for ensuring that this property will receive City services described in this plan. According to the Tennessee Growth Policy Act, six months following the effective date of annexation, and annually thereafter until all services have been extended, a progress report is to be prepared and published in a newspaper of general circulation. This report will describe progress made in providing City services according to the plan of services and any proposed changes to the plan. A public hearing will also be held on the progress report.

RESOLUTION 21-R-A-39 to annex approximately 123 acres located along Veals Road and Double Spring Road and rights-of-way of approximately 2,400 linear feet of Veals Road and 2,430 linear feet of Double Spring Road, and to incorporate the same within the corporate boundaries of the City of Murfreesboro, Tennessee, Hall Family Real Estate Partnership, applicant(s) [2021-510].

WHEREAS, the Owner(s) of the territory identified on the attached map as the “Area Annexed” have either petitioned for annexation or given written consent to the annexation of such territory; and

WHEREAS, a Plan of Services for such territory was adopted by **Resolution 21-R-PS-39** on December 16, 2021; and

WHEREAS, the Planning Commission held a public hearing on the proposed annexation of such territory on September 1, 2021 and recommended approval of the annexation; and

WHEREAS, the annexation of such territory is deemed beneficial for the welfare of the City of Murfreesboro as a whole.

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

SECTION 1. That, pursuant to authority conferred by T.C.A. Sections 6-51-101, et seq., the territory identified on the attached map as the “Area Annexed” is hereby annexed to the City of Murfreesboro, Tennessee and incorporated within the corporate boundaries thereof.

SECTION 2. That this Resolution shall take effect upon its passage, the public welfare and the welfare of the City requiring it.

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

43A2036E61F0401...
Adam F. Tucker
City Attorney

SEAL

Resolution 21-R-A-39

City Limits

Area annexed

DOUBLE SPRINGS ROAD

VEALS ROAD

City Limits

Area annexed



**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
NOVEMBER 3, 2021
PROJECT PLANNER: HOLLY SMYTH**

- 6.f. Zoning application [2021-424] for approximately 82.5 acres located along Veals Road to be rezoned from RS-6, RS-10, and RS-12 to PRD (Graystone PRD), and approximately 123 acres located along Veals Road and Double Springs Road to be zoned PRD simultaneous with annexation, Meritage Homes applicant.**

The subject property is located on the north side of Veals Road and the west side of Double Springs Road containing a total of 205.5 acres. The proposed PRD (Graystone PRD) would accommodate a total of 403 single-family residential units; 303 single family detached houses and 100 single family attached townhomes equating to **1.96 units per acre**. The study area is undeveloped with the exception of one single family dwelling and a cemetery. There are a total of 5 parcels involved which are identified as follows:

- Tax Map 112, Parcel 016.05- 82.5 acres, zoned RS-6, RS-10, and RS-12
- Tax Map 112, Parcel 016.04- 75 acres, zoned RM in the County
- Tax Map 112, Parcel 016.00 - 5 acres, zoned RM in the County
- Tax Map 112, Parcel 016.02 -42.84 acres, zoned RM in the County
- Tax Map 112, Parcel 016.03- 0.21 acre, zoned RM in the County

Adjacent Zoning and Land Uses

The surrounding zone districts include primarily RS-10 (Single-Family Residential District 10) to the west, RM-12 (Residential Multi-Family District 12) at the north-westerly corner, RS-10 and RS-6 to the north, County RM (Residential Medium-Density) to the east, and PRD (Planned Residential District) and County RM to the south. The primary surrounding land uses are either existing or proposed detached single-family dwellings on all sides with the north-westerly corner touching the Aspen Heights apartment development.

Proposed PRD

The PRD is being requested to allow for 100 single family attached townhome units with a horizontal property regime (HPR) and for 303 single family detached homes (144 on their own lots of record and 159 sold as part of a HPR) with a STEP sewer system serving all 403 residential units. The detached homes are most similar to what would be allowed in an RS-6 zone district, while the attached product is most

similar to what would be allowed in an RSA-Type 2 zone district. All homes shall be for purchase either by lots or sold via HPR.

Minimum single-family detached lot size shall be 6,500 ft², with a typical lot size of 6,600 ft² with a minimum 55' lot width. The proposed single-family detached homes shall range in size from 1,400 ft² to 2,500+ ft². Single-family detached homes shall have 2-3 bedrooms, and a mix of two-car front-entry and side-loaded garages with decorative garage doors. The 30' wide house products for the smaller lots would have side-entry garages. All detached units will have a 35' front setback(s) to garage (with 25' to the rest of the home), 5' side setbacks (or minimum of 10' between buildings), and 20' rear setbacks. The 40' wide house products would have front-entry garages. Solid waste shall be handled via the Murfreesboro Solid Waste Department and all streets will be public rights-of-way. Exterior materials shall consist of masonry materials, with corner units having enhanced side facades facing the streets.

The townhome units (i.e. "single family attached townhouse dwellings") shall range in size from 1,200 ft² to 1,600+ ft² in size. Townhomes shall have a minimum of 2 bedrooms and shall include decorative front-entry garages (with their use restricted to vehicular use only) with either 1-car garages with driveways accommodating 2-cars or 2-car garages with 4-car driveway parking. Additional visitor parking spaces are provided with 17 spaces in the 30 townhome unit area and 25 spaces in the 70 townhome unit area. All attached units will have 35' front setback(s) from back of sidewalk, 10' side setbacks between buildings or roadways, and 20' rear setbacks to property line or rears of buildings. Solid waste will be handled via individual carts picked up by a private trash service with carts stored in the garages. All townhome roadways shall be private. Exterior materials shall consist of masonry materials with end units facing streets having enhanced side facades.

This development shall continue the extension of the proposed collector street in the Farmhouse Downs development to the north (known as Lyons Farm Parkway), through the site to Veals Road, per the City of Murfreesboro Major Transportation Plan (MTP) that will ultimately tie John Bragg Highway back to Irby Lane. The updated program book shows a 60' right-of-way for this roadway with three 11' travel lanes in line with the MTP.

Landscape plantings and buffers are provided within and along the perimeter of the project as shown on page 26 of the program book and include the following:

- Landscape plantings along the new north-south collector road
- Berm & Decorative landscape buffer (Type A) along the north side of Veals Road
- Berm & landscape buffer (Type B) along the west side of Double Springs Road
- Landscape buffers (Type C) between the detached homes and the attached townhome areas

Several open space areas are proposed throughout the development. These areas are programmed to include elements such as playgrounds, dog-parks, open play fields, and an amenity center. The centralized amenity center shall provide residents with a pool, splash pad, playground, and clubhouse with an 83-space parking lot. It is unclear how much formal open space square footage is being provided when compared to the townhome developable land area and the entire developable land area. Therefore, this information needs to be incorporated into the plan book. All members of the development shall be part of an HOA managed by a third party. The HOA shall be responsible for maintaining all common areas and amenities. Monument signage shall be incorporated at the Veals Road and Double Springs Road entrances. Signs shall be constructed of masonry material and anchored with landscaping.

It is anticipated that 4-5 phases are anticipated as discussed on page 14 of the program book. Full construction of the new north-south collector road is broken down to construct 1/3 of the length of the roadway with Phase 1 and the remainder with Phase 4 or to “match the timing with Farmhouse Downs (the development to the north), whichever comes first”. Additionally, improvements to accommodate a southbound left turn lane on Bradyville Pike at Veals Road to include a southbound left turn lane with 100’ of storage as discussed in the Traffic Impact Study (TIS) is proposed to be constructed prior to issuance of the first certificate of occupancy (C of O) for Phase 2 homes. Phase 1 also proposes to construct the Septic Tank Effluent Pumping (STEP) system for the Phase 1 development before any units receive a C of O and will then install as the project progresses. Construction start for the amenity areas is proposed once 50% of the units within phase 1 have been built, which equates to 78 units.

The PRD zoning proposes no exceptions to the RS-6 or the RS-A, Type II comparative zoning districts.

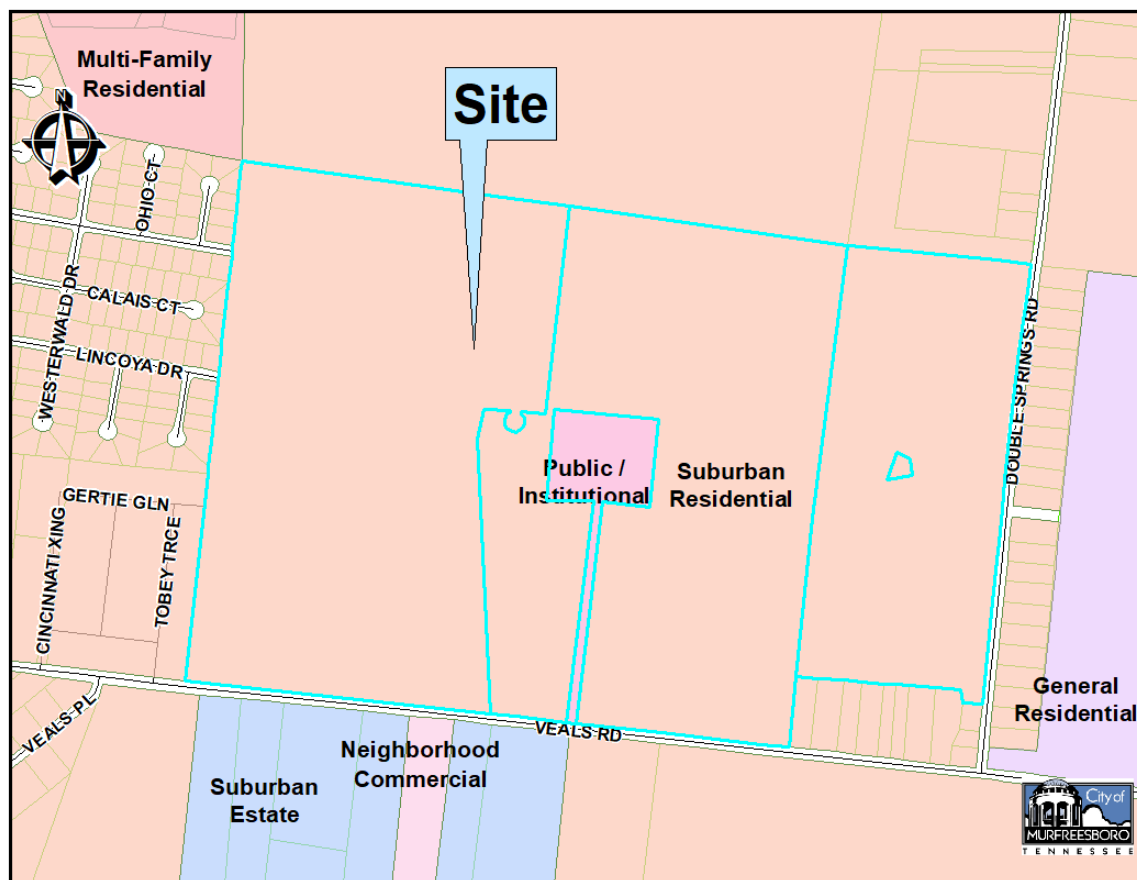
Future Land Use Map

The future land use map contained in the Murfreesboro 2035 Comprehensive Plan, which was adopted in July 2017, recommends that the subject property develop primarily with a *Suburban Residential* land use character. The 5-acre parcel currently developed with a single-family home is recommended to be developed with the *Public/Institutional* land use character (see excerpt from the future land use map below). It is unclear why Public/Institutional was recommended for this parcel. This Suburban Residential character intends to serve as a transition from urban to rural residential development and is predominantly located along the periphery of the City. The comprehensive plan calls out RS-15, RS-12, and RS-10 as existing zoning districts that are compatible with this designation. The

development types in this designation include detached residential dwellings and planned developments to provide other housing types (e.g. Auto-Urban residential) but with increased open space to preserve a suburban character setting. 2.0-3.54 dwelling units per acre is the recommended density.

The Public/Institutional classifications intends to have a high degree of visitation and/or pedestrian activity with people coming and going throughout the day with institutional functions and facilities potentially requiring multiple buildings or special parking and passenger drop-off requirements. The CU, PND, and AOD zone district are listed compatible districts. It is Staff's opinion that the assignment of the Public/Institutional land use character for the 5-acre parcel was an error or an oversight.

Based on the Comprehensive Plan designations, the proposed single-family detached residential uses are clearly consistent with the *Suburban Residential*. The overall gross density of 1.96 units per acre is also consistent with the plan's density range. The attached single family residential townhomes products may only be appropriate if increased open space and design helps to preserve a suburban character setting.



The Planning Commission will need to determine whether the overall PRD layout and design is appropriate in the context of the Comprehensive land use map and whether the open space provided is sufficient enough to be consistent with the recommendations of the Suburban Residential land use character, given the fact that townhomes are proposed.

Department Recommendation

Staff is generally supportive of this rezoning request for the following reasons, so long as the below “Staff Comments” are incorporated into the program book prior to City Council’s public hearing:

1. The overall density is consistent with the 2035 Land Use designation;
2. The plan incorporates ample amenities and open space that serve both the townhomes and single family detached homes; and
3. The development will include the construction of an important roadway depicted on the MTP connecting areas south to John Bragg Highway. The segment of this roadway through this development will be paid for entirely by the developer.

Action Needed

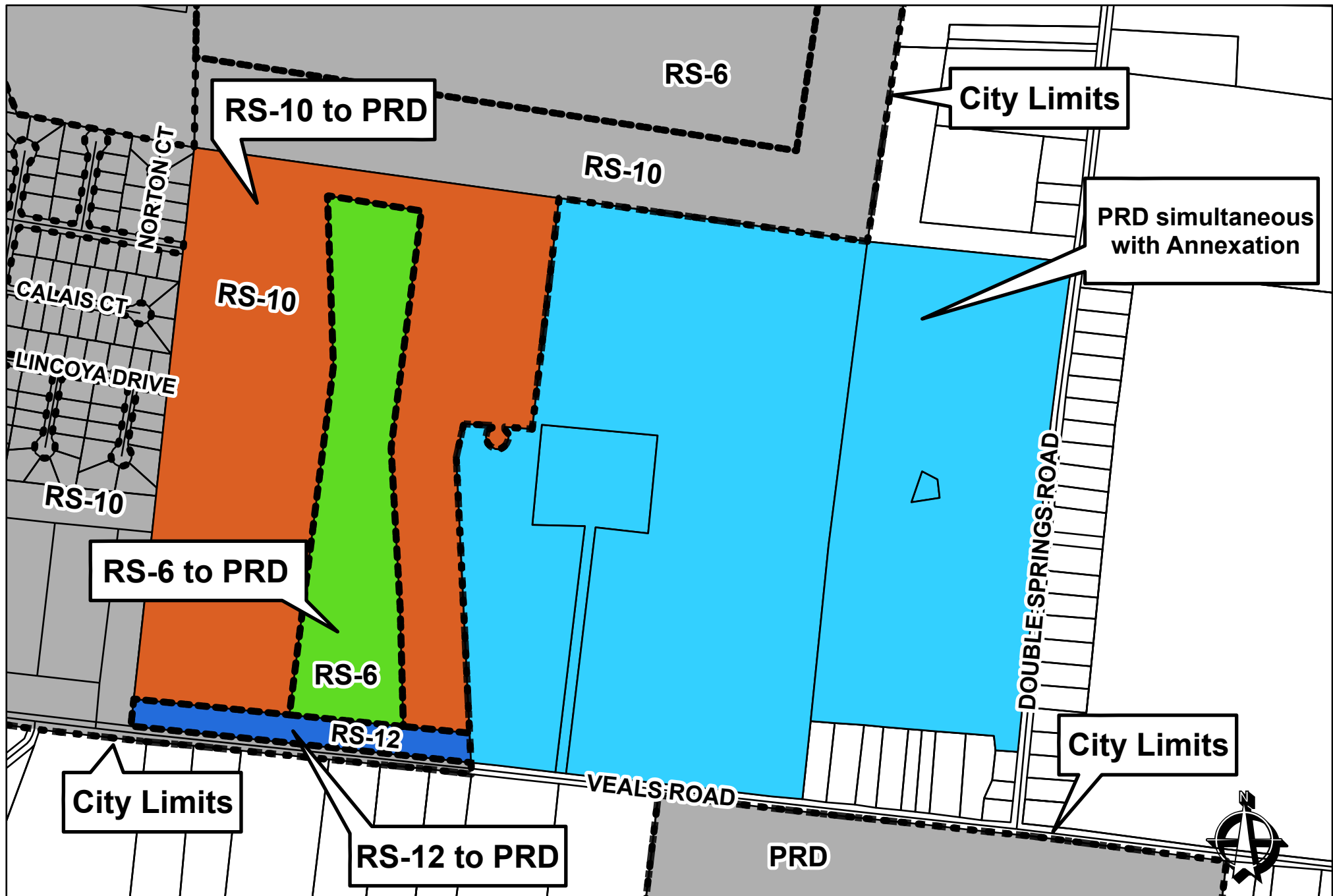
The applicant will be in attendance at the meeting to make a presentation and answer any questions. **He will also be providing updated architectural elevations at that time.** The Planning Commission will need to conduct a public hearing on this matter and then formulate a recommendation to the City Council. Staff recommends that any approval by the Planning Commission be made subject to the following comments being addressed prior to the City Council’s consideration of this item on first reading.

Staff Comments

1. **Improve the proposed architecture in the general direction shown in the black and white line drawings included in the Program Book. Provide enhanced corner elevations and typical side and rear elevations for all product types. Provide the updated final drawings as color renderings in the Program Book.**
2. Provide the square footage and percentage of formal open space being provided in the program book, as it does not currently reflect enough information to know how much of the developable townhome land area incorporates formal open space and how much as a percentage of the overall developable land area contains formal open space.

Staff Comments (continued)

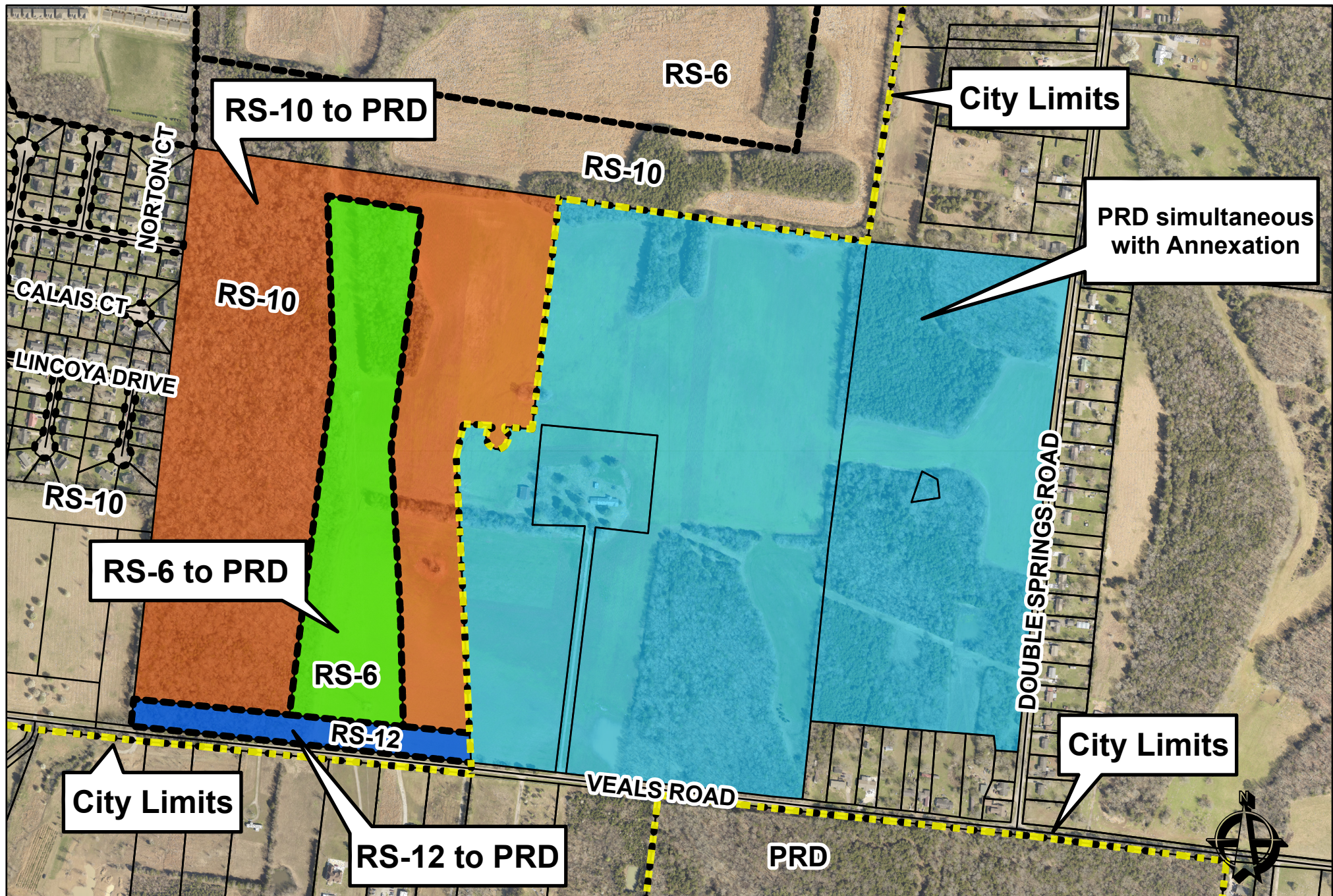
3. The southernmost 300' of Lyons Farms Parkway will need to be a 4-lane roadway and have 45 degree chords (as the Irby Lane connector will be at this intersection).
4. Widen Bradyville Pike at Veals Road to provide a southbound left turn lane with 100' storage length with adequate approaches as depicted in Figure 9 of the TIS.
5. Both Veals Road and Double Springs Road are substandard City Streets and therefore ROW must be dedicated for a total of 30' from the existing centerline of both roadways meeting Section 5.6 of the City's Subdivision Regulations.
6. Center left turn lanes will need to be provided at both entries into the project from Veals Road (one at Lyons Farms Parkway and the other nearest Double Springs Road), with adequate widening and distance to meet City standards.
7. The stub street on Crestview subdivision (called Lincoya Drive) that is proposed to not be connected into the subdivision will need to provide adequate City standard cul-de-sac and be reflected on pages 13 and 14 of the Program Book.
8. Long straight streets need to be avoided or include traffic calming measures.
9. Final Traffic Impact Study (TIS) report needs to include the following information:
 - a) Include the Carter's Retreat development (211 homes, approx. 2000 vehicles daily on Bradyville Pike) in the TIS.
 - b) Include signal warrant analysis for the intersection of Bradyville Pike and Veals Rd.
 - c) The intersections of Bradyville Pike & Medford Campbell and Rutherford Blvd & Floyd Ave meet the warrant for left turn lanes, however the improvements are not included in the recommendations.
 - d) Left turn lanes at the intersection of Veals Road at Lyons Farms Parkway are needed with this development (86 projected lefts during the peak hour). This intersection will warrant full compliments of lanes and appropriate 4 lane cross section for future signalization.



Zoning Request for Property along Veals Road and Double Springs Road.
 RS-10, RS-6, and RS-12 to PRD (Graystone PRD) and PRD Simultaneous with Annexation

0 280 560 1,120 1,680 2,240
 US Feet

Planning Department
 City of Murfreesboro
 111 West Vine St
 Murfreesboro, TN 37130
www.murfreesborotn.gov



Zoning Request for Property along Veals Road and Double Springs Road.
 RS-10, RS-6, and RS-12 to PRD (Graystone PRD) and PRD Simultaneous with Annexation

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 Murfreesboro, TN 37130
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0 280 560 1,120 1,680 2,240
 US Feet



GRAYSTONE - NORTHSIDE OF VEALS ROAD

A REQUEST FOR REZONING FROM RS-6, RS-10, RS-12, AND MEDIUM DENSITY RESIDENTIAL (COUNTY) TO A PLANNED RESIDENTIAL DEVELOPMENT
Murfreesboro, Tennessee

Initial Submittal

September 16th, 2021

Resubmitted

October 15th, 2021 for the October 20th, 2021
Planning Commission Workshop Meeting

Resubmitted

October 27th, 2021 for the November 3rd, 2021
Planning Commission Public Hearing

Resubmitted

November 1st, 2021 for the November 3rd, 2021
Planning Commission Public Hearing

Resubmitted

November 16th, 2021 for the December 2nd, 2021
City Council Public Hearing

Resubmitted

December 7th, 2021 for the December 16th, 2021
City Council Meeting

SEC, Inc.

SEC Project #21294

SEC, Inc.

Company Name: SEC, Inc.
Profession: Planning.Engineering.Landscape Architecture
Attn: Rob Molchan / Matt Taylor
Phone: (615) 890-7901
Email: rmolchan@sec-civil.com / mtaylor@sec-civil.com
Web: www.sec-civil.com

*850 Middle Tennessee Blvd.
Murfreesboro, Tennessee 37129*

Company Name: Meritage Homes
Profession: Developer/Builder
Attn: Kris Keown
Phone: (615) 992-2050
Email: Kris.Keown@meritagehomes.com
Web: meritagehomes.com

*5217 Maryland Way, Suite 222
Brentwood, Tennessee 37027*

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MAJOR THOROUGHFARE PLAN 05

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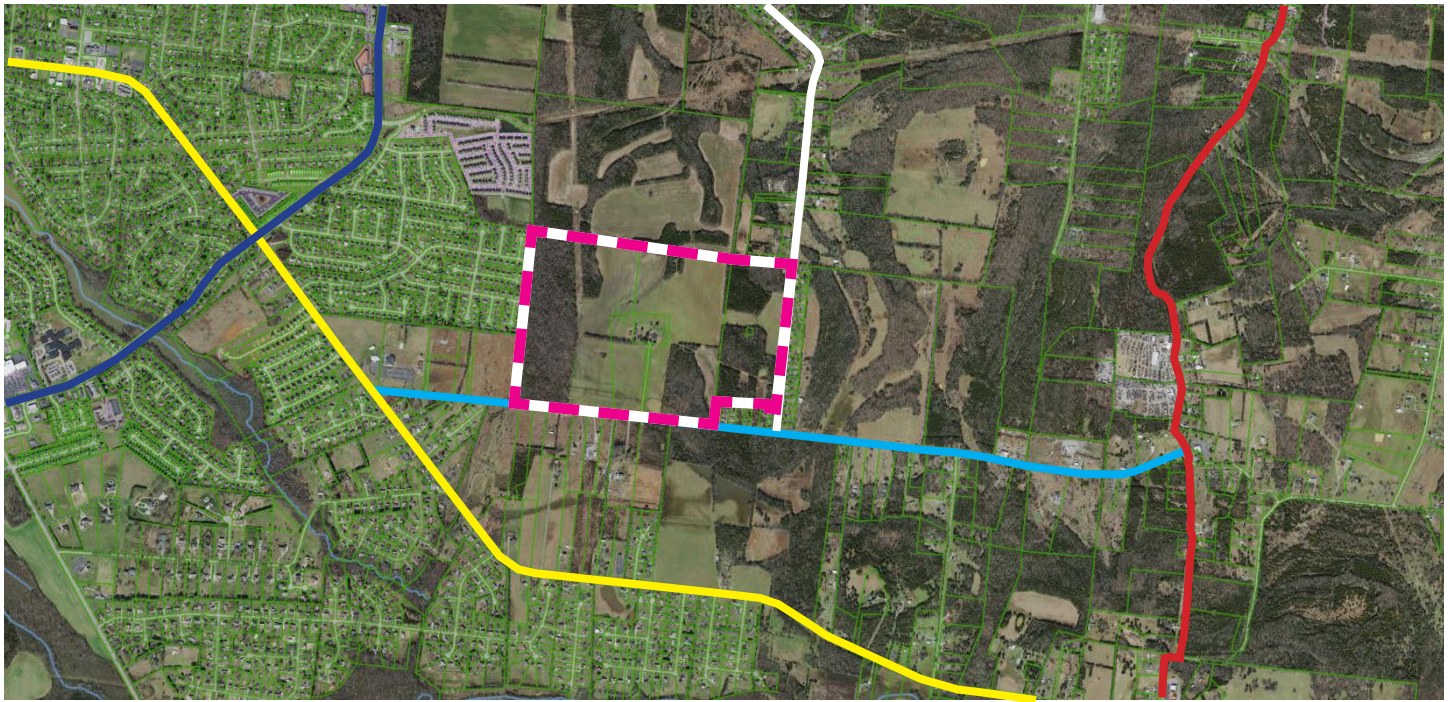
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AERIAL PHOTOGRAPH

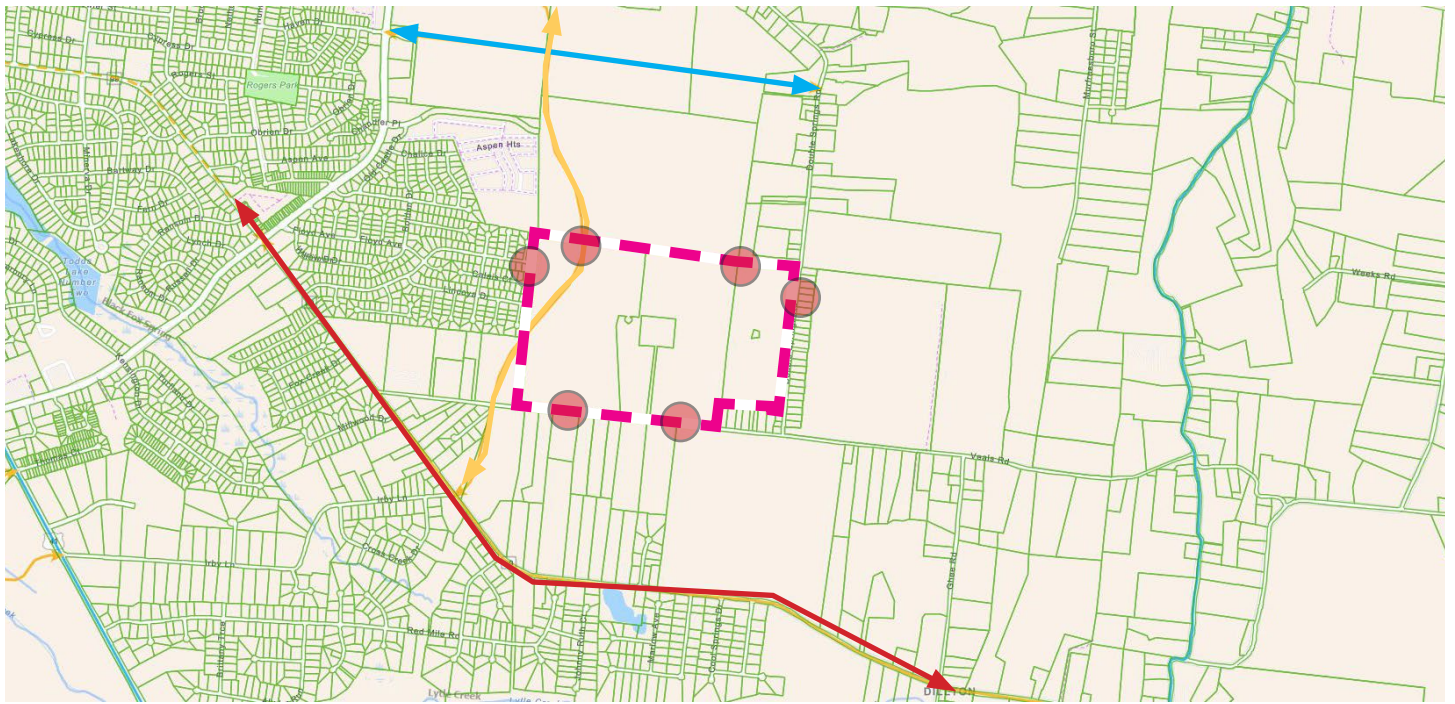
Not To Scale 

- | | | | |
|--|-------------------------|---|----------------------------|
|  | Veals Road |  | South Rutherford Boulevard |
|  | Bradyville Pike- Hwy 99 |  | Double Springs Road |
|  | Mount Herman Road | | |





Meritage Homes respectfully requests rezoning of the Halls Family properties containing 5 parcels along Veals Road from Medium Density Residential - RM (Rutherford County), RS-6, RS-10, and RS-12 (City of Murfreesboro) to Planned Residential Development (PRD) City of Murfreesboro to create Graystone. The property is located along the northern side of Veals Road and west of Double Springs Road. The site is identified as Parcels 16.00, 16.02, 16.03, 16.04, and 16.05 of Tax Map 112, and is approximately 205.21 acres.

The development will consist of 303 single-family detached homes and 100 single-family attached townhomes for a total of 403 homes for a density of 1.97 units per acre. All homes shall be for purchase and townhomes will be sold via HPR. Minimum single-family detached lot size shall be 6,500 sf, with a typical lot size of 6,600 sf. The proposed single-family detached homes shall range in size from 1,400 sf. to 2,500+ sf. Single-Family detached homes shall have 2-3 bedrooms, and a mix of two car front-entry and side loaded garages with decorative garage doors. Townhomes shall range in size from 1,200 sf. to 1,600+ sf in size. Townhomes shall have a minimum of 2 bedrooms and shall include a one/two car front entry garage with a decorative garage door. Home elevations shall be constructed of masonry materials to add quality and character to the community. This development shall continue the extension of the proposed collector street in Farmhouse Downs, through the site to Veals Road, per the City of Murfreesboro Major Thoroughfare Plan. Several open space areas are proposed throughout the development. These areas are programmed to include elements such as playgrounds, dog-parks, open play fields, and an amenity center. The centralized amenity center shall provide residents with a pool, splash pad, playground, and clubhouse. All members of the development shall be part of an HOA managed by a third party. The HOA shall be responsible for maintaining all common areas and amenities. Monument signage shall be incorporated at the Veals Road and Double Springs Road Entrances. Signs shall be constructed of masonry material and anchored with Landscaping.



MAJOR THOROUGHFARE PLAN

Not To Scale 

- MTI#19 3 Lane Roadway
- MTI#18 3 Lane Roadway
- MTI#20 3 Lane Roadway
-  Proposed Connection Points

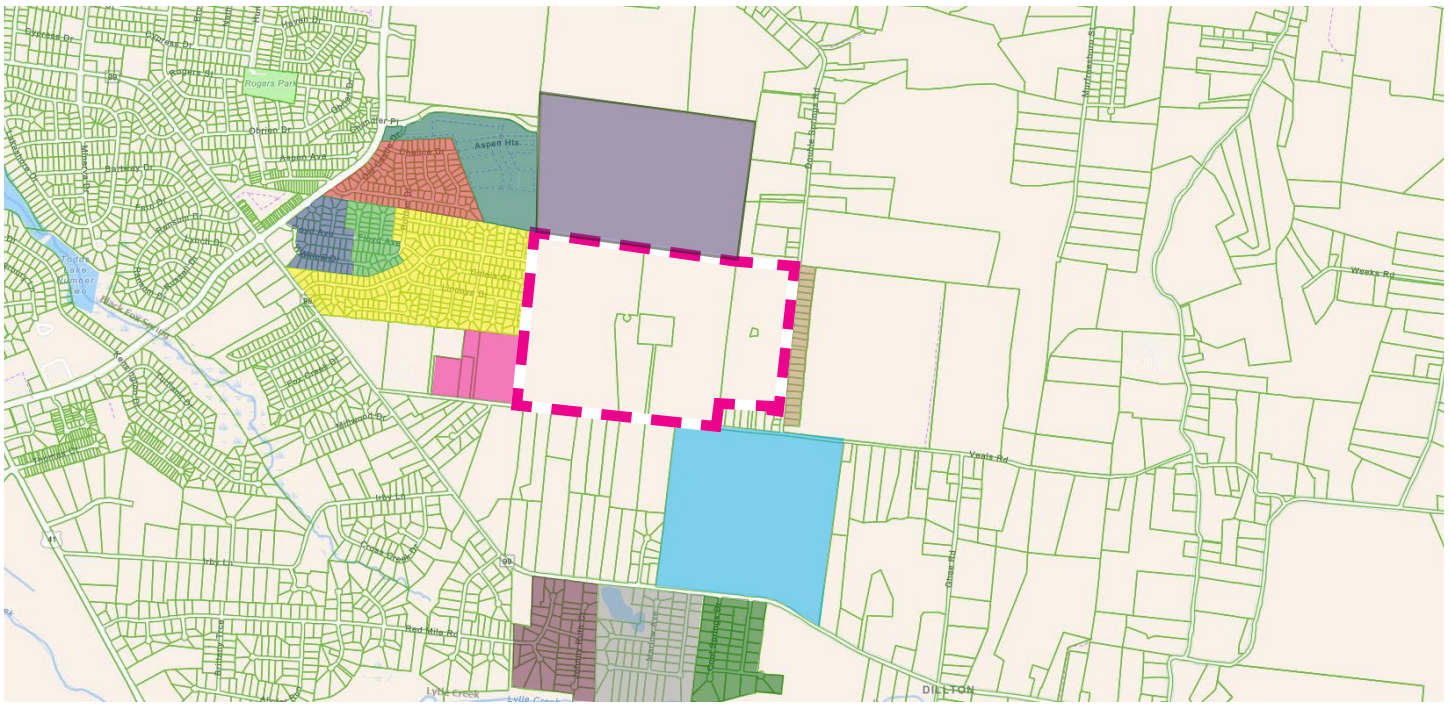


Site Boundary


The property's primary means of access shall be to the existing R.O.W.s of Veals Road and Double Springs Road. Additional access shall be provided via two connections to Farmhouse Down to the north and a connection to Medford Campbell Boulevard to the west. The City of Murfreesboro Major Thoroughfare Plan proposes a 3-Lane Collector Road within this development to ultimately connect East Main Street to Bradyville Pike.



Per the City of Murfreesboro: Greenways, Blueways, and Bikeways Master plan, no improvements exist or are proposed for roadways around this site.



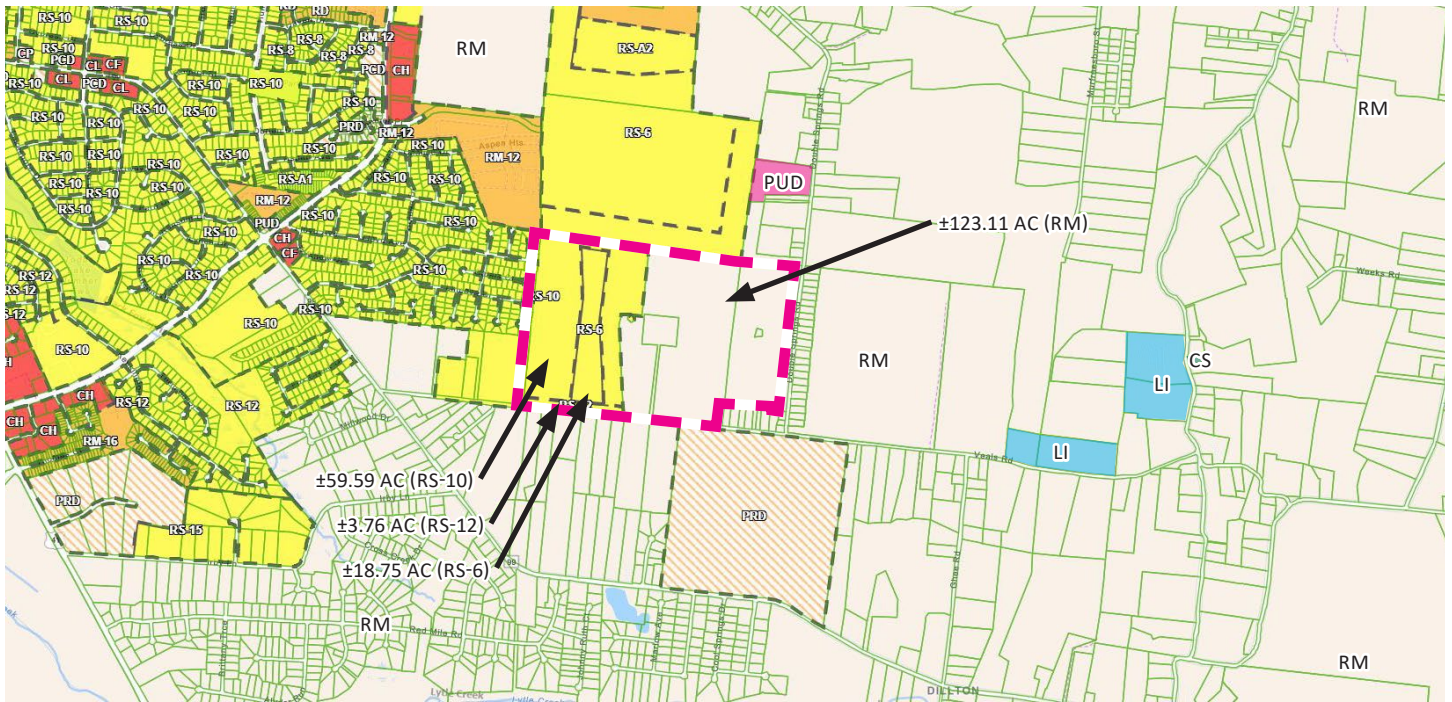
SUBDIVISION MAP

Not To Scale 

 Carters Retreat	 Stonegate	 Aspen Heights	 Briston
 Travelers Trace	 Willow Drive Estates	 Twin Springs	 Bradyton
 Crestview	 Wilson Estates	 Farmhouse Downs	



Graystone is surrounded by a mixture of residential subdivisions, and agricultural properties. Crestview is a residential development immediately adjacent to the west of Graystone consisting of one and two-story single-family detached homes without garages on 10,000 SF lots. The exterior elevations consist of primarily vinyl siding with brick along the front elevation on the first floor for most units. Twin Springs is a small residential subdivision immediately to the east of Graystone across Double Springs Road in the county with minimum 15,000 SF lots. This development consists of single-story detached homes without garages. The exterior elevations consist of primarily brick with vinyl & hardy board accents. North of the development is the approved City of Murfreesboro subdivision of Farmhouse Downs, consisting of commercial, apartment units, and single family detached homes. This subdivision will directly connect to the proposed development via two north-south connections. Carter’s Retreat to the south east of the proposed development is an approved PRD in the City of Murfreesboro consisting of single-family detached homes utilizing a STEP system.



ZONING MAP

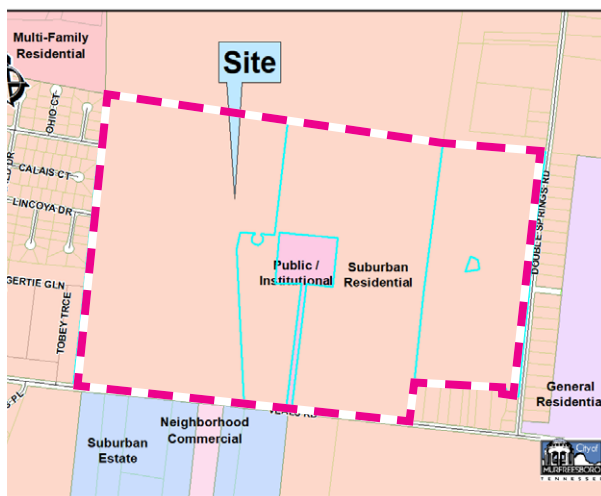
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RS-6	Residential Single-Family (RS-6)	CH	Residential Single-Family (RS-12)
RS-8	Residential Single-Family (RS-8)	CF	Residential Single-Family (RS-15)
RS-10	Residential Single-Family (RS-10)	PCD	Planned Commercial Development (PCD)
RS-12	Residential Single-Family (RS-12)	PRD	Planned Residential Development (PRD)
RS-15	Residential Single-Family (RS-15)	RM	Medium Density Residential (RM) (Rutherford County)
RM-12	Residential Multi-Family (RM-12)	PUD	Planned Unit Development (PUD) (Rutherford County)
RM-16	Residential Multi-Family (RM-16)	LI	Light Industrial (LI) (Rutherford County)
RS-A2	Residential Single-Family (RS-10)	CS	Commercial Services (CS) (Rutherford County)



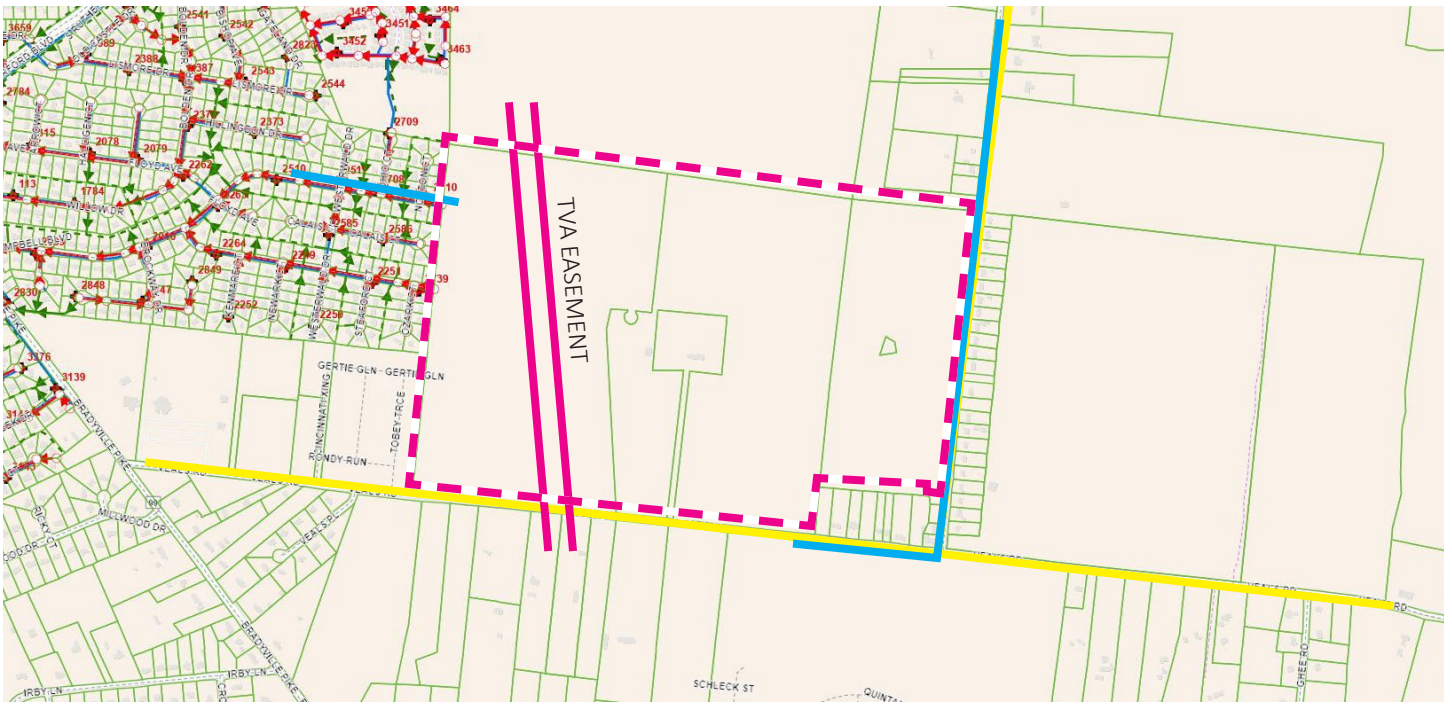
Site Boundary

The surrounding area consists of a mixture of zoning types and uses. All parcels directly adjacent to the property are zoned for residential land use. Further to the east along Veals Road are a couple of properties zoned Light Industrial (LI) in Rutherford County.



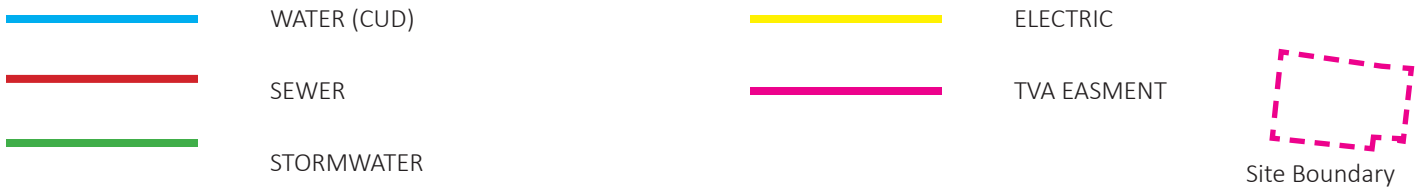
The Murfreesboro Future Land Use Plan proposes this area as suburban residential (SR). The character of this land use includes detached residential dwellings, and attached residential with the notion of increased open space. Development options can be established, which allow for smaller lot sizes in exchange for greater open space, with the open space devoted to maintaining the suburban character and buffering adjacent properties and roads. Density for this character ranges from 2.0 to 3.54 dwelling units per acre. Generally compatible zoning districts include RS-15, RS-12, and RS-10

The proposed development aligns with the described character of the area and provides an overall density of 1.97 dwelling units per acre (within the 205 acres) along with ample open space.



UTILITY MAP

Not To Scale 



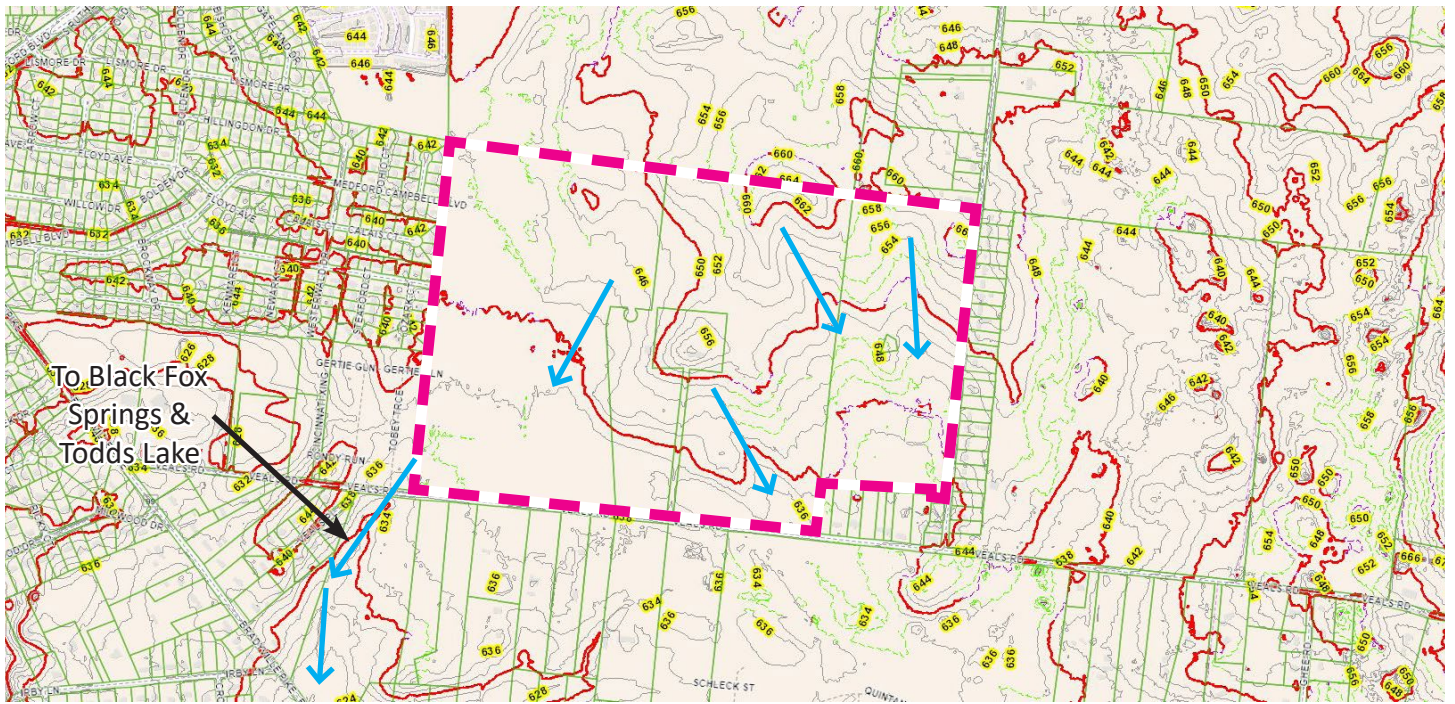
Water service will be provided by Consolidated Utility District. There is an existing 6-inch and 12-inch ductile iron water line along the West and East portions of Veals Road respectively. There is also an existing 20 inch ductile iron water line along Double Springs Road. The developer will be responsible for extending the waterline into the site for domestic and fire water service.



Sanitary sewer service will be provided by the Murfreesboro Water Resources Department via an on-site STEP system. The developer is responsible for the installation, and MWRD shall own and maintain the facility.



Electric service will be provided by Middle Tennessee Electric. Service will be extended from Veals Road, Double Springs Road, and Medford Campbell Boulevard. The developer will be responsible for extending the electric lines into the site, and all on-site electric will be underground. Any off-site improvements will be coordinated with MTE.



HYDROLOGY AND TOPOGRAPHY

Not To Scale 

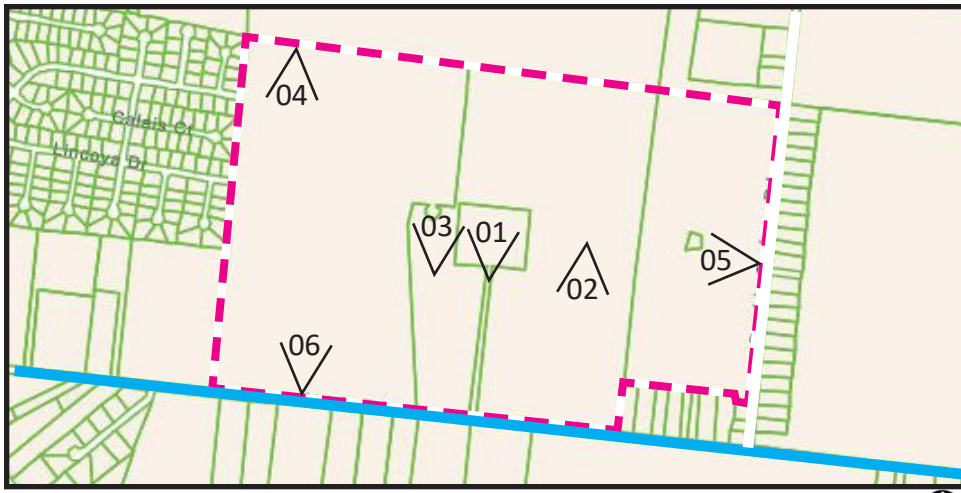
 WATER FLOW DIRECTION

 INTERMEDIATE CONTOURS

 INDEX CONTOURS


Site Boundary

The topographic map above shows the site's topographic high point generally at the northeastern corner of the property. From this high point, the property drains towards the southeast and southwest. All stormwater on the site drains towards Veals Road and eventually ends up in Black Fox Springs before heading towards Todds Lake. No portions of this site lie with a floodway or floodplain per FEMA Map Panel 47149C0280H eff. 1/4/2007, and FEMA Map Panel 47149C0290H eff. 1/4/2007.





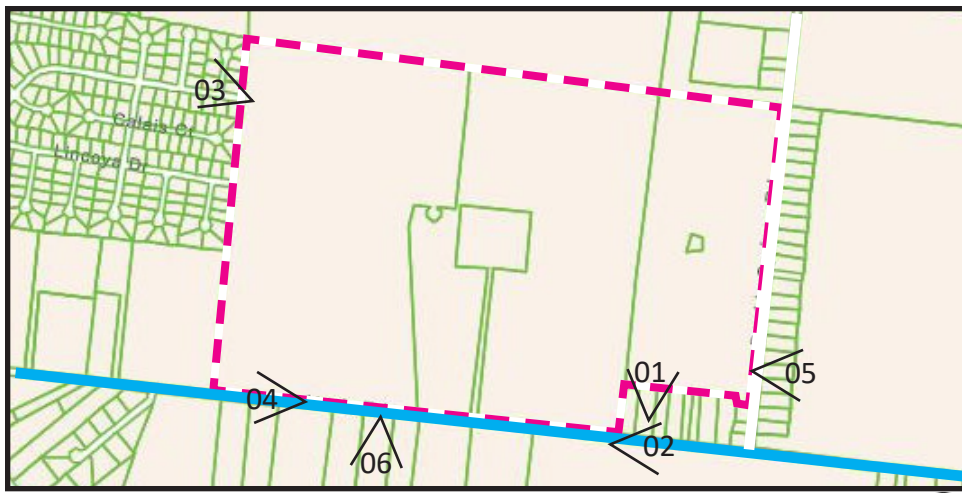
-  Veals Road
-  Double Springs Road



PHOTO DIRECTION MAP

Not To Scale 





- Veals Road
- Double Springs Road



PHOTO DIRECTION MAP

Not To Scale



Development Standards: All

- Entrances off of Veals Road and Double Springs Road shall include entrance signage. Signs shall be constructed of masonry materials and anchored with landscaping
- A berm and decorative Type 'A' buffer will be provided along Veals Road, except where affected by existing wetlands.
- Builders shall install sod and landscaping in front yards
- Builders shall install a front yard tree on each lot or one per home on HPR portion.
- All mechanical equipment (i.e. HVAC and transformers) to be screened or located at rear of homes
- All on-site utilities will be underground
- Prior to construction plan review, a complete and thorough design of the stormwater management system and facilities will be completed
- All home owners will be required to be a member of the H.O.A.
- As a member of the H.O.A., the residents will be subject to restrictive covenants, and be required to pay membership dues as determined by a 3rd party management company
- HOA will be managed by independent 3rd party management company
- The common areas will be owned and maintained by an H.O.A.
- All streets have been designed to comply with Murfreesboro Streets Standards
- Public sidewalks will be provided on both sides of all streets throughout the development to create a pedestrian friendly community
- Mail service will be provided via cluster box units (CBU).

Development Standards: Single-family Detached Homes

- 303 single-family detached homes with 2-3 bedrooms.
- Single-family homes shall be a minimum of 1,400 SF of living area.
- 40' homes shall be on its own lot of record, and sold fee simple.
- 30' homes shall be recorded and sold as a part of a horizontal property regime.
- Parking for the single-family detached homes shall comply with the City of Murfreesboro requirements.
- Each single family lot will provide at least 4 parking spaces per lot (outside of the garage).
- Each lot will have concrete driveways wide enough for 2 vehicles , and have a minimum width of 16 feet.
- Solid waste shall be handled via the Murfreesboro Solid Waste Department.
- All streets will be public rights-of-way.
- All streets have been designed to comply with Murfreesboro Streets Standards.
- HVAC units will be located at the rear or side of each residence.

Development Standards: Single-family Attached Townhomes

- 100 single-family attached townhomes with 2-3 bedrooms each.
- Townhomes shall be a minimum of 1,200 SF of living area.
- Townhomes shall be recorded and sold as part of a horizontal property regime.
- Parking for the attached townhomes shall comply with the City of Murfreesboro requirements (1.1/BR).
- A Type 'C' Landscape Buffer shall be constructed along the length of boundaries of the townhome areas adjacent to single-family detached homes.
- Solid waste will be handled via individual carts picked up by a private trash service.
- Any solid waste enclosures will be constructed of masonry materials consistent with building architecture and be at least 8 feet tall with opaque gates and enhanced with landscaping.
- All Townhome driveways and parking areas will be private and maintained by the H.O.A.
- Each Townhome shall have concrete driveways wide enough for 1 vehicles , and have a minimum width of 12 feet & 35 feet deep.
- Garages within townhome portions of the development shall be restricted to vehicular use only.
- All townhome roadways shall be private.
- HVAC units will be located at the rear of each residence
- Visitor parking shall be provided within townhome areas.
- Townhome trash carts shall be stored inside garages.
- Townhome formal open space shall be provided within common areas throughout the development. Total formal open space shall be at a minimum of 0.66 Acres (5% of the townhome area).



Total Land Area:	±205.21 Acres
Total Number of Units:	403
Single Family Detached:	303
Townhomes:	100
Density: 403 Units/ 205.21 Acres =	±1.96 Units/Acre
(All units will be min. 2 bedrooms)	
Total Open Space:	±62.75 Acres (40%)
Active Open Space	±6.15 Acres (3.0%)
Stormwater (Detention)	±8.87 Acres (5.7%)
Existing Wetlands to Remain:	±21.11 Acres (13.5%)
STEP System:	±47.96 Acres
Minimum Lot Size:	6,500 Square Feet
Typical Lot Dimensions:	55' x 120'
Total Length of New Roadway:	±18,600 Linear Feet
Proposed Collector Roadway:	±2,600 Linear Feet
Proposed Local Streets:	±16,000 Linear Feet

- STEP Fields
- Open Space
- Usable Open Space Areas
- Wetlands
- Detention Areas
- Proposed Lots 40' Wide Homes (144 homes)
Of which 18 shall have enhanced side elevations
- Proposed Lots 30' Wide Homes (159 homes)
Of which 25 shall have enhanced side elevations
- Proposed Townhomes (100 Homes)
Of which 10 shall have enhanced side elevations
- Existing Cemetery
- Formal Open Space (0.66 AC)
- Enhanced Side Elevations As Indicated on Plan

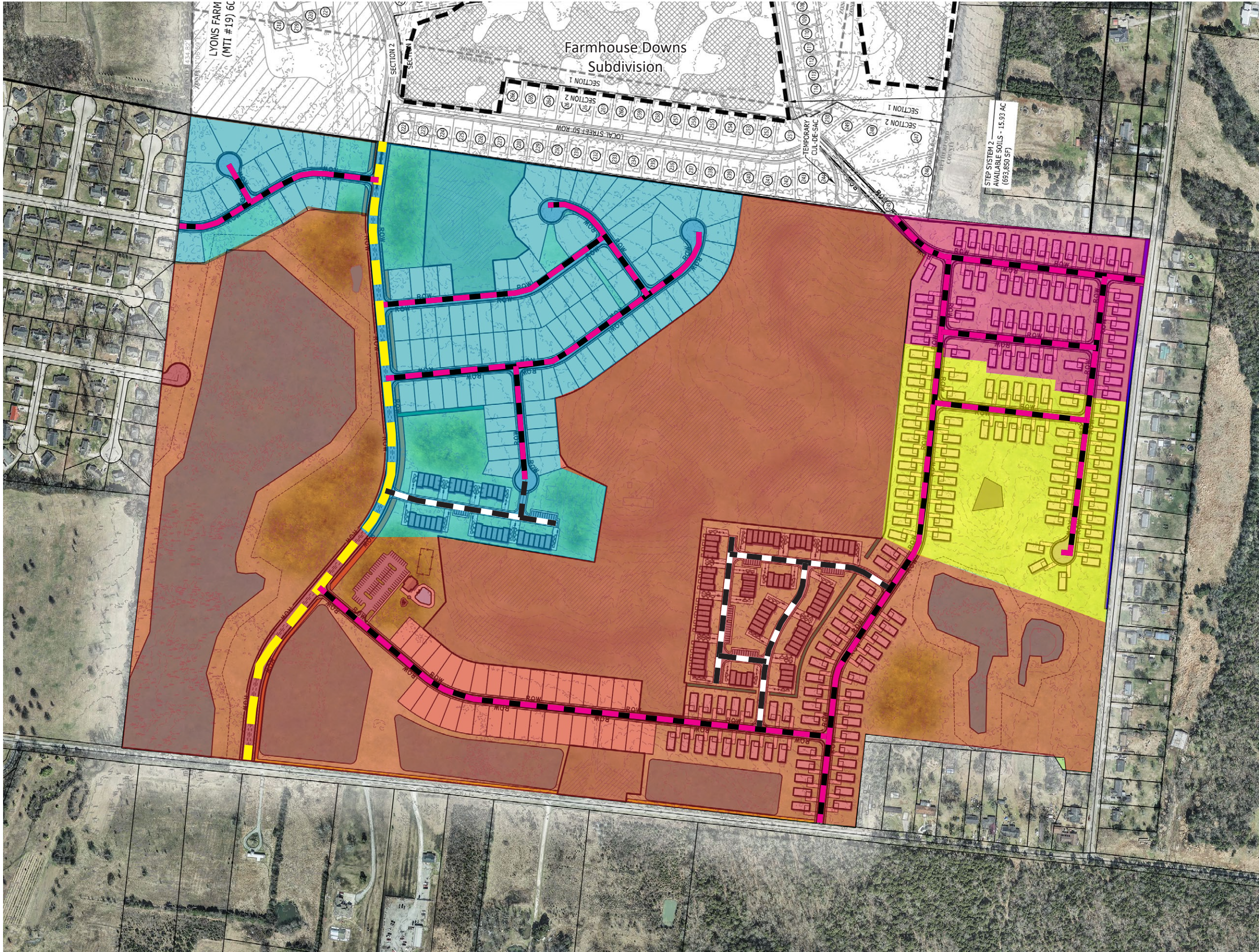


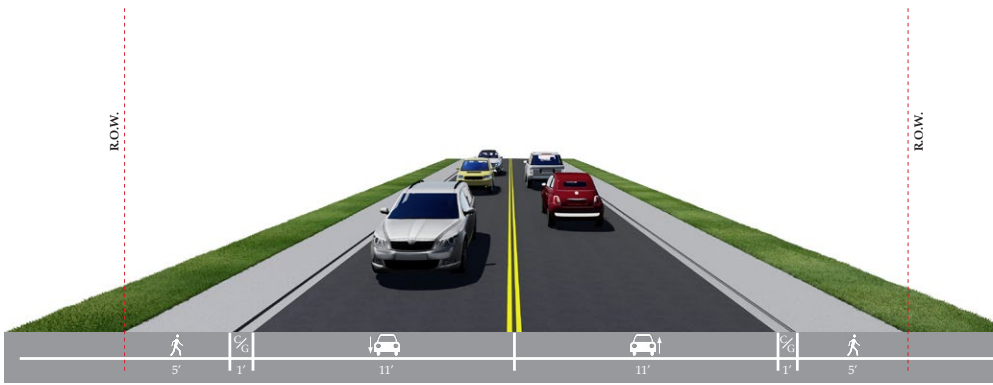
Murfreesboro, Tennessee SEC Project #21294

PHASE	TOWN HOMES	30' HOMES	40' HOMES	AC
1	70	49	36	135.07
2	0	58	0	16.66
3	0	52	0	12.14
4	30	0	108	41.61
TOTAL	100	159	144	205.21

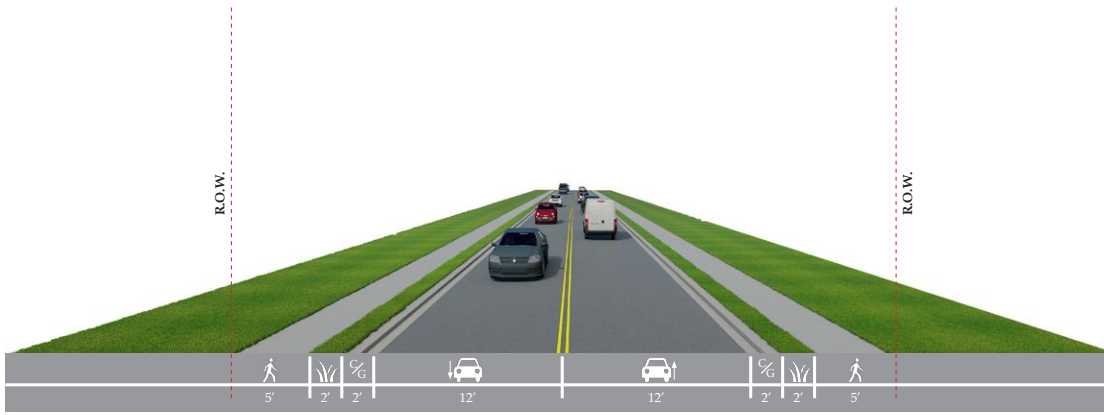
- Phase 1
- Phase 2
- Phase 3
- Phase 4

- The project is anticipated to be built in 5 phases
- Construction of Phase 1 is planned to begin within 90-120 days after the completion of the rezoning process
- The timing of the remaining phases of construction will be market driven and dependent upon the absorption of the units in the previous phase
- In general, the following section of construction will begin after the previous phase is 80%-85% sold
- Amenities are to begin construction when 50% of the units are built within their respective phases.
- Phase 1 shall include the construction of the STEP fields for Phase 1. The rest will be installed as project progresses.
- Bradyville Pike at Veals Road shall be improved to include a southbound left turn lane with 100' of storage prior to issuance of CO for phase 2 homes.
- Construction of Collector Road will be with Phase 4 or to match timing with Farmhouse Downs, whichever comes first.

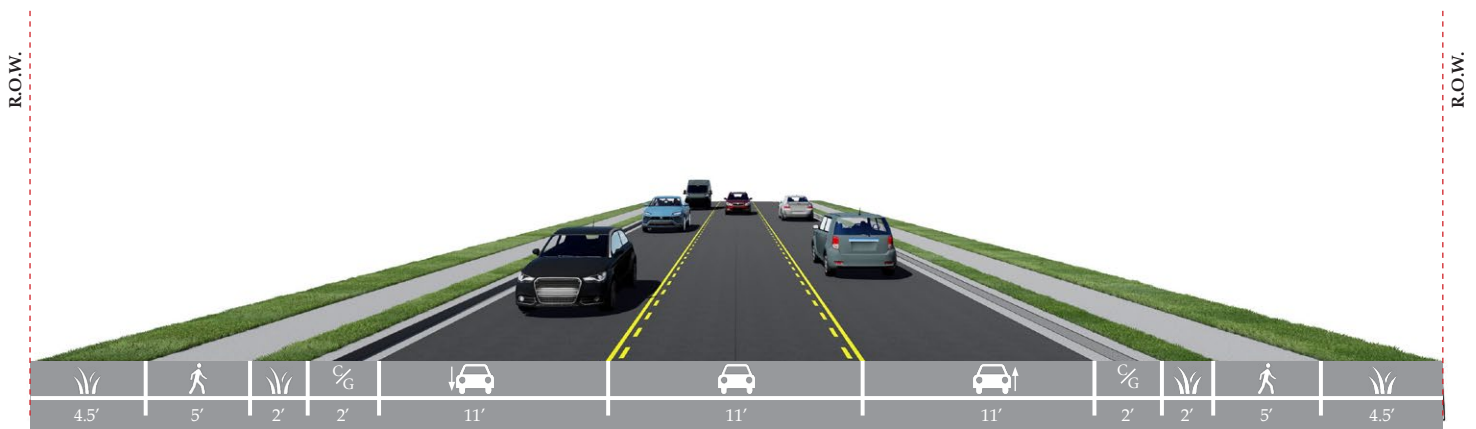




Typical Private Road Cross Section (Townhomes)



Typical 42' ROW Cross Section



Typical 60' Collector ROW Cross Section

Townhome Sample Architecture

Architectural Characteristics:

- Building heights shall not exceed 35 feet in height
- All buildings will be 2 story
- All units will have at least 2 bedrooms
- All the units will have eaves per design elevations
- All units will have a patio area at the rear of the unit
- All attached homes will recorded and sold via Horizontal Property Regime
- All homes shall have a one-car or two-car front entry garage with either two-car or four-car surface parking in front of units.
- Front entry garages will have decorative carriage-style doors with windows
- Garage door color will match trim of the unit
- Townhome buildings will be comprised of alternating unit style and unit colors
- Developer shall control elevations on each building to prevent monotonous facades and provide variety instead.
- Parking will be minimum of 1.1 spaces per bedroom for each unit
- End units to have enhanced side facades facing streets
- Garages will be for vehicular use only



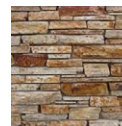
Example of Brick
(different colors will be allowed)



Example of Fiber Cement Board
(different colors will be allowed)



Example of Board and Batton
(different colors, cuts, patterns will be allowed)



Example of Stone Veneer
(different colors, cuts, patterns will be allowed)

Building Materials:

Front Elevations:

All Masonry (Brick, Stone, Cement Board Siding)

Cement Board Siding in the Dormers/Gables

Side Elevations (Internal to the Site):

Cement Board Siding

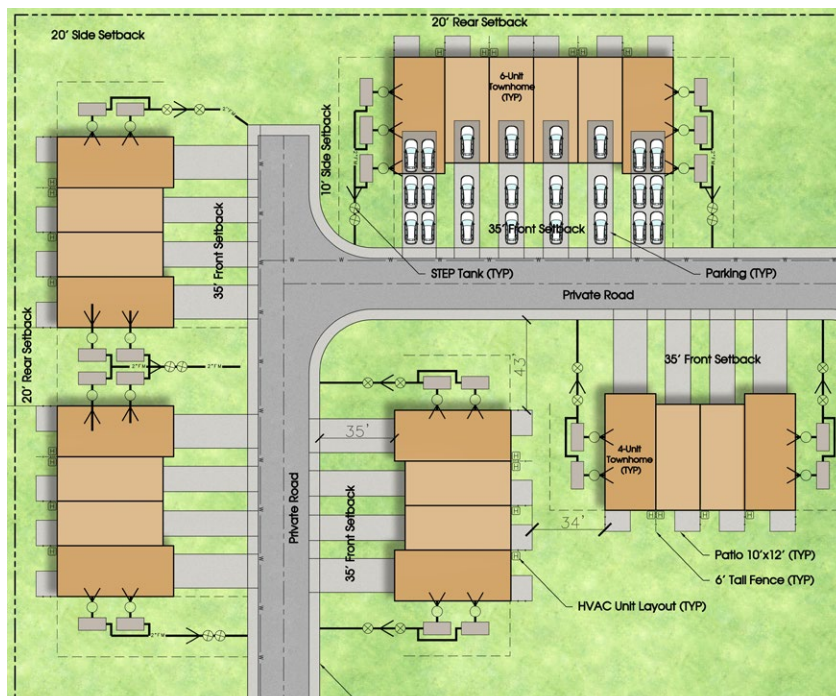
*Where side elevations face onto a street, the side elevation shall be of enhanced variety.

Rear Elevations:

Cement Board Siding

All Elevations:

Vinyl Only Permitted in Trim & Soffit Areas



Townhome Setbacks Internal to the Site

Front to back of sidewalk:	35-feet
Side Facing Roadway:	10-feet
Side Facing Buildings:	10-feet
Rear to Property Line:	20-feet
Rear Between Buildings:	20-feet

4-Unit Townhome Elevation



*The elevations of the homes will vary across the development. The images above are meant to convey the general appearance and functionality of the homes.

4-Unit Townhome Elevation



6-Unit Townhome Elevation



6-Unit Townhome Elevation



6-Unit Townhome Elevation



30' Wide Single-Family Homes Sample Architecture

Architectural Characteristics: Single-family Detached 30' Wide Homes

- Building heights shall not exceed 35 feet in height
- All buildings shall be a maximum of two stories
- All units will have at least two bedrooms and square footage ranging from 1,400 sf to 2,500 sf
- All the units will have eaves
- All homes shall have a 2 car side-entry garages
- Garages will have decorative garage doors with windows
- Garage door color will match trim of the unit and will be either white or a neutral color
- Corner homes to have enhanced side facades facing streets
- Rears facing Double Springs Road will be screened by a berm & buffer in common space to be maintained by HOA.
- 30' wide homes shall be sold as part of a Horizontal Property Regime as per page 12.

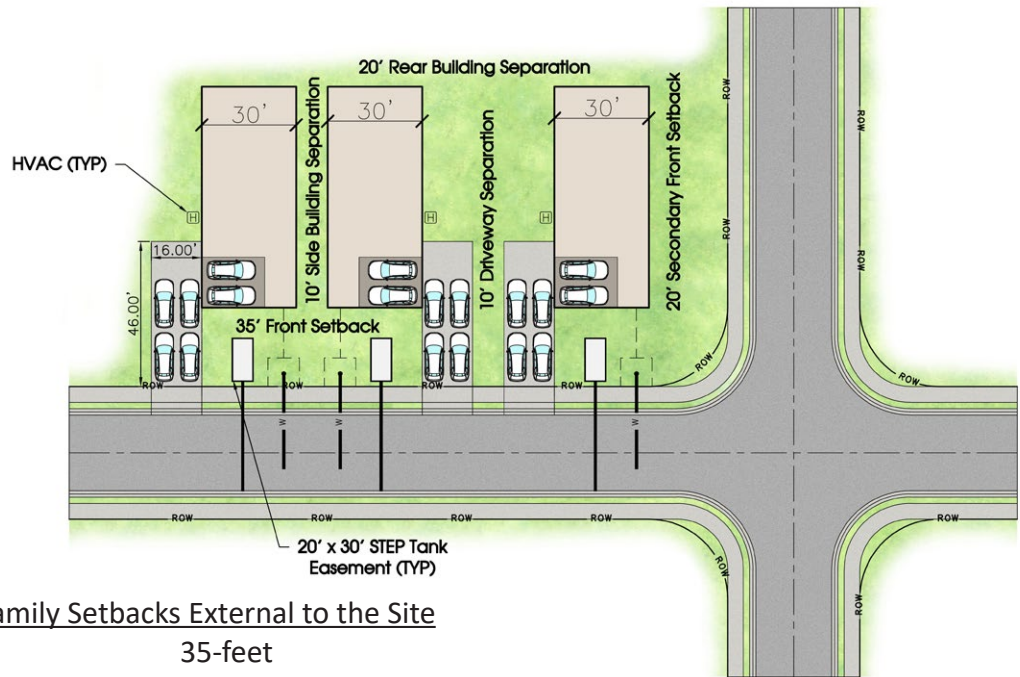
Building Materials:

Front Elevations: All Masonry (Brick, Stone, Cement Board Siding)
Cement Board Siding in the Dormers/Gables

Side Elevations: Cement Board Siding

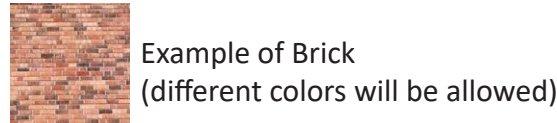
Rear Elevations: Cement Board Siding

All Elevations: Vinyl Only Permitted in Trim & Soffit Areas

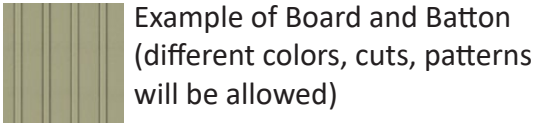


Single Family Setbacks External to the Site

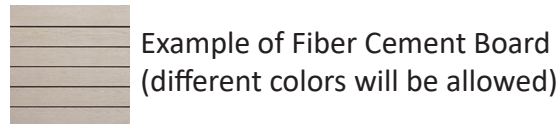
Front: 35-feet
Secondary Front: 20-feet
Side: 5-feet
Rear: 20-feet



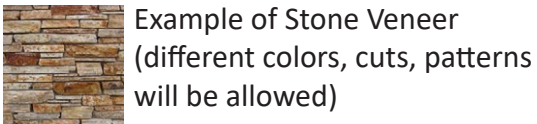
Example of Brick
(different colors will be allowed)



Example of Board and Batton
(different colors, cuts, patterns will be allowed)

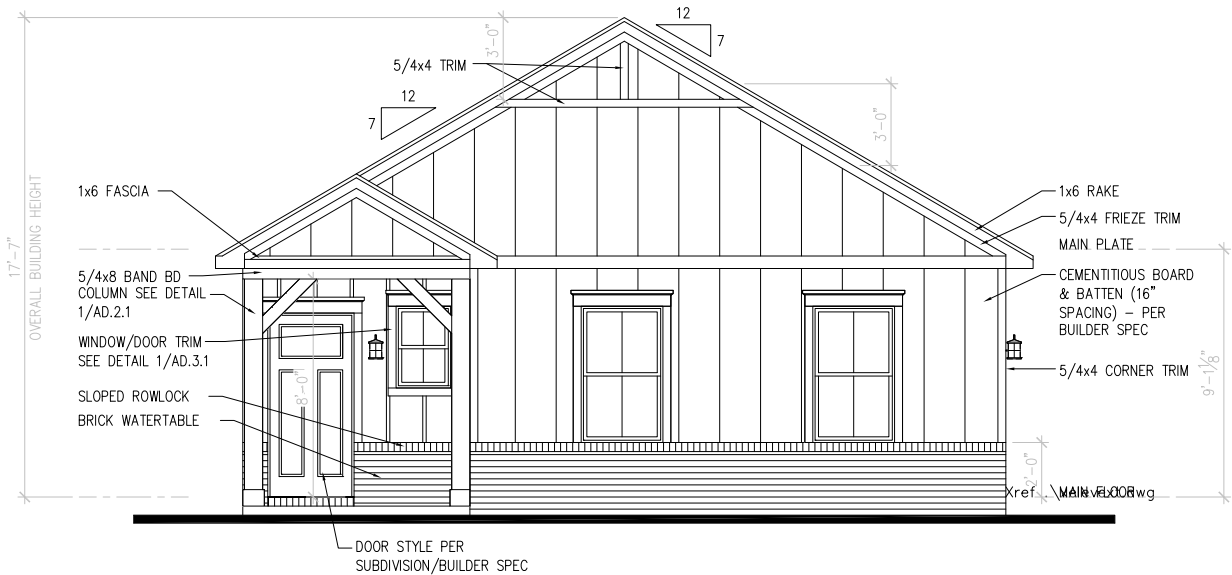


Example of Fiber Cement Board
(different colors will be allowed)



Example of Stone Veneer
(different colors, cuts, patterns will be allowed)

Autumn: 1,420 SQFT | 28' X 70' (80 W/ PARTIO) | RANCH 3 BEDROOM/2 BATH



*The elevations of the homes will vary across the development. The images above are meant to convey the general appearance and functionality of the homes.



FINLEY: 1,528 SQFT | 28' X 40' (50' W/PATIO) | 2 STORY PRIMARY UP | 3 BED/2.5 BATH



ELEVATION "B"



ELEVATION "C"

*The elevations of the homes will vary across the development. The images above are meant to convey the general appearance and functionality of the homes.

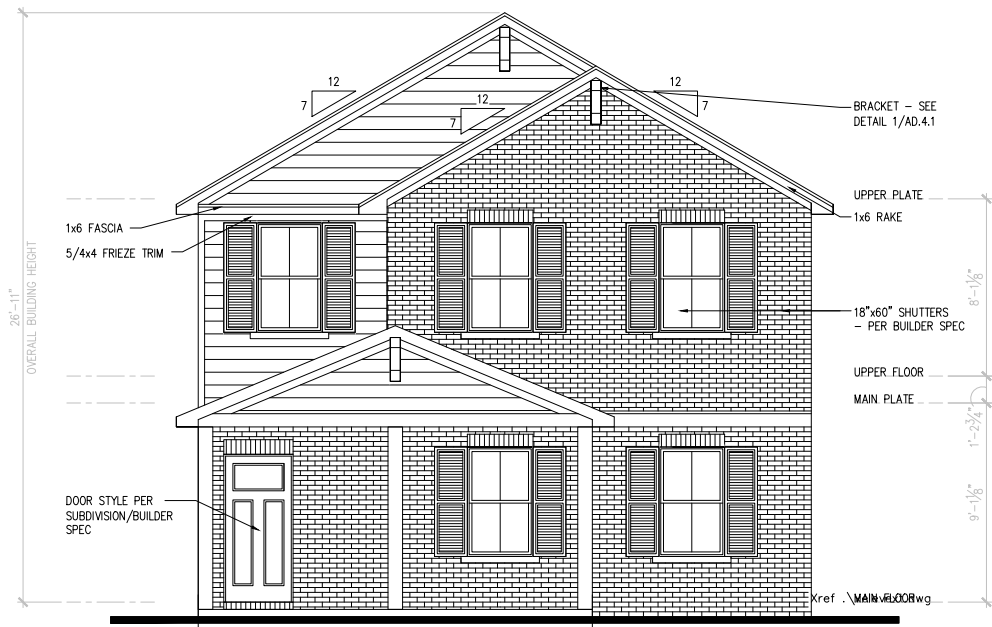
FINLEY: 1,528 SQFT | 28' X 40' (50' W/PATIO) | 2 STORY PRIMARY UP | 3 BED/2.5 BATH



ELEVATION "F"



ELEVATION "T"





ELEVATION "A"



ELEVATION "C"

SYDNEY: 2,018 SQFT | 28' X 62' (72' W/PATIO | 2 STORY PRIMARY DOWN | 4 BED/2.5 BATH



ELEVATION "F"



ELEVATION "T"

REAR ELEVATION EXAMPLES



40' Wide Single-Family Homes Sample Architecture

Architectural Characteristics: Single-family Detached 40' Wide Homes

- Building heights shall not exceed 35 feet in height
- All buildings shall be a maximum of two stories
- All units will have at least two bedrooms and square footage ranging from 1,400 sf to 2,500 sf
- All the units will have eaves
- All homes shall have a 2-car front entry garages with four parking spaces in front of garage.
- Front entry garages will have decorative garage doors with windows
- Garage door color will match trim of the unit and will be either white or a neutral color
- 55 foot wide lot minimum at the front setback.
- Corner lots shall have enhanced side elevations facing streets

Building Materials:

Front Elevations:

All Masonry (Brick, Stone, Cement Board Siding)

Cement Board Siding in the Dormers/Gables

Side Elevations (Internal to the Site):

Cement Board Siding

Rear Elevations:

Cement Board Siding

All Elevations:

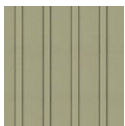
Vinyl Only Permitted in Trim & Soffit Areas



Example of Brick
(different colors will be allowed)



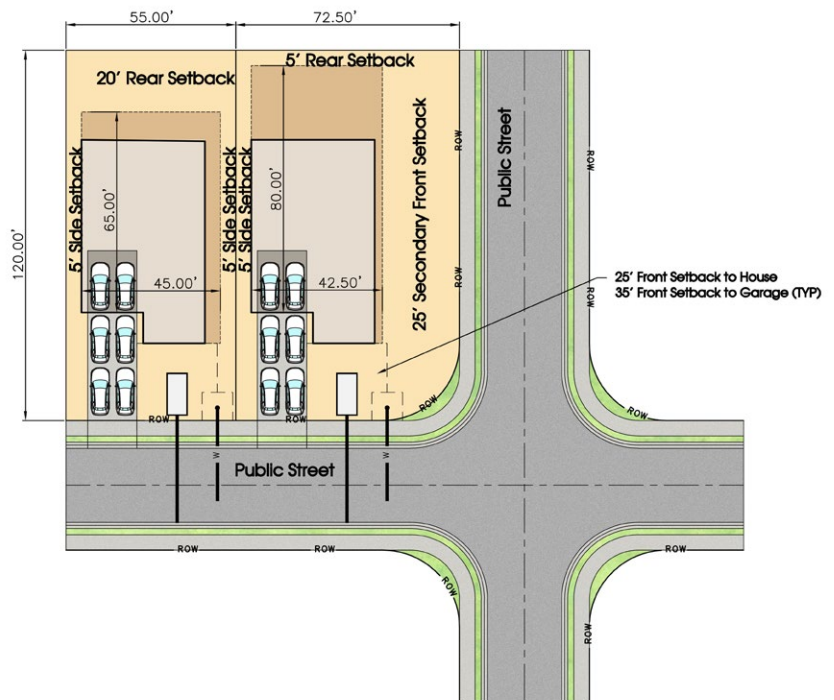
Example of Fiber Cement Board
(different colors will be allowed)



Example of Board and Batton
(different colors, cuts, patterns will be allowed)



Example of Stone Veneer
(different colors, cuts, patterns will be allowed)



Single Family Setbacks External to the Site

Front: 35-feet to Garage (25' to rest of home)

Side: 5-feet

Rear: 20-feet

CHANDLER: 1,648 SQFT | 30' X 60' (60' W/PATIO | RANCH 3 BED/2.5 BATH



ELEVATION "B"



ELEVATION "D"



ELEVATION "E"



ELEVATION "F"

*The elevations of the homes will vary across the development. The images above are meant to convey the general appearance and functionality of the homes.

ROCKWELL: 2,135 SQFT | 38' X 42' (52' W/PATIO) | 2 STORY PRIMARY UP | 3 BED/2.5 BATH



ELEVATION "B"



ELEVATION "D"



ELEVATION "E"



ELEVATION "F"

BRENTWOOD: 2,345 SQFT | 38' X 41' (51' W/PATIO | 2 STORY PRIMARY UP | 3 BED/2.5 BATH



ELEVATION "B"



ELEVATION "D"



ELEVATION "E"



ELEVATION "F"

DAKOTA: 2,479 SQFT | 38' X 44' (54' W/PATIO) | 2 STORY PRIMARY UP | 4 BED/2.5 BATH



ELEVATION "B"



ELEVATION "D"



ELEVATION "E"



ELEVATION "F"

*The elevations of the homes will vary across the development. The images above are meant to convey the general appearance and functionality of the homes.

MANCHESTER: 2,448 SQFT | 38' X 57' (57' W/PATIO | 2 STORY PRIMARY UP | 4 BED/2.5 BATH



ELEVATION "B"



ELEVATION "D"



ELEVATION "E"



ELEVATION "F"

REAR ELEVATION EXAMPLES



Pursuant to the City of Murfreesboro’s Major Thoroughfare Plan, a collector road is proposed and included in this development (MTI #19). The majority of the traffic generated from this development shall primarily impact the existing ROWs of Veal Road and Double Springs Road.

Entrances shall incorporate three travel lanes for proper circulation into and out of the development onto Veals road and Double Springs Road. There shall be dedicated left and right turning lanes out of the neighborhood, as well as single lane for traffic entering the development. The intersection of the proposed community collector and Veals Road shall also include a dedicated lane for southbound traffic as well.

Figure 22.1 illustrates the collector road and it’s north/south connections to Farmhouse Downs and Veals road respectively. It also illustrates the connection to Crestview via Medford Campbell Boulevard. Figure 22.2 illustrates the Double Springs Road and Farmhosue Downs connections. Figure 22.3 illustrates the secondary entrance from Veals road. All secondary roads in the development shall be the typical 42’ ROW per the City of Murfreesboro Street Design Standards. The collector road shall be built as a 60’ ROW with a 33 foot wide pavement cross section and widen to 4-lanes for the Southern most 300 feet of the collector road with 45 degree cords at the intersection with Veals Road.

Developer shall be responsible for improving Bradyville Pike to include a southbound left turn lane onto Veals Road along with a traffic signal for the intersection. This project shall dedicate ROW along Veals Road and Double Springs Road.

Developer shall construct a cul-de-sac at the end of Lincoya Drive.

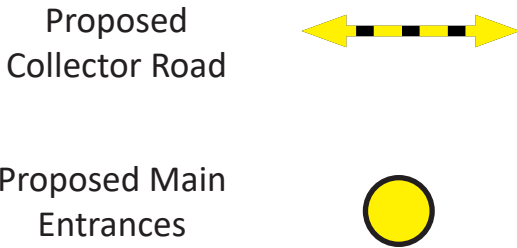


Figure 22.1

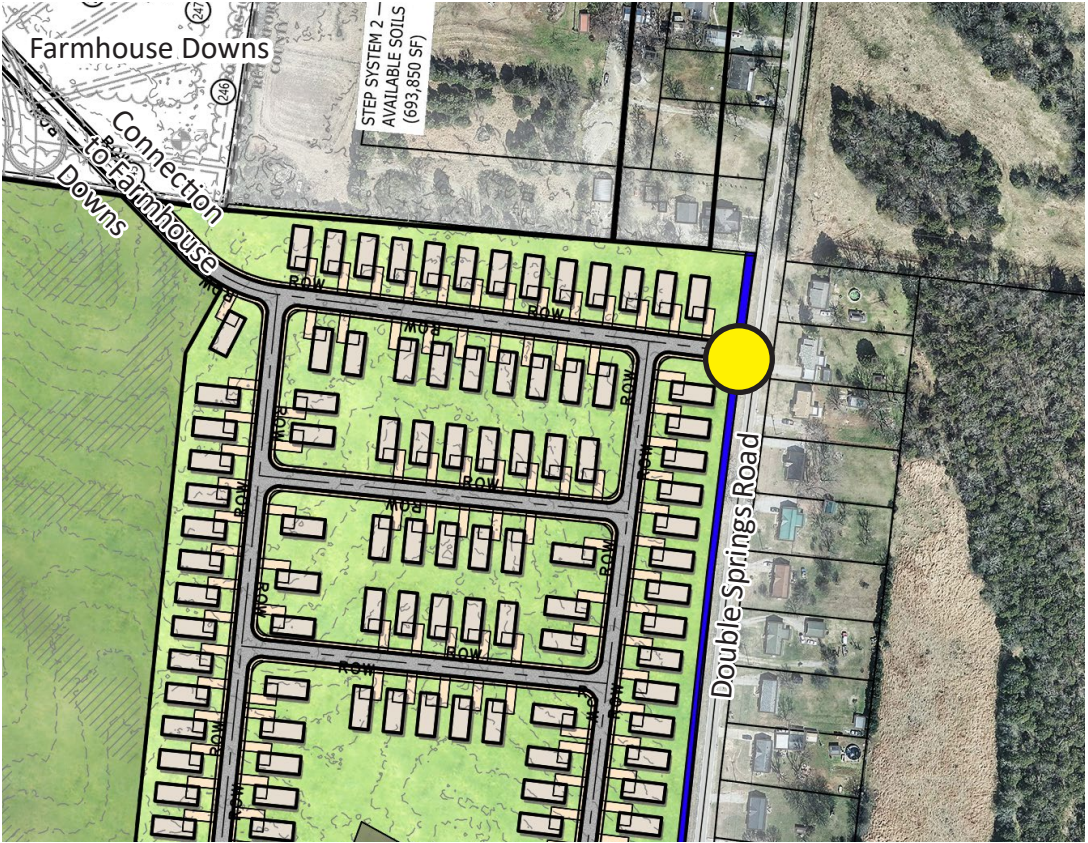


Figure 22.2

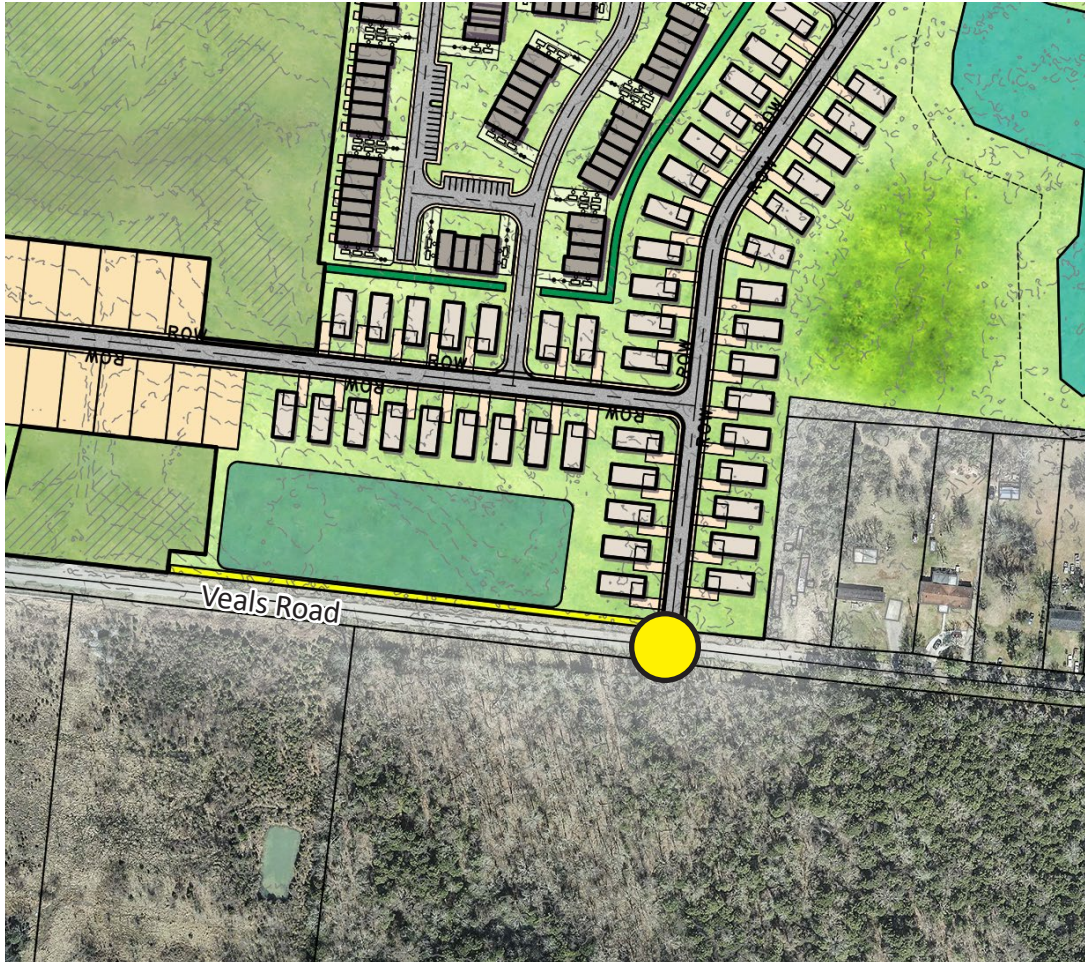
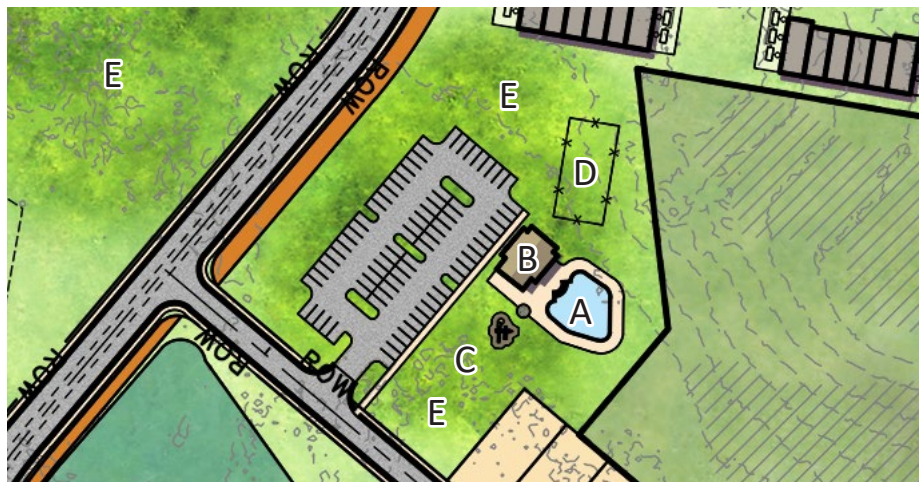


Figure 22.3



LOCATION MAP - CLUBHOUSE AMENITIES

Not To Scale



LOCATION MAP - OPEN PLAY FIELDS

Not To Scale

- A Pool
- C Playground
- E Open Play Field
- B Clubhouse and Patio
- D Dog Park

With this request, Graystone will be providing over 62 acres (approximately 40% of the site) to open space. The open space areas will be comprised of usable open space, detention areas, and the area around the existing wetlands. The approximate 6.15 acres of active open space around the development will offer such formal space amenities as a pool & clubhouse, dog park, playground, and open play fields. Final design of formal open space areas shall be submitted upon site plan review. Sidewalks shall line both sides of all streets to provide pedestrian friendly circulation throughout the development. Amenities shall be built within their respective phases once 50% of the residential units have been built. The clubhouse area will offer resident a place to gather while providing outdoor seating areas and a playground for children. All amenities and open space shall be maintained by the HOA.



A/B - Sample Front Elevation of Amenity Center



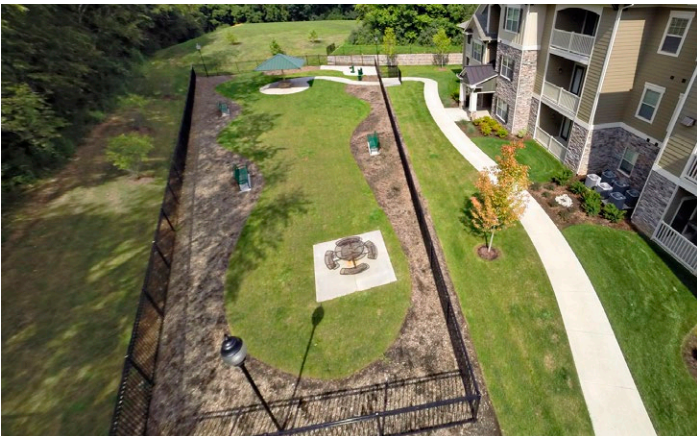
A/B - Sample Side Elevation of Amenity Center



A - Example of Pool



C - Example of Playground



D - Example of Dog Park



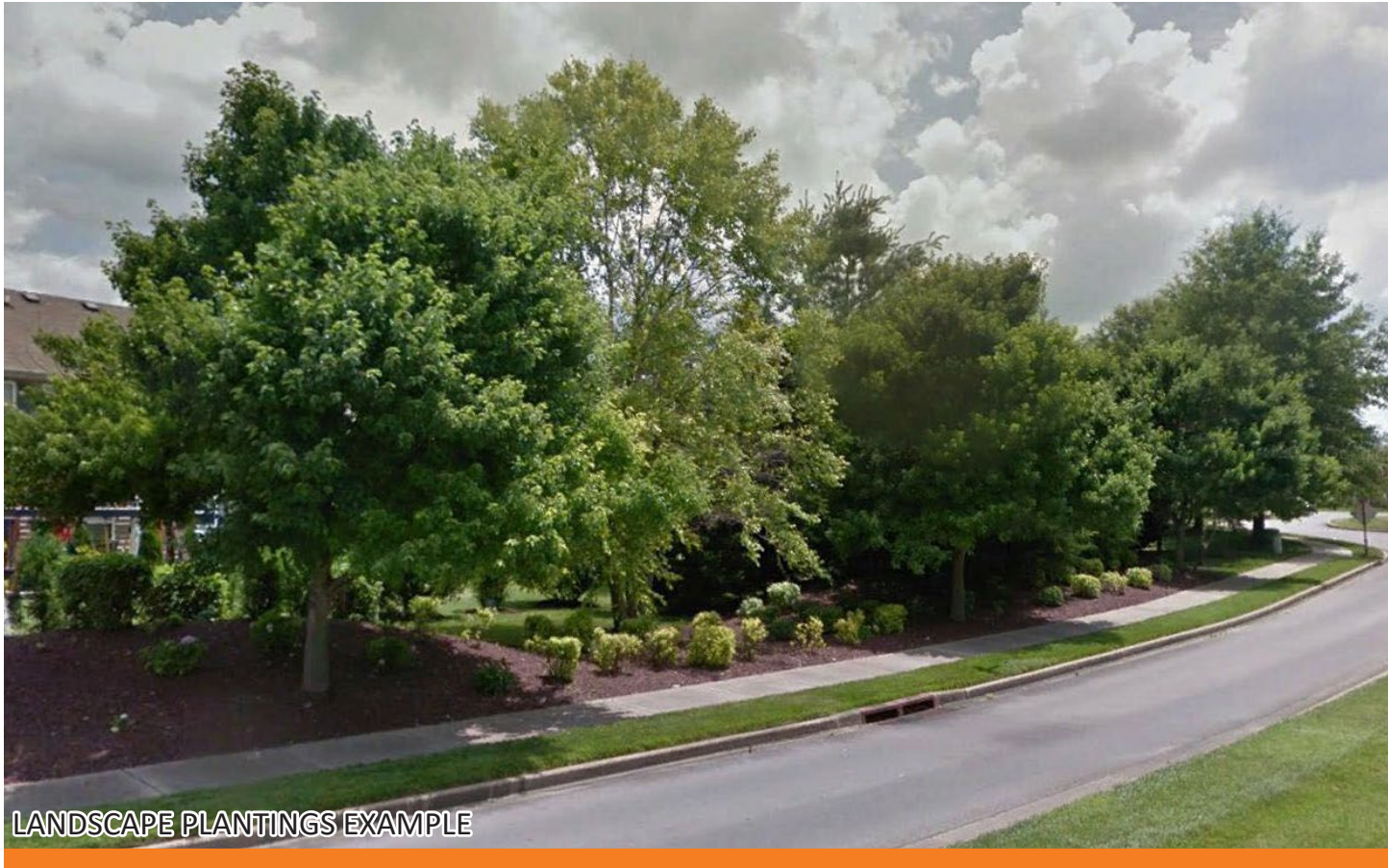
E - Example of Open Play Field



- LANDSCAPE PLANTINGS
- BERM & DECORATIVE LANDSCAPE BUFFERS (TYPE A)
- BERM & LANDSCAPE BUFFERS (TYPE B)
- LANDSCAPE BUFFERS (TYPE C)



DECORATIVE TYPE 'A' LANDSCAPE BUFFER EXAMPLE



LANDSCAPE PLANTINGS EXAMPLE



TYPE 'B' LANDSCAPE BUFFER EXAMPLE



The site has been designed with ample landscaping to provide not only an aesthetically pleasing experience for the residents, but to aid in mitigating impacts to the surrounding areas. To ensure these characteristics, some standards are outlined below as well as a sample palette provided.

Landscaping Characteristics:

- A minimum 10 feet of landscape area between parking and all property lines.
- Public rights-of-way shall be screened from parking by use of landscaping and/or berming.
- Veals Road shall be screened with a berm and decorative Type 'A' buffer.
- Double Springs Road shall be screened with a berm and Type 'B' buffer.
- Townhome areas adjacent to single family lots shall have a Type 'C' Landscape Buffer installed to help transition between products. This buffer shall consist of a double staggered row of evergreen trees planted 10 feet on center and be supplemented with evergreen shrubs. Evergreen trees shall be a minimum of six feet tall at time of planting and shrubs shall be a minimum of two feet tall at time of planting.
- All landscape buffers to be open space and have dedicated landscape easements.
- Landscape Planting areas shall be installed between the single-family lots directly adjacent to the proposed community collector. These landscape areas shall consist of decorative plantings on intermittent berms.
- All above ground utilities and mechanical equipment screened with landscaping and/or walls.
- The fronts and sides at the base of all townhome buildings will have at least 3 foot wide landscape strip.
- Landscaping will be in conformance with the City of Murfreesboro's landscaping ordinance.
- All buffers will be in common open space to be maintained by the HOA.

1.) A map showing available utilities, easements, roadways, rail lines and public right-of-way crossing and adjacent to the subject property.

Response: An exhibit is given on Page 4 and Page 8 along with descriptions of each.

2.) A graphic rendering of the existing conditions and/or aerial photograph(s) showing the existing conditions and depicting all significant natural topographical and physical features of the subject property; location and extent of water courses, wetlands, floodways, and floodplains on or within one hundred (100) feet of the subject property; existing drainage patterns; location and extent of tree cover; and community greenways and bicycle paths and routes in proximity to the subject property.

Response: Exhibits are shown on Page 9 that shows the existing contours and drainage patterns along with an aerial photograph of the area on Page 4. A portion of the property is subject to floodplains or floodways, and the site ultimately drains to Black Fox Springs before heading towards Todds Lake.

3.) A plot plan, aerial photograph, or combination thereof depicting the subject and adjoining properties including the location of structures on-site and within two hundred (200) feet of the subject property and the identification of the use thereof.

Response: Exhibits and photographs on Pages 4, 10, and 11 give the location of existing structures on the subject property and the surrounding properties. An exhibit on Page 7 gives the zoning of those same properties.

4.) A drawing defining the general location and maximum number of lots, parcels or sites proposed to be developed or occupied by buildings in the planned development; the general location and maximum amount of area to be developed for parking; the general location and maximum amount of area to be devoted to open space and to be conveyed, dedicated, or reserved for parks, playgrounds, recreation uses, school sites, public buildings and other common use areas; the approximate location of points of ingress and egress and access streets; the approximate location of pedestrian, bicycle and vehicular ways or the restrictions pertaining thereto and the extent of proposed landscaping, planting, screening, or fencing.

Response: The concept plan on page 13 and lists of standards on page 12 show the concept plan which shows each of these items.

5.) A tabulation of the maximum number of dwelling units proposed including the number of units with two (2) or less bedrooms and the number of units with more than two (2) bedrooms.

Response: Page 13 lists standards and exhibits showing the concept plan which shows each of these items.

6.) A tabulation of the maximum floor area proposed to be constructed, the F.A.R. (Floor Area Ratio), the L.S.R. (Livability Space Ratio), and the O.S.R. (Open Space Ratio). These tabulations are for the PRD.

TOTAL SITE AREA	8,939,162s.f.
TOTAL MAXIMUM FLOOR AREA	882,100 s.f.
TOTAL LOT AREA	1,201,985 s.f.
TOTAL BUILDING COVERAGE	843,242 s.f.
TOTAL DRIVE/ PARKING AREA	733,497 s.f.
TOTAL RIGHT-OF-WAY	696,409 s.f.
TOTAL LIVABLE SPACE	8,205,665 s.f.
TOTAL OPEN SPACE	3,856,625 s.f.
FLOOR AREA RATIO (F.A.R.)	0.09
LIVABILITY SPACE RATIO (L.S.R.)	0.83
OPEN SPACE RATIO (O.S.R.)	0.91

7.) A written statement generally describing the relationship of the proposed planned development to the current policies and plans of the city and how the proposed planned development is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable regulations of this article.

Response: The property is currently zoned RS- 6, RS-10, RS-12, and RM (County). The surrounding area has a mixture of residential properties. The concept plan and development standards combined with the architectural requirements of the homes shown within this booklet align and closely mimic the type of developments in the surrounding neighborhoods and are envisioned to complete the development in this area.

8.) If the planned development is proposed to be constructed in stages or units during a period extending beyond a single construction season, a development schedule indicating:

(aa) the approximate date when construction of the project can be expected to begin;

Response: The project is anticipated to be developed in four phases. Phasing information is described on Page 14.

9.) Proposed means of assuring the continued maintenance of common space or other common elements and governing the use and continued protection of the planned development. For this purpose, the substance of any proposed restrictions or covenants shall be submitted.

Response: This requirement has been addressed on Pages 12, 37, and 39.

10.) A statement setting forth in detail either (1) the exceptions which are required from the zoning and subdivision regulations otherwise applicable to the property to permit the development of the proposed planned development or (2) the bulk, use, and/or other regulations under which the planned development is proposed.

Response: The applicant is requesting the following exceptions with this PRD.

SETBACKS	RS-6	PRD-S.F.	DIFFERENCE	RS-A TYPE 2	PRD-TOWNHOME	DIFFERENCE
Front Setback	35.0'	35.0'	0.0'	35.0'	35.0'	0.0'
Side Setback	5.0'	5.0'	0.0'	5.0'	5.0'	0.0'
Rear Setback	20.0'	20.0'	0.0'	20.0'	20.0'	0.0'
Minimum Lot Size	6,000 SF	6,500 SF	+500 SF	2,000 SF	H.P.R.	N/A
Minimum Lot Width	50'	55'	+5.0'	20.0'	20.0'	0.0'

11.) The nature and extent of any overlay zone as described in Section 24 of this article and any special flood hazard area as described in Section 34 of this article

Response: This property is not in the Gateway Design Overlay District , Airport Overlay District (AOD), Historic District (H-1), or Planned Signage Overlay District (PS). No portion of this property lies in Zone AE, within the 100-year floodplain, according to the current FEMA Map Panel 47149C0280H Eff. Date 01/04/2007 and FEMA Map Panel 47149C0290H Eff. Date 01/04/2007.

12.) The location and proposed improvements of any street depicted on the Murfreesboro Major Thoroughfare Plan as adopted and as it may be amended from time to time.

Response: Pages 5 & 36 discusses the Major Thoroughfare Plan.

13.) The name, address, telephone number, and facsimile number of the applicant and any professional engineer, architect, or land planner retained by the applicant to assist in the preparation of the planned development plans. A primary representative shall be designated.

Response: The primary representative is Matt Taylor of SEC, Inc. developer/ applicant is Meritage Homes, Inc. contact info for both is provided on cover.

14.) Architectural renderings, architectural plans or photographs of proposed structures with sufficient clarity to convey the appearance of proposed structures. The plan shall include a written description of proposed exterior building materials including the siding and roof materials, porches, and decks. The location and orientation of exterior light fixtures and of garages shall be shown if such are to be included in the structures.

Response: Page 16-35 show the architectural character of the proposed buildings and building materials listed. However, exact configuration for these items is unknown and will be determined as each building is built.

15.) If a development entrance sign is proposed the application shall include a description of the proposed entrance sign improvements including a description of lighting, landscaping, and construction materials.

Response: Entrance signage description is on Page 4.

MINUTES OF THE MURFREESBORO PLANNING COMMISSION NOVEMBER 3, 2021

6:00 P.M.

CITY HALL

MEMBERS PRESENT

Kathy Jones, Chair
Ken Halliburton, Vice-Chair
Jami Averwater
Warren Russell
Chase Salas
Shawn Wright

STAFF PRESENT

Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Margaret Ann Green, Principal Planner
Marina Rush, Principal Planner
Holly Smyth, Principal Planner
Joel Aguilera, Planner
Carolyn Jaco, Recording Assistant
David Ives, Deputy City Attorney
Katie Noel, Project Engineer
Abraham Farias, EIT
Sam Huddleston, Executive Dir. Dev. Services

1. Call to order

Chair Kathy Jones called the meeting to order at 6:00 p.m.

2. Determination of a quorum.

Chair Jones determined that a quorum was present.

3. Approve minutes of the October 13, 2021 Planning Commission meeting.

Ms. Jami Averwater moved to approve the Minutes of the October 13, 2021 meeting; the motion was seconded Mr. Chase Salas by and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Chase Salas
Warren Russell
Shawn Wright

Nay: None.

MINUTES OF THE MURFREESBORO PLANNING COMMISSION NOVEMBER 3, 2021

There being no further discussion, Mr. Chase Salas moved to continue the public hearing for the zoning application on November 17, 2021; the motion was seconded by Mr. Shawn Wright and carried by the following vote:

Aye: Kathy Jones

Ken Halliburton

Jami Averwater

Chase Salas

Warren Russell

Shawn Wright

Nay: None.

Zoning application [2021-424] for approximately 82.5 acres located along Veals Road to be rezoned from RS-6, RS-10, and RS-12 to PRD (Graystone PRD) and approximately 123 acres located along Veals Road and Double Springs Road to be zoned PRD simultaneous with annexation, Meritage Homes applicant. Ms. Holly

Smyth presented the Staff Comments regarding this item, a copy which is maintained in the permanent files of the Planning Department and is incorporated into these Minutes by reference.

Mr. Matt Taylor (design engineer) and Mr. Kris Keown (developer) were in attendance for the application. Mr. Taylor gave a PowerPoint presentation of the Pattern Book, which Pattern Book is maintained in the permanent files of the Planning Department and is incorporated into these Minutes by reference.

Chair Kathy Jones opened the public hearing. No one came forward to speak for or against the zoning application.

MINUTES OF THE MURFREESBORO PLANNING COMMISSION NOVEMBER 3, 2021

There being no further discussion, Mr. Warren Russell moved to continue the public hearing for the zoning application on November 17, 2021; the motion was seconded by Mr. Shawn Wright and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Chase Salas
Warren Russell
Shawn Wright

Nay: None.

7. Staff Reports and Other Business:

Mandatory Referral [2021-725] for the Purchase of Properties along Butler Drive, City of Murfreesboro applicant. Mr. David Ives presented the Staff Comments regarding this item, a copy which is maintained in the permanent files of the Planning Department and is incorporated into these Minutes by reference.

There being no further discussion, Vice-Chairman Ken Halliburton moved to approve the mandatory referral subject to all staff comments; the motion was seconded by Ms. Jami Averwater and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Chase Salas
Warren Russell
Shawn Wright

Nay: None.

MINUTES OF THE MURFREESBORO PLANNING COMMISSION NOVEMBER 17, 2021

1:00 P.M.

CITY HALL

MEMBERS PRESENT

Kathy Jones, Chair
Ken Halliburton, Vice-Chair
Jami Averwater
Rick LaLance
Chase Salas
Warren Russell
Shawn Wright

STAFF PRESENT

Matthew Blomeley, Assistant Planning Director
Margaret Ann Green, Principal Planner
Marina Rush, Principal Planner
Holly Smyth, Principal Planner
Amelia Kerr, Planner
Brad Barbee, Planner
Carolyn Jaco, Recording Assistant
David Ives, Deputy City Attorney
Roman Hankins, Assistant City Attorney
Michele Emerson, City Engineer
Teresa Stevens, Sign Administrator
Sam Huddleston, Executive Dir. Dev. Services

1. Call to order

Chair Kathy Jones called the meeting to order at 1:00 p.m.

2. Determination of a quorum.

Chair Jones determined that a quorum was present.

3. Approve minutes of the October 20, 2021 and November 3, 2021 Planning Commission meetings.

Ms. Jami Averwater moved to approve the Minutes of the October 20, 2021 and November 3, 2021 Planning Commission meetings; the motion was seconded by Mr. Chase Salas and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance

MINUTES OF THE MURFREESBORO PLANNING COMMISSION NOVEMBER 17, 2021

Jami Averwater

Rick LaLance

Chase Salas

Warren Russell

Shawn Wright

Nay: None.

Zoning application [2021-424] for approximately 82.5 acres located along Veals Road to be rezoned from RS-6, RS-10, and RS-12 to PRD (Graystone PRD) and approximately 123 acres located along Veals Road and Double Springs Road to be zoned PRD simultaneous with annexation, Meritage Homes applicant.

A copy of the written Staff Comments regarding this item is maintained in the permanent files of the Planning Department and is incorporated into these Minutes by reference.

Chair Kathy Jones reopened the public hearing, continued from November 3, 2021.

No one came forward to speak for or against the zoning application; therefore, Chair Kathy Jones closed the public hearing.

There being no further discussion, Vice-Chairman Ken Halliburton moved to approve the zoning application subject to all staff comments; the motion was seconded by Ms. Jami Averwater and approved by the following vote:

Aye: Kathy Jones

Ken Halliburton

Jami Averwater

Chase Salas

Warren Russell

Shawn Wright

Abstain: Rick LaLance

Nay: None

ORDINANCE 21-OZ-39 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 82.5 acres along Veals Road from Single-Family Residential Six (RS-6) District, Single-Family Residential Ten (RS-10) District and Single-Family Residential Twelve (RS-12) District to Planned Residential Development (PRD) District (Graystone PRD) and approximately 123 acres along Veals Road and Double Springs Road to be zoned Planned Residential Development (PRD) District, simultaneous with annexation; Meritage Homes, applicant [2021-424].

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

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

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

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

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

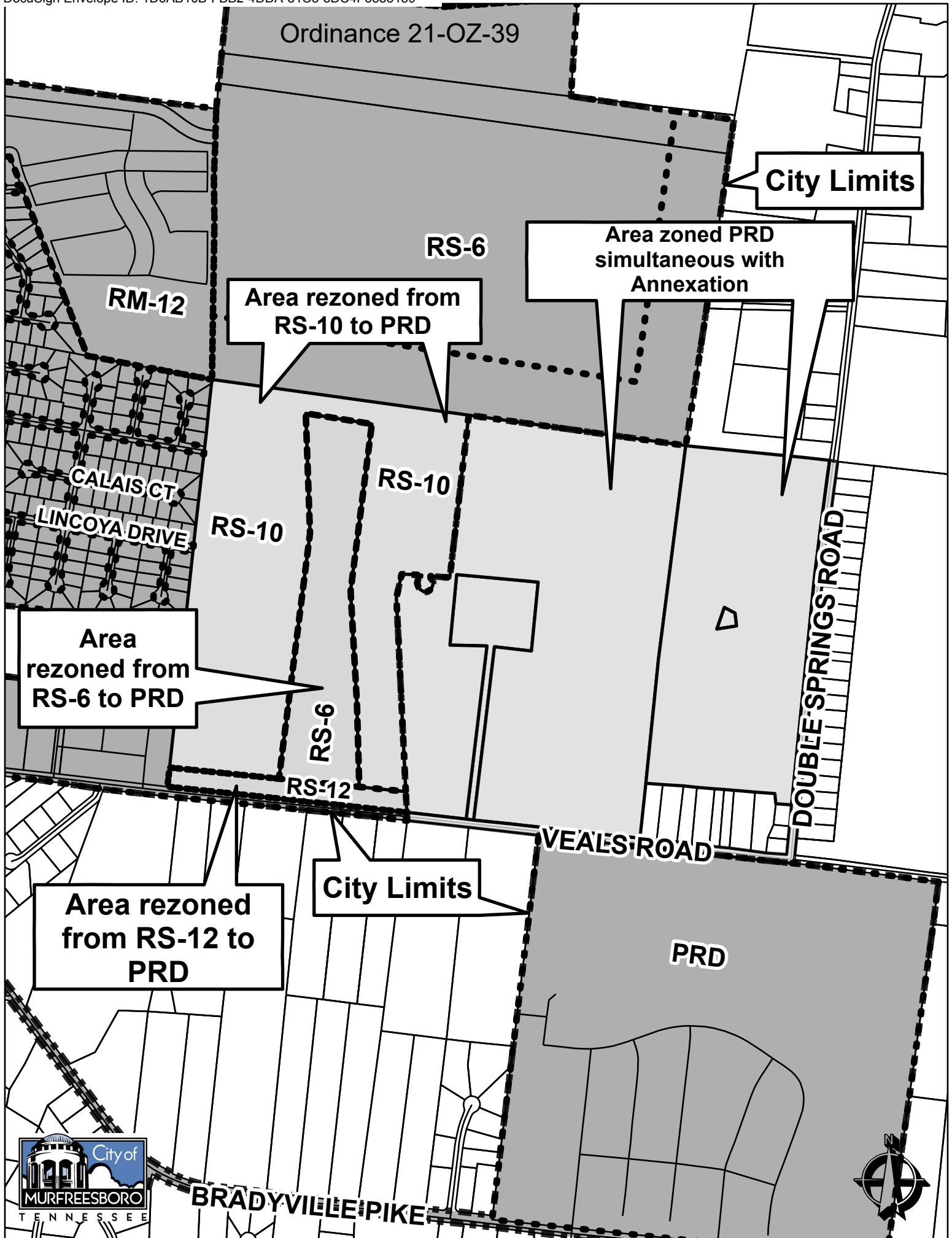
Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker

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Adam F. Tucker
City Attorney

SEAL



COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Planning Commission Recommendations

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning 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

Scheduling matters previously heard by the Planning Commission for public hearings before Council.

Staff Recommendation

Schedule public hearings for the items below on January 27, 2022.

Background Information

During its regular meeting on December 1, 2021, the Planning Commission conducted public hearings on the items listed below. After the public hearings, the Planning Commission discussed the matters and then voted to recommend their approval.

- a. Zoning application [2021-432] to amend the Westlawn PUD to allow additional uses within the area identified as C-3 within the program book on approximately 23.3 acres located along Veterans Parkway and Blackman Road, Oscar Properties, LLC applicant.
- b. Zoning application [2021-428] for approximately 0.53 acres located along Bridge Avenue and Kings Highway to be rezoned from RS-8 to RS-6 (including a portion of right-of-way to be zoned RS-6 upon abandonment), Jon Troutt applicant.
- c. Zoning application [2021-429] to amend the PRD zoning (The Arbors PRD) for approximately 78.25 acres located along Compton Road and to rezone approximately 0.5 acres along Compton Road from PRD to RS-15, Middle TN Developers, LLC applicant.
- d. Annexation petition and plan of services [2021-514] for approximately 3.3 acres located along Joe B Jackson Parkway and Elam Road, Sherri Elam Yokley, et al applicant.
- e. Zoning application [2021-426] for approximately 3.3 acres located along Joe B Jackson Parkway and Elam Road to be zoned G-I simultaneous with annexation, Kimley-Horn applicant.
- f. Annexation petition and plan of services [2021-515] for approximately 1.7 acres located along New Salem Highway, Estate of William Ognio applicant.

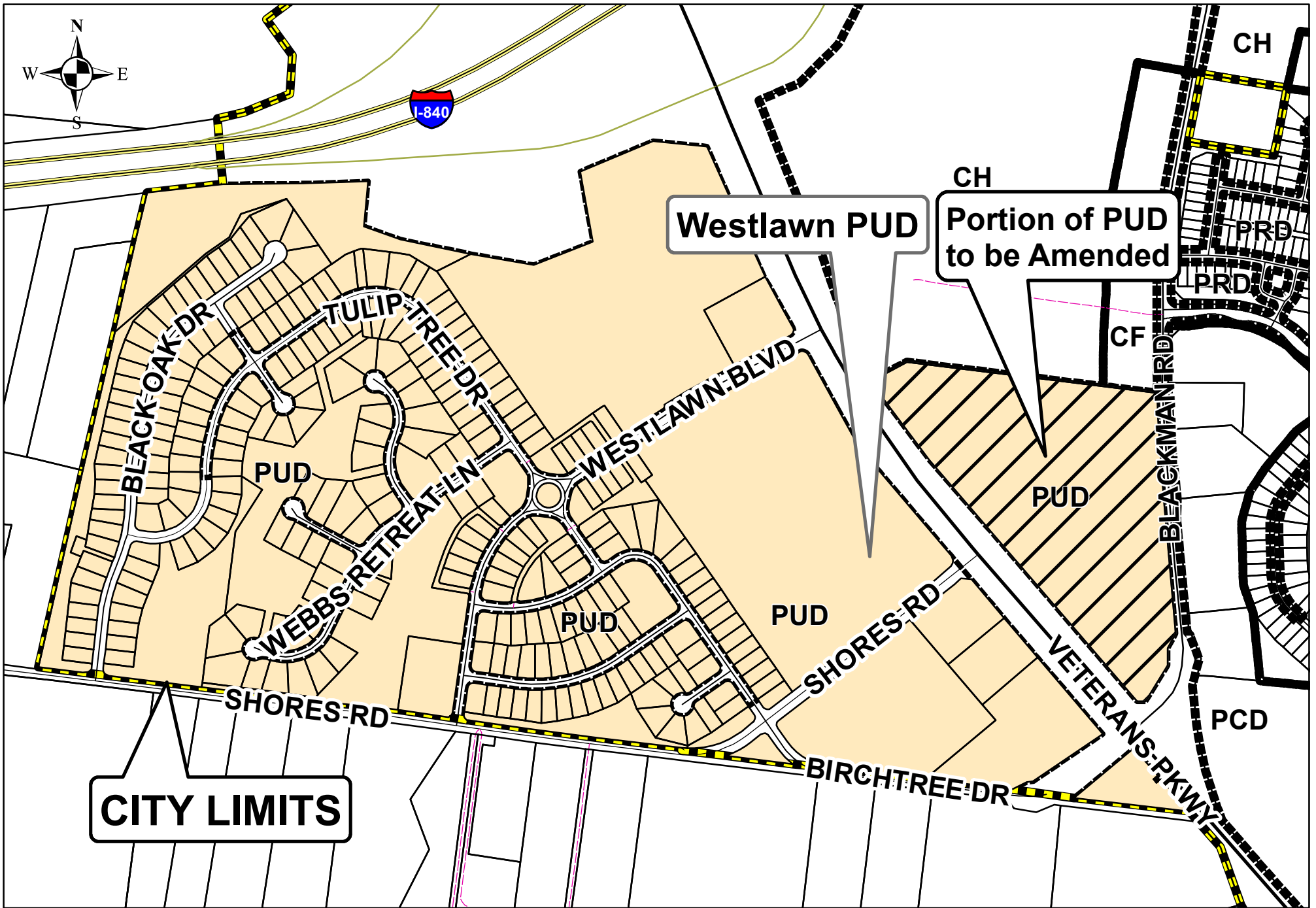
- g. Zoning application [2021-430] for approximately 1.7 acres located along New Salem Highway to be zoned to CF simultaneous with annexation, approximately 2.8 acres to be rezoned from OG and CF to PCD (The Ognios at Foxcroft PCD), and approximately 2.2 acres to be rezoned from OG to CF, Melissa Ognio Barnett applicant

Fiscal Impact

Advertising expense for notice publication in the newspaper, which is unknown at this time, is provided for in the Department Operating Budget.

Attachments:

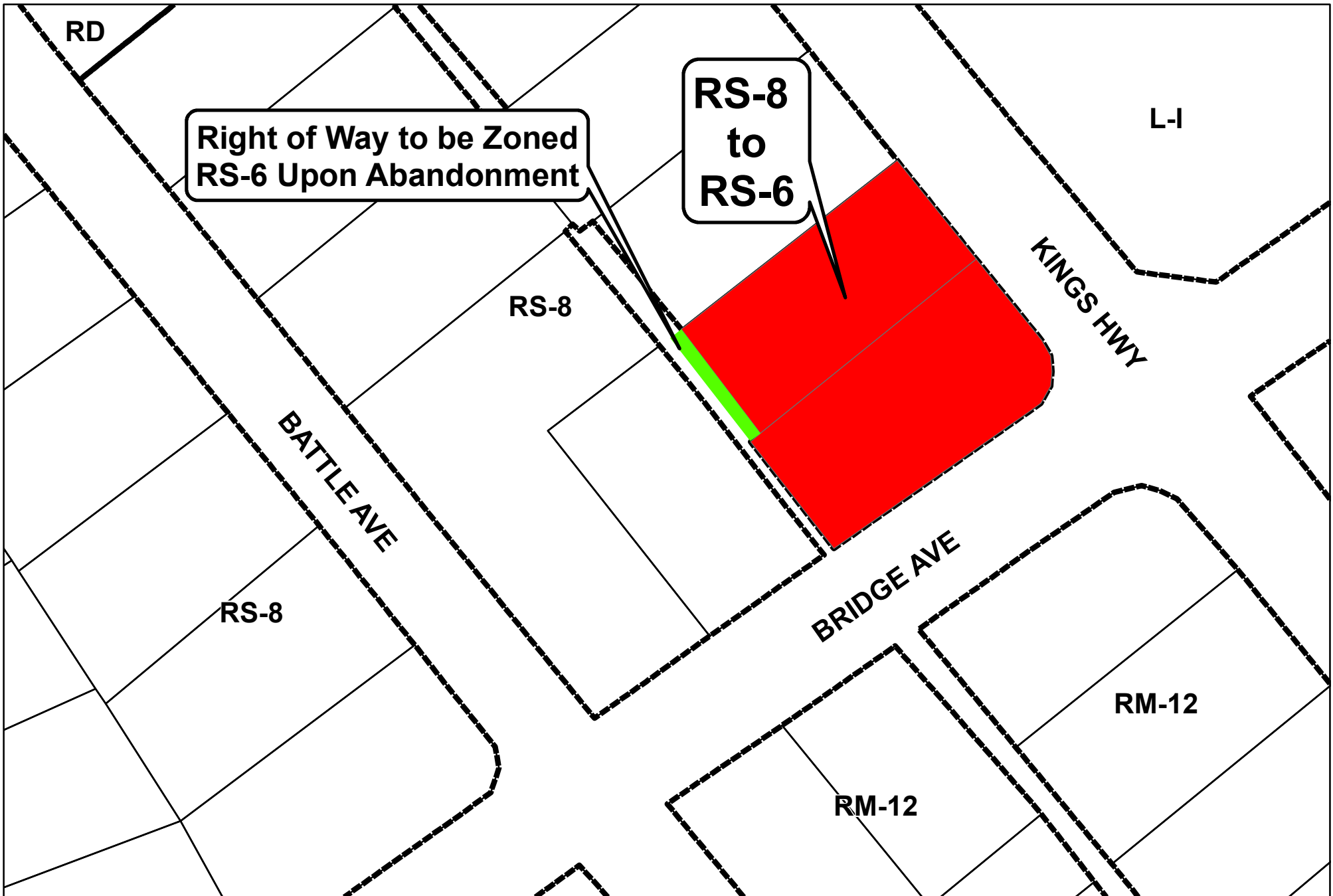
1. Map for zoning application for approx. 23.3 acres located along Veterans Parkway
2. Map for zoning application for approx. 0.53 acres located along Bridge Avenue
3. Map for zoning application for approx. 78.75 acres located along Compton Road
4. Map for annexation petition for approx. 3.3 acres located along Joe B Jackson Parkway
5. Map for zoning application for approx. 3.3 acres located along Joe B Jackson Parkway
6. Map for annexation petition for approx. 1.7 acres located along New Salem Highway
7. Map for zoning application for approx. 6.7 acres located along New Salem Highway



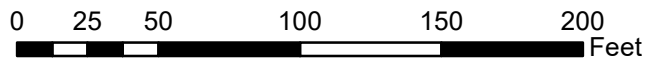
Zoning Request for Property Along Veterans Parkway PUD Amendment (Westlawn PUD)

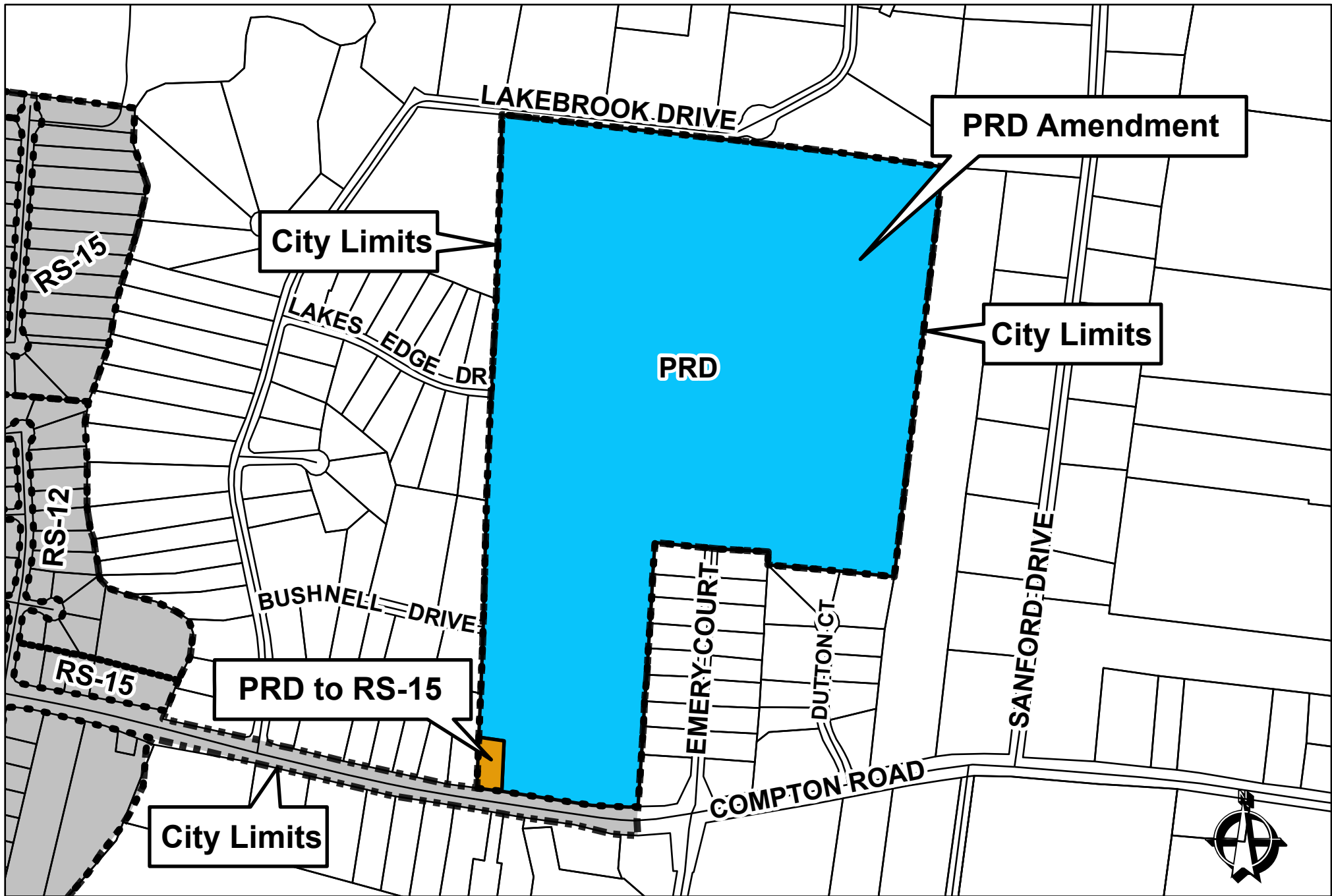


Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov



**Zoning Request for Property located along Bridge Avenue
RS-8 to RS-6**

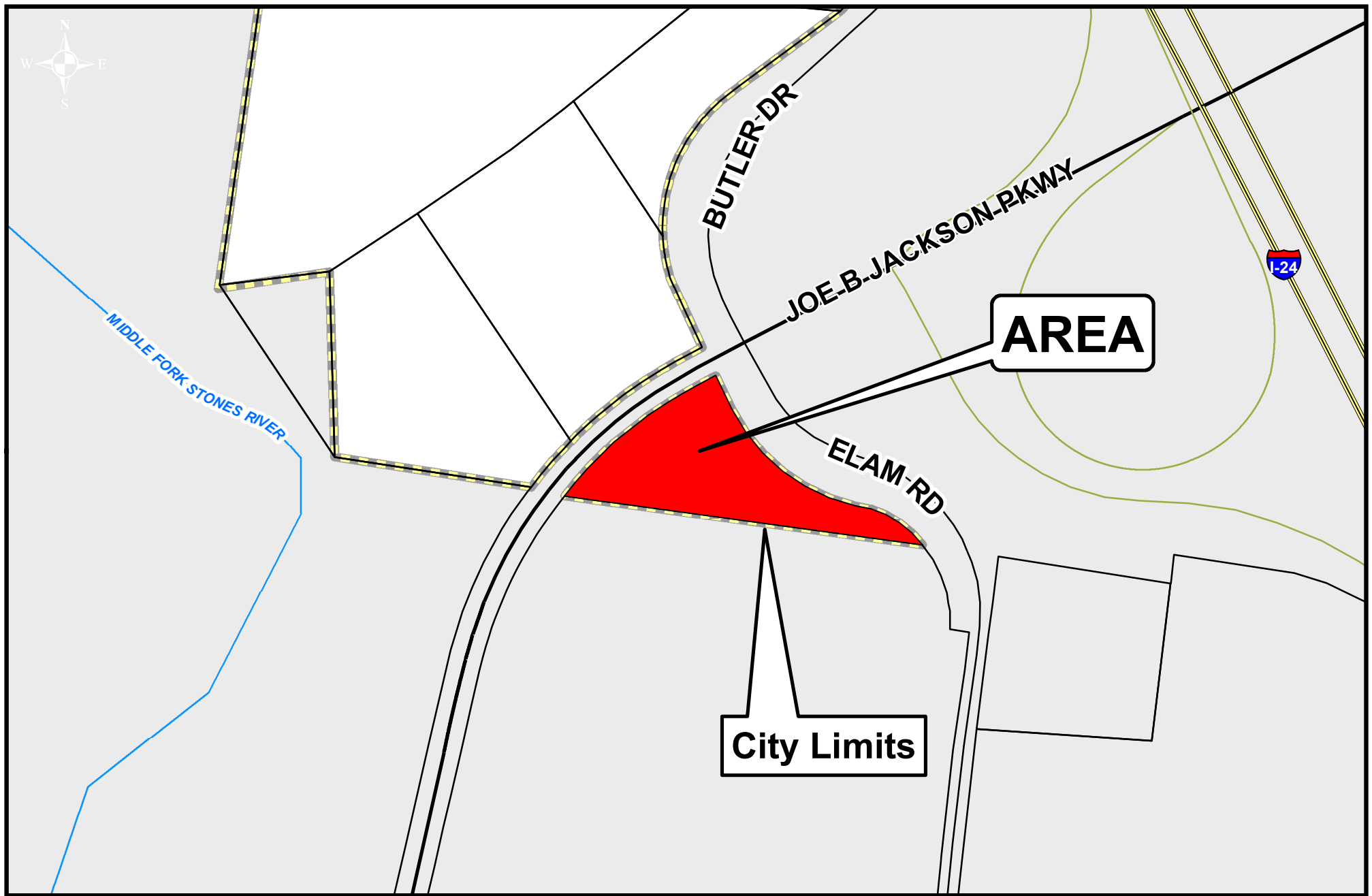




Zoning Request for Property along Compton Road
PRD Amendment (Arbors PRD) and PRD to RS-15

0 387.5 775 1,550 2,325
US Feet

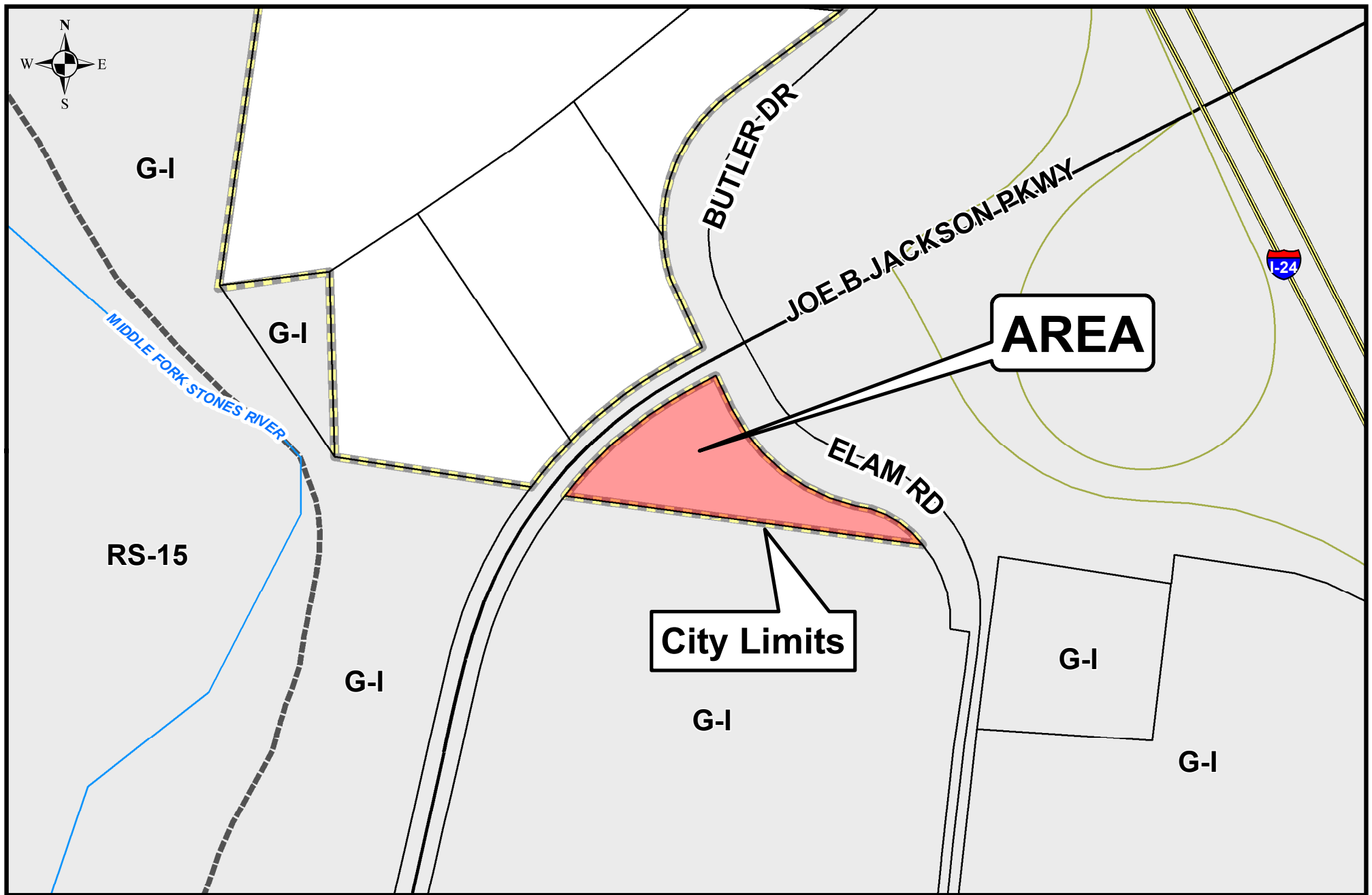
Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov



Annexation Request for Property along Joe B Jackson Parkway and Elam Road

0 150 300 600 900 1,200
Feet

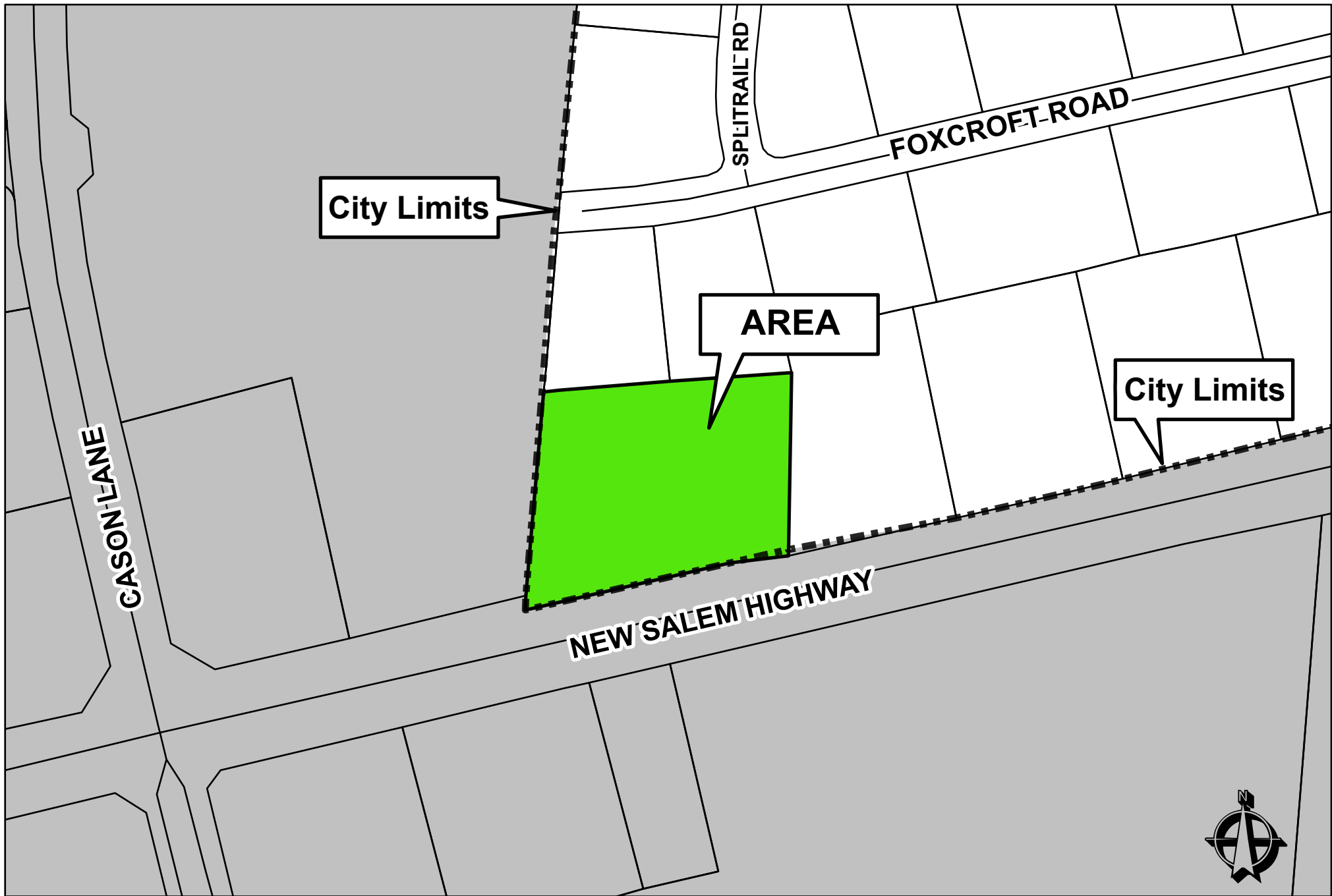
Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov



Zoning Request for Property along Joe B Jackson Parkway G-I Simultaneous with Annexation

0 150 300 600 900 1,200 Feet

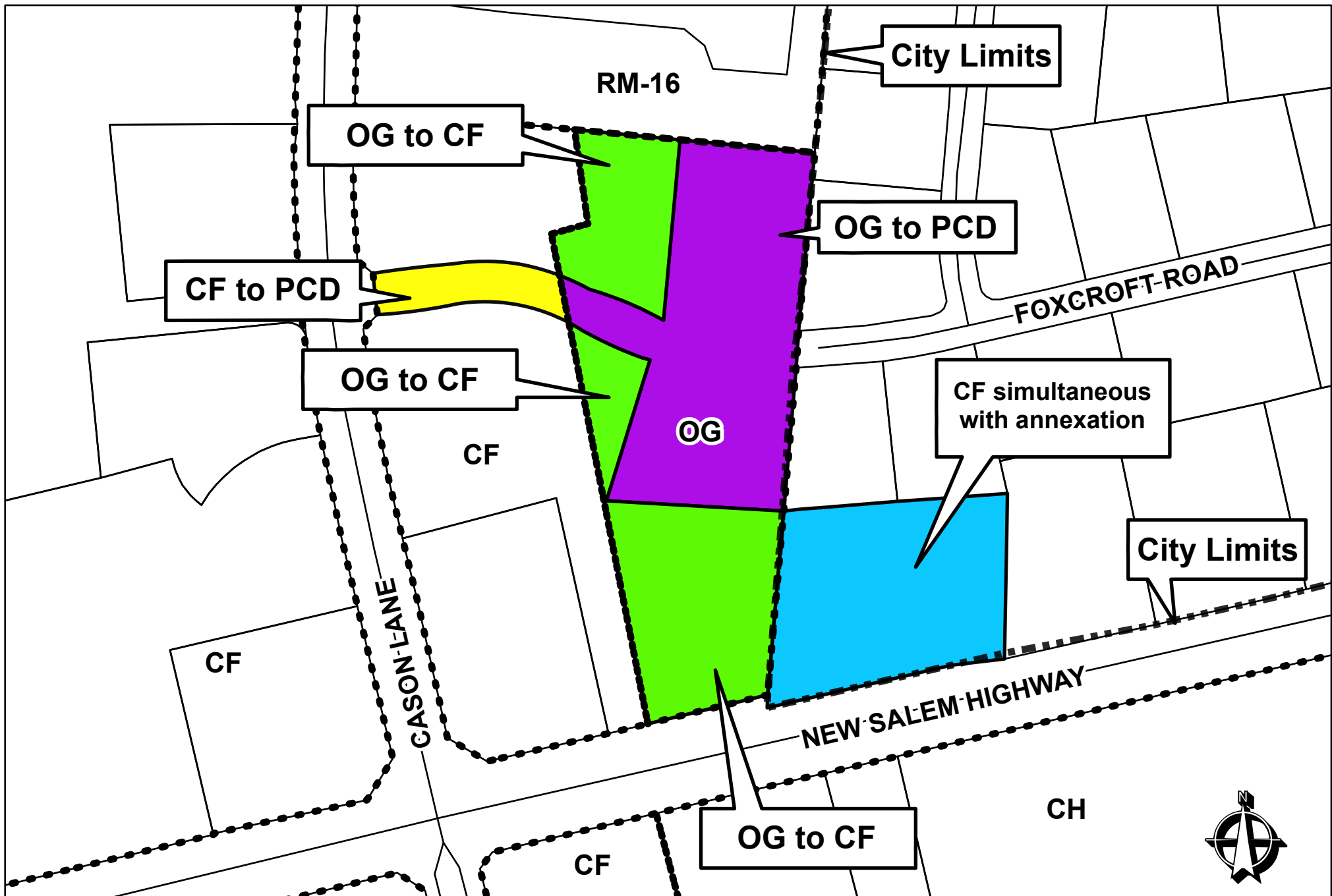
Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
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Annexation Request for Property along New Salem Highway



Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov



Zoning Request for Property along New Salem Highway and Cason Lane.
 OG to CF, CF to PCD (Ognio PCD), OG to PCD, and CF simultaneous with Annexation



Planning Department
 City of Murfreesboro
 111 West Vine St
 Murfreesboro, TN 37130
www.murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: TDOT Procurement Policy Resolution 21-R-38

Department: Transportation

Presented by: Jim Kerr, Transportation 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

TDOT Procurement Policy Resolution 21-R-38

Staff Recommendation

Adopt Resolution 21-R-38 regarding TDOT Local Government Guidelines for Consultant Selection.

Background Information

The City and TDOT partner financially on a variety of construction projects. For the City to maintain this partnership and utilize State and Federal funds, it is required to follow FHWA's and TDOT's policies and procedures. The City has been adhering to the attached TDOT procurement policy concerning Consultant Selection but has not formally adopted this resolution. Staff is seeking the approval of and adoption of this procurement policy resolution which is attached for review.

Council Priorities Served

Responsible budgeting

Following FHWA and TDOT guidelines will assist in securing additional funding sources for Transportation Projects throughout the City.

Fiscal Impact

None

Attachments

1. Resolution 21-R-38
2. TDOT Consultant Selection Policy

RESOLUTION 21-R-38 regarding Tennessee Department of Transportation Local Government Guidelines for Consultant Selection for Projects Funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation.

WHEREAS, it is and has been the policy of the City that all procurements funded with Federal Highway Administration monies comply with Federal Highway Administration regulations as set forth in the Tennessee Department of Transportation Local Government Guidelines; and,

WHEREAS, it is appropriate to explicitly adopt the Federal Highway Procurement Procedures as applicable to consultant selection for projects funded in whole or in part with funds provided by the Federal Highway Administration or the Tennessee Department of Transportation.

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

SECTION 1. The Tennessee Department of Transportation and Federal Highway Consultant Selection Policy for Projects Funded in whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation attached hereto as Exhibit A, and as the same may be hereafter amended, are hereby adopted as applicable for all consultant selection procurements funded with Federal Highway Administration or Tennessee Department of Transportation monies. If the City’s procurement code conflicts with such state or federal regulations, the more restrictive of the two polices shall be followed.

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

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

DocuSigned by:
Adam F. Tucker

43A2035E51F0401...
Adam F. Tucker
City Attorney

CITY OF MURFREESBORO
**Consultant Selection Policy for Projects Funded in Whole or in Part with Funds
 Provided by the Federal Highway Administration or the Tennessee Department of
 Transportation**

AUTHORITY: T.C.A. § 12-4-107. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

PURPOSE: To prescribe the policy of the City of Murfreesboro, hereinafter referred to as the Agency, applicable to the procurement, management and administration of consultant services for architectural, engineering, and right-of-way services for projects.

APPLICATION:

A. Engineering and Design Related Services

This policy is to include all engineering and design related services described in T.C.A. §12-4-107, 40 U.S.C. Chapter 11, 23 U.S.C. §112 (b)(2), 23 CFR Part 172, and 2 CFR 200.317.

B. Right-of-Way Acquisition Services

This policy also includes right-of-way acquisition services for required projects. These services include contracts for appraisal, acquisition, or relocation services related to the acquisition of land entered into by the Agency for the purpose of acquiring right-of-way. Since compensation for these services is not paid pursuant to federal regulation, the terms of this policy regarding methodology of compensation are not applicable.

DEFINITIONS:

A. *Competitive Negotiation* means a qualifications-based selection procurement procedure complying with 40 U.S.C. §§1101–1104, commonly referred to as the Brooks Act.

B. *Engineering and Design Related Services* means –

1. Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project or projects; and
2. Professional services of an architectural or engineering nature, as defined by Tennessee law, including T.C.A. §12-4-107, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide architectural or engineering services.

Examples of services within the scope of this policy include, without limitation, project planning, environmental studies, context sensitive solution/design services, cultural resources studies, geotechnical studies, historic studies, archeological studies, socio-economic and environmental justice analyses, drainage studies, inspection services, intelligent transportation system design and development, traffic control systems design and development, roadway design services, including surveying and mapping, structural design services, materials inspection and testing, value engineering, utility relocation/coordination, and utility analysis/design services with respect to a highway construction project or projects.

- C. *Fixed fee* means a dollar amount established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost.
- D. *One-year applicable accounting period* means the annual accounting period for which financial statements are regularly prepared by the consultant.
- E. *Scope of work* means all services, work activities, and actions required of the consultant by the obligations of the contract.
- F. *Technical Services* means specialized testing or other paraprofessional services that provide test results, data, or information in support of engineering services, including such services as laboratory testing, core borings, and material sampling.

PROCUREMENT METHODS:

- A. *Competitive Negotiation* - Competitive negotiation is the preferred method of procurement for engineering related services. These contracts use qualifications-based selection procedures in the manner of a contract for architectural and engineering services under the "Brooks Act" provisions contained in Title 40 U.S.C. Chapter 11. The proposal solicitation process is by public announcement and provides qualified in-state and out-of-state consultants a fair opportunity to be considered for award of the contract. Price is not used as a factor in the evaluation and selection phases.
- B. *Small Purchases* - Small purchase procedures are relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold as defined in 48 CFR §2.101 (currently \$150,000). Competitive negotiation in the manner of a "Brooks Act" qualifications-based selection procedure is not required.

- C. *Noncompetitive Negotiation* – Noncompetitive negotiation is used to procure engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procedures. Circumstances which may justify a noncompetitive negotiation include when the service is available only from a single source, there is an emergency which will not permit the time necessary to conduct competitive negotiations, or after solicitation of a number of sources competition is determined to be inadequate.

TYPES OF CONTRACTS:

- A. *Project Specific Contract* – A project specific contract provides for all the work associated with a specific project or projects that is to be performed by the consultant firm and requires a detailed scope of services. These contracts may provide for all work to be placed under contract at the same time depending on availability of funds. A project specific contract is the traditional type of consultant contract between the Agency and a consultant for the performance of a fixed scope of work related to a specific project or projects.
- B. *Multiphase Contract* – A multiphase contract is similar to a project-specific contract except that the work is divided into phases such as survey, environmental or design. The consultant contract is based on a general scope of work with a maximum contract ceiling. Individual phases are negotiated and the work authorized while future phases may wait until later in the contract period before completing negotiation and authorization. Multiphase contracts are helpful for complex projects where the scope of a future phase is not well defined. Multiphase contracts may be terminated at the end of a phase. A multiphase contract incorporates the work order concept for a specific project.
- C. *General Engineering Related Contract* – General engineering related contracts are for engineering and design related services related to transportation planning, design, or program management for use on multiple projects. Examples include the development of design standards and technical manuals, and the development of comprehensive transportation program management manuals. These services may be performed on a project specific or on-call basis.

POLICY:

I. CONSULTANT EVALUATION COMMITTEE

- A. Establishment of a Consultant Evaluation Committee: The Agency's legally designated selection authority shall designate the members of the Consultant Evaluation Committee (CEC), which shall at a minimum be composed of professional employees of the Agency capable of providing a review of the technical qualifications of the consultant to perform the job(s) in question. The



Agency's legally designated selection authority must approve any substitutions. The CEC membership may vary depending on the type of service being procured.

- B. Role: The CEC shall have the responsibility of submitting to the Agency's legally designated selection authority a recommended list of at least three of the most highly qualified firms if one firm is to be selected. If more than one firm is to be selected from a single solicitation, the CEC's recommended list of the most highly qualified firms shall include at least two more firms than the number of selections to be made.
- C. Record of Proceedings: The CEC shall designate either a member or staff person to create and maintain a record of proceedings before the CEC, which shall include information submitted to the CEC for consideration, summary minutes of meetings, findings and/or recommendations to the Agency's legally designated selection authority.

II. PREQUALIFICATION OF CONSULTANTS

- A. All firms, including any public or private universities, shall have a current prequalification status which can be found on the Tennessee Department of Transportation's website.
- B. Firms and their employees must comply with the applicable state licensing law requirements including but not limited to Tennessee Code Annotated Title 62, Chapter 2 (Architects, Engineers, and Landscape Architects), Title 62, Chapter 39 (Real Estate Appraisers), Title 62, Chapter 18 (Land Surveyors), and Title 62, Chapter 36 (Geologists).
- C. Firms prequalified by the Tennessee Department of Transportation for engineering and design related services shall have either an "Unlimited" or "Limited" prequalification status as described below:
 - 1. Unlimited Prequalification: This level of prequalification allows consulting firms to compete for any projects for which they are professionally and financially pre-qualified with the Tennessee Department of Transportation. Continued prequalification at this level requires submittal of the prequalification form every three years.
 - 2. Limited Prequalification: This level of prequalification allows firms seeking prequalification for engineering and design related services to:
 - a) Compete for projects with fees estimated to be less than the "Small Purchase Maximum Contract Value" per contract (see Section VI), or
 - b) Work as a sub-consultant or as contract labor with fees estimated to be less than the "Small Purchase Maximum Contract Value" per contract.

- C. Expiration or termination of a consultant's prequalification status may be cause for the Agency to terminate any contract with a consultant.
- D. A name change, merger, buy out or other similar change in status shall cause a termination of the existing prequalification and necessitate the submittal of a new prequalification form to the Tennessee Department of Transportation.
- E. A firm's prequalification status shall be terminated if the firm is included on the Federal Excluded Parties List or if it has been suspended or debarred by the Tennessee Department of Transportation or any other agency of the State of Tennessee.

III. COMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

A. Confidentiality of Data and Records Retention

- 1. To the extent allowed by applicable State law, all documents relating to the evaluation and selection of consultants, and negotiations with selected consultants, shall remain confidential until selection is complete and a contract is awarded.
- 2. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the Agency's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. § 112 and 23 CFR Part 172 without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.
- 3. In accordance with 23 CFR 172.7 and the provisions of 2 CFR 200.333, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:
 - a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

- c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
- d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity

B. Solicitation

The Agency shall seek Letters of Interest from pre-qualified firms by public announcement through its internet website and by any other means of advertisement that may be required by law. Solicitations shall be reviewed and approved by the Local Programs Development Office before publishing.

1. For **all** contract types, the solicitation shall address:
 - a) Contact information at the Agency for project specific questions;
 - b) The specific location where the Letters of Interest should be mailed or e-mailed;
 - c) The deadline for submittals of Letter of Interest (not less than 14 days from the date of the solicitation);
 - d) A statement that all firms must be pre-qualified or have a completed prequalification form filed with the Tennessee Department of Transportation by the deadline for the Letters of Interest; and
 - e) Disadvantaged Business Enterprise (DBE) and Small Business encouragements.
2. The solicitation shall provide at a minimum, the following:
 - a) A detailed scope of work, including:
 - i. The purpose and description of the project;
 - ii. The services to be performed;
 - iii. The deliverables to be provided;
 - iv. The estimated schedule for performance of the work; and
 - b) The technical requirements of consultants required including the applicable standards, specifications, and policies;
 - c) The qualifications of consultants needed for the services to be rendered;
 - d) Any requirements for interviews or other types of discussions that may be conducted with the most highly qualified firms in Phase II of the selection of process;

- e) The evaluation criteria to be used in Phases I and II of the selection process, including the relative weight of importance of the factors to be considered in evaluating the interested firms that submit proposals in Phase II of the selection process;
 - f) Any approved non-qualifications based evaluation criteria to be considered in Phase II of the evaluation process;
 - g) The contract type and method of payment; and
 - h) Any special provisions or contract requirements associated with the solicited services.
3. For mid-range and large size projects, the CEI consultant shall not be associated with any other aspect of the project as described in Attachment A. The Agency must advertise separately for design and CEI services for mid-range and large projects, OR the Agency must separate the project into phases on one advertisement and require the consultant to indicate to which phase they are responding.

C. Consultant Evaluation Criteria

1. The qualifications-based selection criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.
- a) For Phase I evaluation, the qualifications-based evaluation criteria may include, but are not limited to, the following:
 - i. Work experience in the required disciplines with TDOT, the Agency, and/or other clients;
 - ii. Specialized expertise;
 - iii. Professional licensure;
 - iv. Staff capabilities of prime consultant;
 - v. Size of project and limited or unlimited prequalification status; and,
 - b) For firms submitting proposals during Phase II evaluation, the following additional evaluation criteria may also be included:
 - i. Workload capacity; including amount of work under contract with the Agency, if applicable

- ii. Past performance on Agency Projects;
 - iii. Technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures);
 - iv. Other factors including interviews and demonstrations, as approved by the Agency; and
 - v. Any approved non-qualifications based evaluation criteria, as provided in paragraph C.2. below.
2. If approved by the Agency's legally designated selection authority and the Department's Local Programs Office, the following non-qualifications based criteria are permitted, provided the combined total of these factors does not exceed a nominal value of ten percent (10%) of the total evaluation criteria:
- a) For contracts with Federal-aid funding, participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants; and/or
 - b) For any contracts a local presence may be used as a nominal evaluation factor where appropriate; provided, that this factor shall not be based on political or jurisdictional boundaries, and provided further that this factor may be applied only on a project-by-project basis for contracts where:
 - i. A need has been established for a consultant to provide a local presence;
 - ii. A local presence will add value to the quality and efficiency of the project; and
 - iii. Application of this factor leaves an appropriate number of qualified consultants, given the nature and size of the project.
 - iv. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.
3. For contracts or projects with Federal-aid funding, the Agency may set DBE goals, in which case the selected consultant must either meet the goal or show good faith efforts to meet the goal, consistent with the DBE program regulations at 49 CFR Part 26, to be considered for selection.

D. Evaluation, Ranking and Selection

1. Phase I Evaluation

- a) Using the evaluation criteria identified in the public solicitation, the Agency advertising for engineering related services shall evaluate current

statements of qualification and performance data from those firms submitting Letters of Interest.

- b) Unless specifically stated otherwise in the solicitation, the evaluation of a firm's qualification during Phase I evaluation shall be limited to the prime consulting firm only.
- c) Evaluations shall be presented to the CEC for review. The CEC shall choose at least three of the most highly qualified consultants who would make viable candidates and who will be invited to submit a proposal.
- d) The Agency shall issue a list of firms chosen to submit proposals and notify the firms that were not selected. The firms selected in Phase I shall be requested to submit a proposal for the work. Proposal format requirements, delivery address and deadlines shall be included in the notification sent to the selected firms. Electronic delivery and receipt of the proposal may be permitted.

2. Phase II Evaluation

- a) The Agency shall evaluate the proposals of firms selected in Phase I using the Phase II evaluation criteria identified in the public solicitation.
- b) A consultant firm that has been short-listed for a project and asked to submit a proposal shall specifically identify any sub-consultant(s) required to complete the project team. Identified sub-consultants will be evaluated using the criteria identified in the public solicitation. All sub-consultants identified on the submittal must be pre-qualified by the Tennessee Department of Transportation to perform the required tasks or have an application pending prior to submittal of the proposal. It shall be the responsibility of the prime consultant to include a signed statement from each sub-consultant on their own letterhead confirming that they have the staff available and agree to provide the necessary services for the specific item/project listed in the prime consultant's proposal. Failure to meet these requirements will void the submittal.
- c) Separate formal interviews, if approved as an evaluation criteria, shall be structured and conducted with a specified time limit. Competing consultants may be asked to bring additional information or examples of their work to the interviews if such information will contribute to the evaluation process. Specific questions may be asked of each consultant to clarify qualifications, written proposals, or oral presentations.
- d) The Agency shall present the evaluation of proposals received from firms selected in Phase I to the CEC for review. The CEC shall rank the firms based on the established and published criteria, or the CEC shall submit to the legally designated selection authority a list of the firms deemed most

highly qualified to provide the services required. The list shall contain no fewer than three firms. In instances where only two qualified consultants respond with proposals, the Agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition.

3. Phase III Evaluation, Ranking, Selection and Notification

- a) If the CEC does not make the final ranking of the most highly qualified firms, the Agency's legally designated selection authority shall rank the firms in order of preference.
- b) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.
- c) The Agency will negotiate with the three consultant firm(s) deemed to be most highly qualified in rank order.

E. Negotiation of Contract

The following shall apply to all negotiations of scope and cost for contracts, work orders, and supplemental agreements.

1. **Determination of Contract Amount:** The Agency shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate, which shall serve as the basis for negotiation, will be based on the following:
 - a) Relative difficulty of the proposed assignment or project, size of project, details required, and the period of performance; and,
 - b) A comparison with the experience record for similar work performed both by Agency personnel and previously negotiated consultant contracts.

This estimate shall be done independently, prior to negotiation, and shall remain confidential to the extent allowed by applicable law.

2. **Scope of Work Meeting with Selected Firm:** The Agency will negotiate with the selected firm and may arrange a conference with the prospective consultant where the parties must come to a mutual understanding of the scope of work and all technical and administrative requirements of the proposed undertaking. In lieu of a conference, this may be done by phone or correspondence. The prospective consulting firm may be represented as it wishes; however, a project manager and accounting representative are recommended.
3. **Cost Proposal:** The prospective consulting firm will be invited to submit a cost proposal for the project. This cost proposal is to be broken down by the various

items of work as requested and supported by estimated labor requirements. Instructions shall be given regarding the method of compensation and the documentation needed to justify the proposed compensation.

In evaluating the consultant's cost proposal(s), the Agency shall judge the reasonableness of the proposed compensation and anticipated labor and equipment requirements by the following and other appropriate considerations:

- a) The proposed compensation should be comparable to that of other projects of similar nature and complexity, including as applicable salaries and man-hours to accomplish the work, and allocation of labor within the man-hour estimates.
 - b) The Agency will assess the fairness of the proposed fixed fee based on the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract. Fixed fee is calculated using the following formula: $\text{Fixed Fee} = 2.35 \times \text{Direct Salary} \times \text{Allowed Fixed Fee Rate}$. Unless a higher fixed fee rate is expressly approved by the Agency, the maximum allowable fixed fee rate is 13% (See Appendix 1 for fixed fee rate determination).
 - c) The proposed compensation shall be studied for reasonableness and to assure sufficient compensation to cover the professional quality of the work items desired.
4. **Contract Negotiations:** If the consultant's first cost proposal is rejected by the Agency, the negotiating parties shall hold a second conference to discuss those points of the cost proposal which are considered unsatisfactory. The consultant shall submit a second cost proposal based upon this second conference. If the Agency rejects the consultant's second cost proposal, negotiations shall be formally terminated and commence with the second most qualified firm. If like negotiations are unsuccessful with the second most qualified firm, the Agency will undertake negotiations with the third most qualified firm and any others on the selected list in sequential order. With the concurrence of the legally designated selection authority, the Agency may, at any time, in lieu of continuing negotiations, elect to redefine the scope of the project and resolicit proposals pursuant to "POLICY", Section III, B, "Solicitation".
 5. The Agency shall maintain a record of the negotiations and all required approvals and shall retain these records for 36 months following final payment in accordance with Item A.3. of this section and as provided in 23 CFR § 172.7 and 2 CFR § 200.333.

F. Contract Development and Execution

1. In the event the parties reach agreement, the legally designated selection authority shall approve the preparation of a contract.
2. The contract will include a clause requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to Agency.
3. The contract shall contain a clause whereby the consultant must report at least quarterly all amounts paid to any DBE sub-consultants and to any Minority Business Enterprise (MBE) and/or Woman Owned Business Enterprise (WBE) sub-consultants.
4. Method of Payment: The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.
5. Suspension and Debarment: Prior to contract execution, the Agency shall verify suspension and debarment actions and eligibility status of consultants and sub-consultants in accordance with 2 CFR Part 1200 and 2 CFR Part 180.
6. The Agency shall maintain a record of the negotiations and all required approvals.
7. Prior to approval of the contract, the Agency must have on file a contract specific Certificate of Insurance for the consultant. It shall confirm that the firm has professional liability insurance for errors and omissions in the amount of \$1,000,000, as a minimum, and the policy shall be maintained for the life of the contract. Consultants responsible for the disbursement of Agency funds shall be required to provide evidence of a Fidelity Bond in the amount of \$250,000 maintained for the life of the contract.

G. Contract Administration

1. Once a contract has been awarded, the consultant may negotiate directly with sub-consultants. A change in sub-consultants must be approved by the Agency. A written request must be submitted to the Agency to initiate the change. This request must include an explanation of the need to change sub-consultants and the impact on the project schedule and financial elements of the contract. The substitute sub-consultant must be pre-qualified at the appropriate level (unlimited or limited) by the Department of Transportation to perform the required tasks. After consideration of all factors of the request, the Agency will respond to the request in writing.
2. After the contract has been approved, a work order issued, and productive work on the consultant's assignment has begun, the Agency shall periodically review

and document the consultant's progress. Said monitoring reviews shall be directed toward assurance that the consultant's assignment is being performed as specified in the agreement, that an adequate staff has been assigned to the work, that project development is commensurate with project billings, and that work does not deviate from the contracted assignment.

Should conditions warrant, these reviews may consist only of an appropriate exchange of correspondence. These reviews shall determine, among other matters, if any changes or supplemental agreements are required for the completion of the consultant's work.

3. A full-time employee of the Agency shall be responsible for each contract or project. Annually and/or at project close, the assigned employee will prepare a performance evaluation report covering such items as timely completion of work, conformance with contract cost, quality of work, and whether the consultant performed the work efficiently. A copy of this report will be furnished to the firm for its review and comments.

H. Contract Modifications

1. A contract modification, in the form of an executed supplemental agreement or amendment, is required whenever there is a change in the terms of the existing contract, including a change in the cost of the contract; a significant change in the character, scope, complexity, or duration of the work; or a significant change in the conditions under which the work is required to be performed. Contract modifications shall be negotiated using the same procedures as the negotiation of the original contract. The executed supplemental agreement or amendment shall clearly define and document the changes made in the contract and establish the method of payment for any adjustment in contract costs.
2. No contract may be supplemented to add work outside the scope of the project or the general scope of services the consultant was initially evaluated to perform. For example, a roadway design contract may be supplemented to add work related to additional phases of project design (e.g. preliminary engineering with related technical services such as survey or geotechnical work, preparation of right-of-way plans, or preparation of final construction plans); however, a project specific or multiphase contract for roadway design shall not be supplemented to add a new project or to add a different type of service, such as construction engineering and inspection, beyond the type of services solicited in the original solicitation.
3. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts.

I. Contract Accounting Policies

1. Indirect Cost Rate – Basic Agreement or Contract

- a) **Federally funded projects:** The indirect cost rate, effective for contracts advertised on or after December 1, 2005, shall be the actual rate as determined in compliance with Federal Acquisition Regulation Standards and approved by the cognizant agency as defined by 23 CFR § 172.3. The cognizant agency is the home state transportation department, a federal agency, or TDOT in the absence of any of the other. A Certified Public Accountant (CPA) may perform the audit, but the audit work papers may be reviewed by the governmental agency. Further;
 - i. The indirect cost rate for firms with multiple offices shall be a combined rate for all offices.
 - ii. The approved rate shall be utilized for the purposes of contract estimation, negotiation, administration, reporting, and contract payment for a twelve month period beginning the seventh month after the firm's Fiscal Year End.
 - iii. If the indirect cost rate expires during the contract period an extension may be considered on a case-by-case basis in accordance with 23 CFR § 172.11(b)(1)(vi). In any event, no new contracts will be considered for any firm without an approved indirect cost rate.
- b) **State funded projects:** Pursuant to T.C.A. § 54-1-130, the indirect cost rate cannot exceed a maximum of 145%.

2. Travel: Travel and subsistence charges shall be in conformance with the State of Tennessee Comprehensive Travel regulations. Air travel shall be pre-approved by the Agency. Actual expenses, not to exceed the commercial rate, for the use of company owned airplanes are allowable as a direct charge.

3. Fixed Fee Payment:

- a) For cost plus fixed fee contracts, payments of fixed fee shall be based on the actual labor costs not to exceed the total approved fixed fee.
- b) The fixed fee for each progress billing shall be determined using the consultant's actual direct labor for the specific billing period multiplied by 2.35 times the negotiated fixed fee percent.
- c) With the exception of Construction Engineering and Inspection Contracts, the firm may invoice for the balance of any unbilled fixed fee upon successful completion of the contract.

4. **Contract and Project Closing:** The Agency is responsible for keeping up with contract costs and knowing when a contract is complete. The Agency is also responsible for closing the contract in a timely manner. By letter to the consultant, the Agency shall affirm that the contract or work order has been satisfactorily completed. In the event that additional services are required within the original scope of the project, the contract or work order may be re-opened. All terms and conditions of the contract shall remain the same.
5. **Retainage** shall not be required for new Engineering and Technical Services Contracts.
6. **Audit Requirements:**
 - a) Pre-award audits consist of a review of a proposed indirect cost rate based upon historical data, review of the consultant's job cost accounting system, and review of project man-day or unit price proposals.
 - b) Awarded contracts are subject to interim and final audits. The audits consist of determining the accuracy of invoice charges by reviewing time sheets, payroll registers, travel documents, etc. Charges that cannot be supported will be billed back to the consultant. Firms will be selected for contract compliance audits using a risk analysis utilizing primarily the firm's total contract exposure with the Agency and the time elapsed since the last compliance audit.
 - c) Annual approval of the indirect cost rate for non-fixed indirect cost rate contracts will be required and adjustments to the invoiced billing rate may be necessary based on audit results. The determination of whether to perform a desk review or full field audit of the indirect cost schedule is made utilizing a risk analysis created in accordance with the guidelines proscribed in the AASHTO Uniform Audit & Accounting Guide.
7. **Computer Aided Drafting and Design (CADD) Expenditures:** All CADD equipment and software expenditures are to be treated as part of indirect cost. CADD expense will not be allowed as a direct expenditure based on an allocation rate.
8. **Facilities Capital Cost of Money (FCCM) Rate:** FCCM referenced in 48 CFR § 31.205-10 shall be allowed as part of indirect cost and applied to direct labor.
9. **Direct Costs**
 - a) Include job related expenses that are required directly in the performance of project services such as travel, subsistence, long distance telephone, reproduction, printing, etc. These should be itemized as to quantities and unit costs in arriving at the total cost for the expense.

- b) The proposed direct cost shall not exceed the Tennessee Department of Transportation's maximum allowable rate when a rate for such cost is specified. All direct costs must show supporting documentation for auditing purposes. Documentation for proposed rates should show how they were developed including historical in-house cost data or names and phone numbers of vendors that supplied price quotes along with receipts, invoices, etc., if available.
 - c) Electronic equipment, such as personal computers, cameras, and cellular phones, shall be included in the consultant's indirect cost.
 - d) The cost of the use of the consultant's vehicle(s) to the Agency's project shall be paid for according to Attachment B, Schedule of Vehicle Reimbursements.
10. Collection of Funds Due as Result of Contract Audit: Once an audit is completed and the consultant is found to owe the Agency, the Auditor will notify the Agency's Finance Director in writing, with a copy to the Department's Local Programs Office. The Agency will contact the consultant in writing about the indebtedness and request payment within 30 days from the date of the letter. If after 30 days payment is not received, the consultant will then be notified that any funds owed to the consultant under other agreements will be used to satisfy the indebtedness. If funds or payables to the consultant in the Agency's possession are in excess of the indebtedness, anything owed the consultant will be remitted under normal payment procedures. If the funds in the Agency's possession are not sufficient to satisfy the indebtedness, the Agency will take appropriate action.

J. Geotechnical Contracts

Contracts for geotechnical services are considered separately because they may involve a mixture of two types of services, i.e., geotechnical studies (engineering services) and subsurface exploration/drilling and/or laboratory testing (technical services). Additionally, some firms offer one or the other of these services, others offer both, and others offer some combination as well as other services, e.g., design. Firms offering both services must, for accounting purposes, separate the two operations. Cost of equipment, supplies, etc., used in technical services may not be applied towards indirect cost computations for engineering services.

Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing services shall be procured as noted in "POLICY", Section III, Competitive Negotiation Procurement Procedure. The technical services costs shall be negotiated by the Agency based on usual industry standards.

K. Sub-consultants for Engineering Services

1. Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing within another Engineering Services Firm: These services may be procured as part of the larger contract, e.g., roadway design. Payment for subsurface exploration/drilling shall be invoiced as a direct cost. Geotechnical studies shall be invoiced as other engineering services.
2. Geotechnical Studies Firms as Sub-Consultants
 - a) Geotechnical Studies Only: The services of these firms may be procured by negotiation with the prime consultant as described previously herein.
 - b) Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing Firms as Sub-Consultants: The services of these firms shall be procured by negotiation with the prime consultant. However, costs associated with subsurface exploration/drilling and/or laboratory testing shall be negotiated by the Agency.

L. Sub-consultants Not Covered Under Engineering Services

In the event a sub-consultant is required whose hiring process, as a prime, would not be governed by Competitive Negotiation under this Policy, that sub-consultant shall be retained by the same method as the Agency would use to procure the same type of services under the Agency's local law or other applicable state law.

1. Example: Design consultants are occasionally asked to provide laboratory testing services under their design contract. The design consultant shall use, and document, the applicable procedures identified by the Agency.
2. The Agency should monitor the hiring and documentation of sub-consultants by the prime. Documentation should detail the method used and should be satisfactory for a final project audit.

IV. NONCOMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

The following procedures shall be used by the Agency, subject to the Tennessee Department of Transportation's prior approval, in those circumstances where there exists only one viable source for the desired services, when competition among available sources is determined to be inadequate after solicitation of a number of sources, or in emergencies when adherence to normal competitive negotiation procedures will entail undue delays for projects requiring urgent completion.

Upon determination of a need for this type of procurement, the Agency shall request an estimate from the qualified firm for the accomplishment of the desired assignment. The request for an estimate shall define the full scope of the desired services, together

with minimum performance specifications and standards, the date materials and services are to be provided by the consultant to the Agency, and the required assignment completion schedule. Response to the request for an estimate shall be evaluated, giving due consideration to such matters as a firm's professional integrity, compliance with public policies, records or past performances, financial and technical resources, and requested compensation for the assignment. Before using this form of contracting, the Agency shall submit justification to and obtain approval from the Department; provided, however, that for Federal-aid contracts, the Department shall also submit the request to FHWA for approval in accordance with 23 CFR § 172.7(a)(3)(ii).

V. SMALL PURCHASE PROCUREMENT PROCEDURE

When the contract cost of the services does not exceed the simplified acquisition threshold as defined in 48 CFR § 2.101 of the Federal Acquisition Regulations (FAR), which is currently \$150,000, small purchase procedures may be used. The scope of work, project phases and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures. Further, a contract obtained under small purchase procedures shall not be modified to exceed the simplified acquisition threshold.

Proposals will be obtained from an adequate number of qualified sources with a minimum of three. In instances where only two qualified consultants respond to the solicitation, the Agency may proceed with evaluation, ranking and selection if it is determined that the solicitation did not contain conditions or requirements which arbitrarily limited competition. Awards will be made to the responsible firm whose proposal is most advantageous to the program.

VI. TECHNICAL SERVICE PROCUREMENT PROCEDURE

The Agency shall use the procurement process it would use for the same type of service under applicable state or local law; provided, that on Federal-aid projects the procurement process shall be consistent with competitive procurement requirements under 2 CFR Part 200.

ATTACHMENT A – Consultant Selection for Locally Managed Projects

Size of Project	Type of Project	Procurement Requirements
SMALL projects <ul style="list-style-type: none"> Must have a full-time employee on staff with experience managing transportation projects. Must hire consultants for all phases of the project from TDOT's approved list if the Local Government has not been approved by TDOT to use their own forces. The consultants must be qualified in the required area of expertise. 	<ul style="list-style-type: none"> Transportation Alternatives intersection improvements without significant ROW (under one acre of disturbance) Safe Routes to School resurfacing striping signing guardrail installation signalization some bridge replacement projects (under one acre of disturbance) non-construction/service contracts (as listed in Chapter 10 of the LGG) low-risk and exempt ITS 	<ul style="list-style-type: none"> Local Government can use the same consultant for the entire project (planning, preliminary engineering and CEI)
MID-RANGE projects <ul style="list-style-type: none"> Must have a qualified, full-time professional engineer on staff. Must hire consultants for all phases of the project from TDOT's approved list. The consultants must be qualified in the required area of expertise. 	<ul style="list-style-type: none"> roadway widening realignment of existing roadway signalization projects with the addition of turn lanes intersection improvements with significant ROW (over one acre of disturbance) bridge replacement projects requiring significant land acquisition (over one acre of disturbance) projects with environmental requirements greater than a categorical exclusion but lesser than an EIS high-risk ITS 	<ul style="list-style-type: none"> The selected CEI consultant shall not be associated with any other aspect of the project.
LARGE projects <ul style="list-style-type: none"> Must have a qualified, full-time professional engineer on staff with extensive experience working with federally-funded transportation projects. Must hire consultants for all phases of the project from TDOT's approved list. The consultants must be qualified in the required area of expertise. 	<ul style="list-style-type: none"> construction of new facilities widening of existing roadways realignment of existing roadways that require significant land acquisition (over 10 acres) environmental clearances that require an EIS 	<ul style="list-style-type: none"> The selected CEI consultant shall not be associated with any other aspect of the project.

**ATTACHMENT B – Policy for Standard Procurement of Engineering and Technical Services****Vehicle Reimbursement Schedule**

For all projects except Construction Engineering and Inspection (CEI), the consultant shall be reimbursed at the rate specified in the State of Tennessee Comprehensive Travel Regulations in effect at the time the cost was incurred.

For CEI projects, the consultant shall be reimbursed at the rate of \$27.00 per day for compact pick-up trucks used on the Agency's projects. For full size pick-up trucks used on the Agency projects, the consultant shall be reimbursed at the rate of \$30.25 per day

Rate changes are approved: _____
AGENCY HEAD DATE

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Jordan Farms Public Restroom

Department: Administration

Presented by: Angela Jackson, Executive Director Community 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

Agreement for construction of public restrooms at the Jordan Farms soccer fields.

Staff Recommendation

Approve contract for construction services with Hawkins & Price, LLC.

Background Information

Several years ago, the City constructed soccer fields on City-owned land west of Siegel Soccer Facility. These fields are a vital part of the programming for the soccer complex and are heavily used. The City has added lighting to the fields to increase their utilization. These fields need restroom and storage facilities. To construction these, the project requires the installation of a sewer pump station to the force main serving Richard Siegel Park.

Council Priorities Served

Establish strong City brand

Richard Siegel Soccer Complex is an important economic engine for the City, drawing a significant number of visitors during the tournaments and other events at the Park.

Expand infrastructure

Building facilities necessary to service the use of City parks is a part of the City critical infrastructure.

Fiscal Impact

The construction project is \$713,616, of which \$250,000 is funded by a grant from TDEC, \$100,00 is from ADA funds, and the remainder by the FY19 and FY21 CIP Budget.

Attachments

Construction Contract Agreement with General & Supplementary Conditions

SECTION 00520

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is dated as of the _____ day of _____ in the year of 2021, by and between the City of Murfreesboro ("Owner") and Hawkins and Price, LLC ("Contractor").

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of a new \pm 840 s.f. restroom with \pm 500 sf attached pavilion and site improvements including a new 3-inch water line, a new sewage lift station, and 2,200 feet of 3-inch PVC forcemain.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described in Article 1.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Griggs & Maloney, Inc.; P.O. Box 2968, Murfreesboro, Tennessee 37133.
- 3.02 The Owner has retained Griggs and Maloney, Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 Time of the Essence
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 Contract Times: Days
- A. The Work will be substantially completed within 150 days after the date contract times commence to run as provided in Paragraph 4.01 of the General Conditions and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 180 days after the date when the Contract time commences to run.

- B. Substantial Completion is defined by the complete and accepted construction of the restroom, forcemain, and pump station. All other work must be complete and ready for final payment within 90 days.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones, if any, not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner \$300.00 if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. Substantial Completion: Contractor shall pay Owner \$300 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 - 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$300 for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
 - A. All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
 - B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item). The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

C. Total of Lump Sum Amount and Unit Price Work is as follows:

\$713,616.00

(Figures)

Seven hundred thirteen thousand six hundred sixteen and 00/100 dollars

(Words)

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 5th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due, as provided in Article 15 of the General Conditions, shall bear interest at 3 percent annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 9, inclusive).
 2. Performance bond.
 3. Payment bond.
 4. General Conditions (pages 1 to 65, inclusive; Specification Section 00700).
 5. Supplementary Conditions Section 00800 and Supplementary Conditions Section 00801. In the event of any conflict between the Agreement and Supplementary Conditions, the terms of this Agreement shall govern. If there is any conflict between the terms of the General Conditions and the Supplementary Conditions, the Supplementary Conditions shall govern.
 6. Specifications as listed in the table of contents of the Project Manual, including Appendices.
 7. Drawings (not attached but incorporated by reference) with each sheet bearing the following general title: 2016 LPRF Jordan Farms New Public Restroom, Pump Station, and Forcemain.
 8. Addenda (Specification Section 00900).
 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 No-Damage-For-Delay.

- A. Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it considered this no damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

10.07 No Third-Party Beneficiaries.

- A. There are no intended third-party beneficiaries to the Contract

10.08 Indemnification.

- A. Contractor shall defend, hold harmless and indemnify Owner and Engineer, and each of their respective officers, agents, engineers, attorneys and employees from any and all losses, liability, damages, costs, expenses (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs), claims, suits or actions whatsoever in nature, including intentional acts, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Contract.

10.09 Amendments.

- A. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written, properly signed instrument by the parties duly authorized representative. This requirement includes all change orders, which shall not arise under any other circumstances, including verbally, cumulatively, or by any course of conduct. Such waiver, alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the purpose given, and shall be valid and binding only if it is signed by all parties to this Agreement. The failure of Owner to enforce any provision of this Agreement shall not constitute a waiver by the Owner of that or any other provision.

10.10 Choice of Law.

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. All disputes will be resolved in accordance with Addendum B of the Supplementary Conditions. Provided, if any litigation arising under the Agreement must be brought in a federal forum, it shall be brought and maintained solely and exclusively in the United States District Court for the Middle District of Tennessee.

10.11 Integration.

- A. This Agreement, which includes all Contract Documents as identified herein, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, regarding this Agreement, except as specified or referenced herein. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

10.12 Counterparts.

- A. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER: **City of Murfreesboro, Tennessee**

CONTRACTOR:

By: _____
Shane McFarland

By: _____

Title: Mayor _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Approved as to Form:

By: _____
Adam Tucker

Attest: _____

Title: City Attorney _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

END OF SECTION 00520

SECTION 00700

GENERAL CONDITIONS

PART 1 - GENERAL

1.01 GENERAL

- A. The Standard General Conditions of the Construction Contract, EJCDC Document C-700, 2013 Edition, of the Engineer's Joint Contract Documents Committee, hereinafter referred to as General Conditions, are hereby made a part of this Specification bound herein.
- B. The Contractor is hereby specifically directed, as a condition of the Contract, to acquaint himself with the Articles contained therein, and to notify and appraise all subcontractors and any other parties to the Contract of, and bind them to, its conditions.
- C. No contractual adjustments shall be due as a result of failure on the part of the Contractor, subcontractors or other parties to the Contract to fully acquaint themselves with the conditions of EJCDC Document C-700.
- D. The Standard General Conditions of the Construction Contract, EJCDC Document C-700, is hereby amended by the Supplementary Conditions.
- E. The provisions of the General and Supplementary Conditions and DIVISION 1, General Requirements, apply to the work specified in each Section of the Specifications.

PART 2 - PRODUCT

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION 00700

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 - 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 - 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION 00800
SUPPLEMENTARY CONDITIONS

These Supplementary Conditions ("SC") modify specific provisions the Standard General Conditions of the Construction Contract (EJCDC C-700 (2013)). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions, unless otherwise modified herein. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

SC-1. Strike Paragraph 1.01.A.8 in its entirety and replace with the following:

8. *Change Order*—A document that is signed by Contractor and Owner, a requirement that cannot be waived by any subsequent action of the parties, and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

SC-2. Strike Paragraph 1.01.A.23 in its entirety and replace with the following:

23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having or purporting to have jurisdiction.

SC-3. Strike Paragraph 1.01.A.24 in its entirety and replace with the following:

24. *Liens*—Charges, security interests, or encumbrances, or legal actions to assert the same, upon Contract-related funds, real property, or personal property.

SC-4. Strike Paragraph 1.01.A.26 in its entirety and replace with the following:

26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid. The Notice of Award alone shall not create remedies for any Work performed under the Agreement or Contract Documents.

SC-5. Strike Paragraph 2.01.C in its entirety and replace with the following:

- C. [Intentionally omitted]

SC-6. Delete Paragraph 2.02.A in its entirety and insert the following in its place:

- A. Owner shall furnish to Contractor up to 3 printed or hard copies of the Contract Documents and Plans and, if requested, one set in electronic format. Additional copies will be furnished upon request at the cost of reproduction. Electronic documents provided to the Contractor are for convenience and informational purposes only.

SC-7. Strike Paragraph 2.03.A.1 in its entirety and replace with the following:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract. The Progress Schedule, in detailed precedence-style critical path method (CPM)

or primavera-type format satisfactory to Owner and Engineer, shall (i) provide a graphic representation of all activities and event that will occur during the performance of the Work: (ii) identify each phase of the construction and occupancy; and (iii) set forth milestone dates that are significant to ensure the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

SC-8. Strike Paragraph 2.04.A in its entirety and replace with the following:

- A. Contractor shall arrange for, either at such time as Engineer shall specifically direct, of any, or otherwise, before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

SC-9. After Paragraph 2.04.B add the following:

- 1. Generally, Contractor shall communicate with Engineer, or the Engineer's designated representative under Paragraph 9.02, concerning matters affecting Engineer or Owner. In the event that Contractor believes he cannot deliver necessary communications to Engineer or his representative, Contractor may transmit those communications to Owner's representative with a copy to Engineer, which communications will include a brief explanation of the need to communicate with Owner's Representative.

SC-10. Strike Paragraph 2.05.A in its entirety and replace with the following:

- A. Contractor shall arrange for, either at such time as Engineer shall specifically direct, of any, or otherwise, at least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times, in compliance with the requirements of Paragraph 2.03.A.1. Upon review and acceptance by Owner and Engineer, the Progress Schedule shall be deemed to be part of the Contract Documents. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor. If not accepted, the Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of Owner and Engineer and resubmitted.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the

component parts of the Work. The unit prices or lump sum amounts provided by the Contractor in the Bid Form shall serve as the basis for the Schedule of Values. Additional subdivision of unit price or lump sum items shall be made as reasonably requested by the Engineer or as required to verify progress payments for Lump Sum or Unit Price work that will take place over several progress payment periods.

SC-11. Strike Paragraph 3.01.B in its entirety and replace with the following:

- B. It is the intent of the parties that the Contract Documents describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom, practice, or trade usage as being required to produce the indicated result will be provided at no additional cost to Owner. The grades, elevations, dimensions, locations, and field measurements or any drawings or specification issued by Engineer, or the Work installed by other Contractors, are not guaranteed by Engineer or Owner. Contractor shall be responsible for verifying the accuracy of all grades, elevations, dimensions, locations, and field measurements. In all cases of the interconnection of its Work with existing or other Work, Contractor shall verify at the site all dimensions relating to such existing or other Work. Any errors due to Contractor's fault to verify shall be promptly rectified by Contractor without any additional costs to Owner or extensions of Contract Time.

SC-12. Strike Paragraph 3.03.A in its entirety and replace with the following:

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall within two business days report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall within two business days report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof, or should have had such knowledge under the circumstances of the Contract.

SC-13. Strike Paragraph 3.04 in its entirety and replace with the following:

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder. However, should Owner choose to self-perform the duties and responsibilities of Engineer, or should Owner choose to designate another party to fulfill these duties and responsibilities, (i) Contractor shall accept all actions and decisions of Owner or Owner's designated party as if and to the same extent it would were Engineer fulfilling these duties and responsibilities under the Contract; and (ii) Engineer shall have no liability for such actions or decisions.
- B. Engineer will, with reasonable timeliness based on the circumstances affected by the issue, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will within one business day of its determination give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

SC-14. Strike Paragraph 4.01.A in its entirety and replace with the following:

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. Owners, with the concurrence of Engineer, will provide a Notice to Proceed after the effective date of the Agreement. Until Contractor receives a Notice to Proceed from Owner, Contractor shall not proceed with work on the Project. In no event will Contractor have any remedies for Work performed on the Project until the Notice to Proceed is given of Contractor.

SC-15. Strike Paragraph 4.02.A in its entirety and replace with the following:

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date. Contractor shall have no remedies for any Work Performed under the Agreement or Contract Documents until Owner issues the Notice to Proceed.

SC-16. Strike Paragraph 4.03.A in its entirety and replace with the following:

- A. Engineer shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel, approved by Engineer, and licensed in the state where the Project is located or working under direct supervision of a surveyor licensed in the state where the Project is located.

SC-17. Strike Paragraph 4.05.A in its entirety and replace with the following:

- A. If Owner or Engineer delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Notwithstanding any other provision of the Contract, Owner shall not be liable, as damages for delays under this section, for any consequential damages, lost opportunity costs, impact damages, or other similar remuneration. Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, directing suspension, rescheduling, or correction of the Work, or terminating this agreement for its convenience), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with Contractor's performance of the Work. If Contractor submits a progress report indicating, or otherwise expressing, an intention to achieve completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Times, Owner shall have no liability to Contractor for any failure of Contractor to so complete the Work according to that progress report.

SC-18. Strike Paragraph 4.05.F in its entirety and replace with the following:

- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor, its subcontractors, suppliers, agents and representatives.

SC-19. Strike Paragraph 5.03.A in its entirety and replace with the following:

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.

Such reports shall not excuse Contractor and each Subcontractor from the duty to independently evaluate and satisfy themselves as to the site conditions and limitations under which the Work is to be performed, including, without limitation,

(1) the location, condition, layout, and nature of the project site and surrounding areas; (2) generally prevailing climatic conditions; (3) anticipated labor, supply, and costs; (4) availability and cost of materials, tools, and equipment; and (5) other similar issues. Further, Owners assumes no responsibility or liability for the physical conditions or safety of the project site or any improvements located on the project site. Except as set forth in in Article 5, Contractor shall be solely response for providing a safe place for the performance of the Work. Owner shall not be required to make adjustments in either the Contract Price or Contract Times arising from a failure by Contractor or any Subcontractor to independently evaluate and satisfy themselves as to the site conditions and limitations.

SC-20. Strike Paragraph 5.04.A in its entirety and replace with the following:

- A. *Notice by Contractor:* If Contractor discovers or should have discovered that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, immediately or as soon as feasible, and in any event not more than 24 hours after the time Contractor discovers, and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

SC-21. Strike Paragraph 5.04.B in its entirety and replace with the following:

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will immediately or as soon as feasible review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

SC-22. Strike Paragraph 5.04.D.3 in its entirety and replace with the following:

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a written, duly authorized, and signed Change Order.

SC-23. Strike Paragraph 5.05.B in its entirety and replace with the following:

- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, immediately attempt to and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and by not later than the end of the next business day give written notice to that owner and to Owner and Engineer.

SC-24. Strike Paragraph 5.05.C in its entirety and replace with the following:

- C. *Engineer's Review:* Engineer will as soon as feasible review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

SC-25. Strike Paragraph 5.05.E.2 in its entirety and replace with the following:

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a written, duly authorized, and signed Change Order.

SC-26. Strike Paragraph 5.06.C in its entirety and replace with the following:

- C. Contractor must make all reasonable efforts to discover and locate any Hazardous Environmental Conditions at the site that may present a danger to persons or property exposed thereto in connection with the Work at the site. Contractor is liable for any damages caused by any Hazardous Environmental Conditions that Contractor knew or, or by the exercise of reasonable efforts should have known of, and any damages caused by reason of any Hazardous Environmental Conditions created, known to, or encountered by Contractor, its Subcontractors, Supplier, or anyone else for whom Contractor is responsible. Within 24 hours of the time when Contractor discover any Hazardous Environmental Conditions, Contractor will follow the procedures set forth in Paragraph 5.06.E. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

SC-27. Strike Paragraph 5.06.G in its entirety and replace with the following:

- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Nothing in this Paragraph obligates Owner or Contractor to indemnify the other from and against the consequences of the other's own negligence.

SC-28. Strike Paragraph 5.06.I in its entirety and replace with the following:

- I. To the fullest extent permitted by Laws and Regulations, the party to this Contract who created or was responsible for the Hazardous Environmental Condition shall indemnify and hold harmless the other party to this Contract, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (i) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by the party(ies) to be indemnified hereunder or by anyone for whom party(ies) to be indemnified hereunder is responsible. Nothing in this Paragraph 5.06.I shall obligate the party to this Contract who created or was responsible for the Hazardous Environmental Condition to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

SC-29. Strike Paragraph 6.01.A in its entirety and replace with the following:

A. Contractor shall furnish a performance bond and a payment bond, each in an amount of 100% of the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

SC-30. Strike Paragraph 6.01.D in its entirety and replace with the following:

D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall immediately upon learning of the bankruptcy or insolvency notify Owner and Engineer and shall, within 10 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

SC-31. Modify Paragraph 6.02.B as follows:

Strike the words "Owner or" in the first sentence.

SC-32. Strike Paragraph 6.02.D in its entirety and replace with the following:

D. [Intentionally omitted]

SC-33. Modify Paragraph 6.02.E as follows:

Strike the words "or Contractor" in the first sentence.

SC-34. Strike Paragraph 6.02.F in its entirety and replace with the following:

- F. If Contractor does not purchase or maintain all of the insurance required of such party by the Contract, Owner shall notify Contractor in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

SC-35. Strike Paragraph 6.02.H in its entirety and replace with the following:

- H. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, Owner may elect to obtain equivalent insurance to protect Owner and Contractor's interests at the expense of Contractor and the Contract Price shall be adjusted in order for Owner to recover the full cost of the insurance so obtained.

SC-36. Modify Paragraph 6.03 in its entirety and replace with the following:

Strike all subsections and replace with the following: "Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions Addendum A."

SC-37. Strike Paragraph 6.06.B in its entirety and replace with the following:

- B. Owner waives all rights against Contractor and Subcontractors and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. [Intentionally left blank]
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06. This Paragraph applies solely to pre-completion insurance policies and Owner may claim subrogation to coverages provided for damages caused by Contractor and Subcontractors, or officers, directors, members, partners, employees, agents, consultants and subcontractors of each.

SC-38. Strike Paragraph 6.07.A in its entirety and replace with the following:

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 6.07.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged

Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

SC-39. Strike Paragraph 6.07.B in its entirety and replace with the following:

- B. Proceeds for such insured losses under the builder's risk and other policies of insurance required by Paragraph 6.05 shall be made payable by the insurer to Owner, or if paid to another Party to this Contract, shall be immediately signed over to the benefit of Owner. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers.

SC-40. Strike Paragraph 7.01 in its entirety and replace with the following:

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent, as provided under Paragraph 2.04.B., who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

SC-41. After Paragraph 7.02.B, add the following:

- C. Contractor shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

SC-28. SC-42. Strike Paragraph 7.03.B in its entirety and replace with the following:

- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. Contractor agrees to assign to Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work, and Contractor further agrees to perform the Work in such a manner as to preserve any and all manufacturer's warranties. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

SC-29. Strike Paragraph 7.05.B in its entirety and replace with the following:

- B. *Engineer's Evaluation and Determination:* Engineer will be allowed an average of seven days, or such other reasonable period of time as Owner determines is required to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

SC-30. Strike Paragraph 7.06.A in its entirety and replace with the following:

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. No later than 14 days after the execution of the Agreement by Contractor and Owner, Contractor shall furnish Owner and Engineer, in writing, with (1) the name, trade, and subcontract amount for each Subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor.

SC-31. Strike Paragraph 7.08.A in its entirety and replace with the following:

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Contractor shall pay all charges of utility owners for connections for providing service to the Work, and Owner shall pay all charges of such utility owners for costs related to providing post-construction service to the Work.

SC-32. After Paragraph 7.09.A, add the following:

- B. Should Owner be exempt from payment of sales and compensating use taxes of the State on all materials to be incorporated into the Work.
1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

SC-33. Strike Paragraph 7.10.B in its entirety and replace with the following:

- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and

losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

SC-34. Delete the second sentence of Paragraph 7.12.C and replace with the following:

All Owner required safety with which Contractor must comply are listed in Section 01010, Summary of Work.

SC-35. Strike Paragraph 7.12.D in its entirety and replace with the following:

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site, to which Owner may interpose reasonable objections that are not beyond a general right to order, inspect, make suggestions, or prescribe alterations or deviations or in any way accept or cause liable for site safety to shift from the sole responsibility of Contractor to either Owner or Engineer to any degree.

SC-36. Strike Paragraph 7.15.A in its entirety and replace with the following:

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof as soon as is feasible. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

SC-37. Strike Paragraph 7.17.A in its entirety and replace with the following:

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective.

SC-38. Strike Paragraph 7.18.A in its entirety and replace with the following:

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting in whole or in part from any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly

employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

SC-39. Strike Paragraph 8.03.D in its entirety and replace with the following:

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) as soon as reasonably possible attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim as expediently as possible by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference. In no event shall Contractor's actions as described in this Paragraph result in an increase in the Contract Price or Contract Times.

SC-40. Strike Paragraph 9.03.A in its entirety and replace with the following:

- A. Owner shall furnish the data required of Owner in accordance with the Contract Documents.

SC-41. Strike Paragraph 10.03.A in its entirety and replace with the following:

- A. If Owner and Engineer have agreed that Engineer will act as Owner's Project Representative, Engineer shall act as its Resident Project Representative and designate a specific person with Engineer's firm to serve as the Resident Project Representative to represent Owner at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority, which shall include the authority to transmit instructions, receive information, render decisions relative to the Contract Documents, and otherwise act in place of the Engineer, subject to the Supplementary Conditions providing otherwise and the limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions. In the event Owner designates a representative or agent other than Engineer or Engineer's agent, Engineer shall not be liable for decisions rendered by such Owner or Owner's Representative.

SC-42. Strike Paragraph 10.07.A in its entirety and replace with the following:

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for

initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith. However, should Owner choose to self-perform the duties and responsibilities of Engineer, or should Owner choose to designate another party to fulfill these duties and responsibilities, (i) Contractor shall accept all actions and decisions of Owner or Owner's designated party as if and to the same extent it would were the Engineer fulfilling these duties and responsibilities under the Contract; and (ii) Engineer shall not be liable for decision rendered by Owner or Owner's Representative

SC-43. Strike Paragraph 11.01.A.1.b in its entirety.

SC-44. Strike Paragraph 11.01.A.3 in its entirety and replace with the following:

3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order should instead, have been issued as a Change Order, because that Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein. Engineer will obtain not later than one week after issuing a given Field Order, and if possible before Contractor performs work under the Field Order, the signature of Contractor on each Field Order. This signature confirms that Contractor is not entitled to any change in the Contract Price or the Contract Times. Engineer should obtain the signature of Contractor on all Field Orders issued.

SC-45. Strike Paragraph 11.02.A in its entirety and replace with the following:

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall proceed with the Work involved; or, in the case of a deletion in the Work, cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

SC-46. Strike Paragraph 11.04.C.2.a in its entirety and replace with the following:

- a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, Contractor's fee shall be 15%;

SC-47. Strike Paragraph 11.04.C.2.c in its entirety and replace with the following:

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that Contractor's fee shall be based on: (i) a fee of 15% of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (ii) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27% of the costs incurred by the Subcontractor that actually performs the work;

SC-48. Strike Paragraph 11.05.A in its entirety and replace with the following:

- A. The Contract Times may only be changed by agreement only through a written and executed Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.

SC-49. After Paragraph 11.05.B add the following:

- C. All time limits stated in the Contract Documents are of the essence of the Agreement. Contractor acknowledges and understands that (i) Owner has a need for the completed Work, shortly after the date set forth in the Agreement by which substantial completion is to be achieved for the public good and to protect public funds; and (ii) failure by Contractor to complete the Work in accordance with the construction schedule will cause significant damages to Owner, including, without limitation, public health, safety, and welfare, as well as the undue diminishment of public funds.

SC-50. Strike Paragraph 11.01.A.1.B in its entirety.

SC-51. Strike Paragraph 11.06.A.2 in its entirety and replace with the following:

2. *Engineer's Action:* Engineer will review each Change Proposal and, within 60 days after receipt of the Contractor's supporting data, will recommend to the Owner that the Owner either deny or approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor and Funding Agency (if there is one). If Engineer does not take action on the Change Proposal within 60 days, then either Owner or Contractor may, at any time thereafter, submit a letter to the other party indicating that as a result of Engineer's inaction, the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

SC-52. Strike Paragraph 11.06.A.3 in its entirety and replace with the following:

3. *Binding Decision:* Engineer's decision on issues other than changes in Contract Price or changes in Contract Times will be final and binding upon Contractor, unless Owner or Contractor appeals the decision by filing a claim under Article 12.

SC-53. In Paragraph 11.07.A delete the following:

“in accordance with a Work Change Directive”

SC-54. After Paragraph 11.07.B add the following:

- C. An agreed Change Order that adjusts the Contract Price, or the Contract Time, or both, shall be accomplished only by a written and executed Change Order. Accordingly, no course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alterations or additions to the Work shall be the basis of any claim for an increase in any amount due under the contract documents or in any time period provided for in the Contract Documents, unless executed as a Change Order under Paragraph 10.03. Any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Contract Times. In the event a Change Order increases the Contract Price, Contractor shall include the Work covered by such Change Order in applications for payments as if such Work were originally part of the Agreement. No individual employer, agent, or representative of Owner is authority to waive this requirement of compliance with the requirement of this Section.

SC-55. Strike Paragraph 12.01.B in its entirety and replace with the following:

- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract as soon as practicable, and in no event more than 30 calendar days, after the start of the event giving rise thereto, and in the case of appeals regarding Change Proposals within 14 calendar days of the decision under appeal. The party submitting the Claim shall also furnish a copy to Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

SC-56. Strike Paragraph 13.01.B.1 in its entirety and replace with the following:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized in writing by Owner.

SC-57. Strike Paragraph 13.01.B.4 in its entirety and replace with the following:

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work, but only to the extent authorized and approved in writing by Engineer.

SC-58. Strike Paragraph 13.01.B.5.c in its entirety and replace with the following:

- c. Construction Equipment and Machinery:
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor will be paid at a rate shown for such equipment in the "The Rental Rate Blue Book for Construction Equipment" published by Equipment Watch, Prism Business Media. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.

SC-59. Strike Paragraph 13.03.E.1 in its entirety and replace with the following:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement (the quantity of an item will be deemed to differ materially and significantly, without limitation, if it exceeds or falls short of the estimated quantity by more than 25 percent);

SC-60. Strike Paragraph 14.02.F in its entirety and replace with the following:

- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted in a reasonable time, but in no case more than seven days.

SC-61. Strike Paragraph 14.03.D in its entirety and replace with the following:

- D. *Correction, or Removal and Replacement:* Using best efforts and as soon as feasible, but in no event more than three days after receipt of written notice of defective Work, Contractor shall begin correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and

replace it with Work that is not defective, and shall continue to undertake corrections without delay or adjustment to Contract Price or Contract Times.

SC-62. Strike Paragraph 14.05.C.2 in its entirety and replace with the following:

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction, unless Contractor fails to provide written notice as required in Paragraph 14.02.F. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

SC-63. After Paragraph 15.01.B.3 add the following:

4. Each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner:
 - a. In addition to the current Contractor's lien waiver, a duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into Subcontracts, the amount of each such Subcontract, the amount requested for each Subcontractor and Supplier who is to be paid any sum under the Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and Suppliers;
 - b. Duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material Suppliers and lower-tier Subcontractors, establishing payment or satisfaction of payment of all amounts requested of the Contractor on behalf of such entities or persons in any previous application for payment; and
 - c. All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Engineer. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.
5. Contractor shall also comply with the following specific requirements:
 - a. The aggregate cost of materials stored off site shall not exceed \$10,000 at any time without written approval of Owner.
 - b. Title to such materials shall be vested in Owner, as evidenced by documentation satisfactory in form and substance to Owner and Owner's construction lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
 - c. With each application for payment, Contractor shall submit to Owner a written list identifying each location where materials are stored off the project site and the value of materials at each location. Contractor shall procure insurance satisfactory to

Owner for materials stored off the project site in an amount not less than the total value thereof.

- d. The consent of any surety shall be obtained, to the extent required by the surety, or Owner prior to payment for any materials stored off the project site.
- e. Representatives of Owner and the lender shall have the right to make inspections of the storage areas for any materials stored off site at any time.
- f. Such materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of Owner and lender; (2) specifically marked for use on the project; and (3) segregated from other materials at the storage facility.

SC-64. After Paragraph 15.01.C.6.e add the following:

- f. Liability for liquidated damages has been incurred by Contractor
- g. Contractor has failed to pay for damages to existing underground utilities as required by the Tennessee One Call Law.

SC-65. After Paragraph 15.02.A add the following:

- 1. Contractor further expressly undertakes to defend Owner and Engineer, at Contractor's sole expense, against any actions, lawsuits, or proceedings brought against Owner, Engineer, or any third party as a result of liens filed against the Work, the site of any of the Work, the project site and any improvements thereon, payments due Contractor, or any portion of the property of Owner, Engineer, or third party. Contractor hereby agrees to indemnify and hold Owner, Engineer, and third parties harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such action, lawsuit, or proceeding.
- 2. Owner shall release any payments withheld due to a lien or claim of lien, if Contractor obtains security acceptable to Owner or a lien bond that is (a) issued by a surety acceptable to Owner; (b) in form and substance satisfactory to Owner; and (c) in an amount not less than two hundred percent (200%) of such lien claim. Provided, however, Contractor shall not be relieved of any responsibilities or obligations under this paragraph, by obtaining a bond or other acceptable security, including, without limitation, the duty to defend and indemnify Owner and Engineer. The cost of any premiums incurred in connection with such bonds and securities shall be the responsibility of Contractor and shall not be part of, or cause any adjustment to, the Contract Price.
- 3. Contractor agrees to waive, to the fullest extent allowed by applicable law, any right that it may have to assert a mechanic's or other lien against the Project or the Site and any improvements thereon, including, without limitation, the Work itself. Furthermore, Contractor will cause a similar provision, waiving to the fullest extent allowed by applicable law all rights to a mechanic's or other lien against the property, to be included in all of its Subcontracts, any sub-subcontracts, and all contracts with material Suppliers.
- 4. Notwithstanding the foregoing, Owner reserves the right to settle any disputed Subcontractor's, mechanic's or material Supplier's lien claim by payment to the lien claimant or by such other means as Owner, in Owner's sole discretion, determines is the

most economical or advantageous method for settling the dispute. Contractor shall promptly reimburse Owner, upon demand, for any payment so made.

SC-66. Strike Paragraph 15.03.B in its entirety and replace with the following:

- B. At a time Engineer determines to be reasonable, after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel, and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owned, then Owner may impose a reasonable set-off against payments due under Article 15.

SC-67. Strike Paragraph 15.03.E in its entirety and replace with the following:

- E. After Substantial Completion the Contractor shall without delay begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

SC-68. Strike Paragraph 15.05.A in its entirety and replace with the following:

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will within five business days make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

SC-69. Strike Paragraph 15.08.A in its entirety and replace with the following:

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall immediately, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

SC-70. Strike Paragraph 15.08.B in its entirety and replace with the following:

- B. If Contractor does not immediately comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

SC-71. Strike Paragraph 15.08.C in its entirety and replace with the following:

- C. In special circumstances where a particular item of equipment is placed in continuous service solely for the benefit of Owner before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

SC-72. Strike Paragraph 16.02.A.1 in its entirety and replace with the following:

- 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to have Contractor's authorized representative required by Paragraph 2.04.B available as reasonably needed (including the repeated absence of such authorized representative for two business days consecutively or more at a time), failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);

SC-73. Strike Paragraph 16.03 in its entirety and replace with the following:

- A. Owner may, at any time, terminate the Contract in whole or in part for Owner's convenience and without cause. Termination by Owner under this paragraph shall be by a notice of termination delivered to Contractor specifying the extent of termination and the effective date.
- B. Upon receipt of a notice of termination for convenience, Contractor shall immediately, in accordance with instructions from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this paragraph:
 - (1) Cease operations as specified in the notice;
 - (2) Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;
 - (3) Terminate all subcontracts and orders to the extent they relate to the Work terminated;
 - (4) Proceed to complete the performance of Work not terminated; and
 - (5) Take actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work.

- C. Upon such termination, Contractor shall recover as its sole remedy payment of the percentage of the Contract Price equal to the percentage of the work performed satisfactorily and not previously paid for. Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
- D. Owner shall be credited for: (1) payments previously made to Contractor for the terminated portion of the Work; (2) claims that Owner has against Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by Contractor that are part of the Contract Price.

SC-74. Strike Paragraph 16.04 in its entirety and replace with the following:

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 60 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 30 days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 60 days to pay Contractor any sum finally determined to be due, Contractor may, seven business days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

SC-75. Add Paragraph 17.02 as follows:

- 17.02 *Dispute Resolution.* Any dispute subject to resolution under this Article and any other claim or dispute regarding the Contract Documents shall be resolved in accordance with the process set forth in Addendum B of these Supplementary Conditions.

ADDENDUM A

SCHEDULE OF INSURANCE

CONTRACTOR'S 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 employers 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 (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$2,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$2,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
 - a. Include the per project aggregate endorsement;
 - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
 - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
 - d. Includes a severability of interest clause; and
 - e. Waive all rights of recovery against the Additional Insureds.

2. Workers' Compensation Insurance. Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$1,000,000

per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. Auto Liability Insurance

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

4. Environmental Liability. Contractor must secure, pay for, and maintain Contractor's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the Owner as an Additional Insured. Contractor must also provide to the Owner proof of Contractor's Pollution Legal Liability (PLL) for sites owned or operated by Contractors and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.

5. Professional Liability. Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the Owner and with tail coverage of not less than two years.

6. Umbrella Coverage. Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$5,000,000 on a form acceptable to the Owner. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.

7. Equipment Property Insurance. Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the Owner against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.

8. Builder's Risk. Unless otherwise instructed by the Owner, Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Project (not merely the Work), including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.

9. Waiver of Subrogation. Contractor hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the Owner and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.

10. Term of Coverage

- 10.1 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").
- 10.2 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.
- 10.3 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.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

11. Subcontractor and Lower-Tier Entities Insurance Requirements

- 11.1 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.

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

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits;
- 12.3 Include the Project per aggregate endorsement;

- 12.4 Waive all rights of subrogation against the Owner;
- 12.5 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
- 12.6 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.

13. Certificates and Endorsements

- 13.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 13.2 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.
- 13.3 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.

14. 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.

15. Suppliers and Materialmen Coverages

- 15.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 15.2 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.

16. Condition Precedent to Starting Work

- 16.1 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;
- 16.2 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.

17. 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.

18. 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.

19. 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.

ADDENDUM B
DISPUTE RESOLUTION PROCEDURES

1. Disputes

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 Contractor and the Owner will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
 - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
 - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

2. Emergency Arbitration

- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:
 - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
 - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
 - c. The Emergency Arbitrator must be an attorney with at least 10 years' experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.

- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association (“AAA”) Commercial Rules-Optional Rules for Emergency Protection Commercial Rules (“AAA Emergency Rules”)
- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party’s prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
 - a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
 - b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

3. Non-Emergency Arbitration

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
 - a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
 - b. The two arbitrators then each select a third arbitrator.
 - c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.

- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.
- 3.3 In connection with such arbitration, each Party is entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").
 - a. Each Party's Proposed Resolution must be fully dispositive of the dispute.
 - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
 - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
 - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
 - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
 - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.

4. Continuing Work. Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the Owner will continue to make payment to Contractor in accordance with the Contractor Agreement.

5. Exceptions

- 5.1 Neither the Owner nor Contractor are not be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Contractor.
- 5.2 The Owner or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.
- 5.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire

Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

- 5.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.

END OF SECTION 00800

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Contract for Sign Consultant

Department: Building and Codes

Presented by: Robert Holtz

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:

Consulting contract to assist with the creation a new sign ordinance.

Staff Recommendation:

Approve contract with Zoneco, LLC.

Background Information:

The existing sign ordinance has been amended more than 80 times since its original adoption in August 1984. These amendments, while necessary, have resulted in an ordinance that is unduly convoluted, which diminishes its effectiveness for commercial establishments and allow for more consistent interpretation within the community.

The committee selected ZoneCo LLC was selected by a staff committee after a RFCSP process. ZoneCo is a nationally recognized, award-winning zoning consultancy with a team of top interdisciplinary professionals.

Council Priorities Served

Improve economic development

Updating the City's sign ordinance will address the sign technology now being used by commercial establishment as well as improve continue to improve the aesthetics of the City, which enhances economic development.

Fiscal Impact:

The expense, \$98,000, is funded within the Department's FY22 operating budget.

Attachments:

Professional Services Agreement with ZoneCo, LLC

ZONE CO^{LLC}

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of _____, 2021 ("Effective Date"), by and between MURFREESBORO, TENNESSEE, with an address of 111 West Vine Street, Murfreesboro, Tennessee 37130, Attn: Robert Holtz, Building & Codes Director (the "City"), and ZONECO, LLC, an Ohio limited liability company, with an address of 455 Delta Avenue, Suite 203, Cincinnati, Ohio 45226, Attn: Sean S. Suder, Lead Principal (the "Consultant"), on the following terms and conditions:

RECITALS

- A. The City is seeking a professional consultant to update its Sign Ordinance, specifically Section 25.2 of the Murfreesboro Code of Ordinances (the "Project").
- B. Consultant provides zoning consulting and sign ordinance update services to local governments and has demonstrated the qualifications necessary and desired to complete the Project, and the City finds that it is in its best interests to retain Consultant for these specialized professional services.
- C. The City desires to retain Consultant to provide professional consulting services, and Consultant desires to render such professional consulting services to the City, on the terms and conditions set forth herein.

NOW, THEREFORE, the parties intending to be legally bound hereby agree as follows:

AGREEMENT

1. Consulting Period; Termination. Consultant will commence work on the Services (defined below) on the Effective Date ("Project Commencement"), and this Agreement shall be in effect for a term commencing on the Effective Date hereof and ending on the date of final completion of the Services (the "Consulting Period"). The Consulting Period may be extended upon the mutual agreement of the City and Consultant. Notwithstanding anything contained herein to the contrary, this Agreement may be terminated upon thirty (30) days' advance written notice of either the City or Consultant. If this Agreement is terminated by either party, Consultant shall be paid for all services it has performed in connection with, time spent on, and all costs and expenses incurred relative to, the Project through the date of termination. The parties agree that the City's recovery of any damages arising out of or related to the termination of this Agreement shall not exceed the total Consulting Fee.

2. Consulting Services. During the Consulting Period, Consultant agrees to provide the scope of consulting services set forth on Exhibit A attached hereto and made a part hereof (the "Services") and the Additional Scope Assumptions set forth on Exhibit B attached hereto and made a part hereof (the "Assumptions"). Consultant's Lead Principal Sean S. Suder will serve as the project manager for Consultant. Robert Holtz will serve as project manager for the City. If there is a change in the City's project manager for any reason during the Consulting Period, and if that change results in a delay in the Project longer than sixty (60) days, a change in scope of the Services, additional revisions or changes to the Project, the City shall be solely responsible for the cost and expense attributable to such revisions or changes. The City agrees to provide clear direction to Consultant in writing on all matters of the Project and to be responsive to Consultant's questions related to the Project. The City agrees to provide adequate staffing and to devote a reasonable amount of staff time to the Project. A party may rely on the representations, approvals, and other actions of the project manager of the other party. Consultant may rely upon the accuracy and completeness of information provided to it in writing by the City.

3. Consulting Fee. During the Consulting Period, the City shall pay Consultant a total consulting fee of Ninety-Eight Thousand and 00/100 Dollars (\$98,000.00) (the "Consulting Fee"), payable to Consultant upon the Completion of each Task within the Scope of Services set forth on Exhibit A, attached hereto and made a part hereof. The City shall pay Consultant the Consulting Fee not later than thirty (30) days following the date of Consultant's written invoice therefor. The Consulting Fee shall include all of Consultant's expenses, including, but not limited to, Consultant's travel expenses, and Consultant shall not receive reimbursement for any business or travel expenses unless separately pre-approved by the City in writing. Travel Expenses will be reimbursed consistent with City's most recently adopted policy for employees, Employee Handbook Policy No. 1013. The Consulting Fee is for work performed and is not contingent upon any approval or adoption of the City or otherwise or any outcome. Consultant shall not be responsible or liable for the failure of the City to adopt, ordain or implement any ordinance, or part thereof, prepared as part of the Services. Failure to timely pay Consultant may excuse Consultant from further performance of the Services in Consultant's discretion.

4. Work Product. All documents and materials prepared pursuant to this Agreement are the property of the City, although Consultant may retain physical possession of them for the convenience of the City. The City shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement. Unless otherwise specified in writing by the City, Consultant may presume that any paper, electronic, or other document delivered to City is a public document.

5. Understanding of Relationship. Consultant acknowledges and agrees that its status at all times shall be that of an independent contractor, and that it may not, at any time, act as a representative for or on behalf of the City, for any purpose or transaction, and may not bind or otherwise obligate the City in any manner whatsoever without first obtaining the written approval of the City. In recognition of its status as an independent contractor, Consultant hereby waives any rights as an employee or

deemed employee of the City. Consultant shall pay directly all taxes associated with the compensation it receives under this Agreement. Further, although consultant is affiliated with the law firm of Suder, LLC, its principal place of business being located at 455 Delta Avenue, Suite 203, Cincinnati, Ohio 45226, and although some of Consultant's employees and principals may be attorneys who may be separately engaged to provide legal representation in a state where they are licensed to practice law, Consultant is not a law firm and does not provide legal representation or legal services. The City understands, acknowledges, and agrees that engaging or otherwise contracting with Consultant or its principals or employees does not form an attorney-client relationship and, as such, the protections of the attorney-client relationship do not apply to the provision of the services or any communication related thereto.

6. Insurance. During the performance of all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- (a) Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- (b) Automobile Liability Insurance, including non-owned auto coverage, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (c) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate.
- (d) Worker's Compensation Insurance in accordance with the statutory requirements of the Ohio Revised Code.

7. Compliance with Laws. Consultant shall comply with all relevant federal, state, and local laws and regulations, including without limitation, those governing non-discrimination in employment and the protection of the environment. Where such statutes, ordinances, plans, or regulations of any public authority having any jurisdiction over the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between the authorities and shall notify the City in a timely manner of the conflict, the nature of the attempted resolution, and a planned course of action.

8. Miscellaneous. This Agreement shall be governed by the laws of the State of Tennessee. Any action between the parties arising from this Agreement must be maintained in the courts of Rutherford County, Tennessee. This Agreement contains the parties' entire understanding and supersedes all prior negotiations, proposals, or agreements concerning the services described herein. This Agreement may only be modified by written instrument duly executed by both parties. The rights and interests under this Agreement shall not be assigned without the prior written consent of the other party. To the extent that any provision of this Agreement is finally adjudged invalid by a court of competent jurisdiction, that provision shall be deleted or modified, as necessary, to make it enforceable, and the remaining provisions of the Agreement shall remain in full force and effect and be binding upon the parties hereto. All communications required by this Agreement may be personally delivered or mailed to the other party at the address set forth above. The address and party may be changed by written notice given as

provided in this paragraph. This Agreement shall be binding on each party's successors and assigns.

9. Additional Provisions. This Agreement contains, and the parties hereby agree to, the additional scope exclusions attached hereto as Exhibit B and made a part hereof.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the last date below.

CONSULTANT:

ZONECO, LLC, an Ohio limited liability company

DocuSigned by:
By Sean Suder
A3F6E0307AE05... Sean S. Suder, Lead Principal

Date: 11/29/2021

CITY:

CITY OF MURFREESBORO, TENNESSEE

By: _____

Name: _____

Title: _____

Date: _____

CERTIFICATION OF FUNDING AVAILABILITY:

Certified Date: 11/30/2021

Fund/Code: 10212008-520000

Amount: \$98,000.00

DocuSigned by:
By Jennifer Brown
43A20B5F54F9D04... Jennifer Brown, Murfreesboro, Tennessee Treasurer

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A20B5F54F9D04... Adam Tucker, City Attorney

EXHIBIT A

SCOPE OF SERVICES AND FEE SCHEDULE

Module 1: Project Kick-Off; Diagnostic

Duration: Months 1-2
Deliverable: Staff feedback form distribution
Total fee budget: \$20,000

Module 1 Tasks:

- 1.1 Kick-off Meeting (in person), including signage tour, meetings with staff, perform sign inventory
- 1.2 Review of existing code and any relevant documents provided by staff
- 1.3 Draft diagnostic report assessing current sign code against city sign goals
- 1.4 Lead stakeholder meeting (virtual) to present diagnostic report

Module 2: Calibrate

Duration: Months 3-5
Deliverables: Draft Calibration Table, Final Calibration Table
Total fee budget: \$32,000

Module 2 Tasks:

- 2.1 Draft sign standards calibration table by district/zone
- 2.2 Incorporate staff review and feedback
- 2.3 Finalize sign standards calibration table and prepare presentation to stakeholder committee
- 2.4 Lead stakeholder committee meeting (in person) to present and gather input on sign standards calibration
- 2.5 Finalize sign standards calibration

Module 3: Codify

Duration: Months 6-9
Deliverables: Administrative Draft of Regulations, Final Draft of Regulations
Total fee budget: \$46,000

Module 3 Tasks:

- 3.1 Draft sign ordinance layout/format for staff review and input
- 3.2 Administrative review draft sign ordinance
- 3.3 Revised administrative review draft sign ordinance
- 3.4 Public review draft sign ordinance
- 3.5 Lead stakeholder committee meeting (virtual) to review public review draft sign ordinance

- 3.6 Present public review draft to City Planning Commission/City Council workshop (in person)
- 3.7 Revise public draft and prepare adoption draft
- 3.8 Attend Planning Commission and City Council adoption hearings (in person)

EXHIBIT B

SCOPE EXCLUSIONS

- (a) Consultant is not responsible for identifying individual members of stakeholder, working groups and committees related to the Project.
- (b) Consultant is not responsible for coordination of any public meetings/stakeholder group meetings, including meeting times, locations, invitations, a/v equipment, or costs associated with those meetings.
- (c) Consultant is not responsible for any mailings, fees associated with mailings, and contact with the media regarding this project or the posting of any project information to any Project social media accounts.
- (d) Local approval of the deliverables will be carried out by City and the City will generate all formal documentation necessary for the adoption of the regulations.
- (e) Any additional meetings not anticipated in the Scope of Services will be performed on an hourly basis or by separate agreement between Consultant and the City.
- (f) Consultant will not be responsible for any GIS mapping associated with the project.

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Purchase of SCBAs for Two New Apparatus

Department: Fire Rescue

Presented by: Mark A. Foulks

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

Purchase of Self-Contained Breathing Apparatus (SCBA) through the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program.

Staff Recommendation

Approve the purchase of SCBAs through cooperative purchasing program.

Background Information

MFRD desires to purchase 12 SCBAs including masks and two cylinders. Six of the SCBAs are for the new Ladder Truck due to be delivered in December 2022, and six are for the new Engine due to be delivered in Spring 2023. The purchase of the SCBAs is requested at this time to avoid a significant price increase that will be enacted in January. The new SCBA's will be stored at MFRD logistics (Old Station 4) until the new apparatus arrive. The equipment expiration will not be affected.

The proposed purchase the SCBAs will utilize the HGAC agreement with Municipal Emergency Services (MES). State law and City Code permits purchases without competitive bids through cooperative purchasing agreements. The total purchase expenses is \$92,499.

Council Priorities Served

Maintain public safety

SCBAs are a critical piece of personal protective equipment for MFRD personnel.

Fiscal Impact

Total expenditure, \$92,499, will be funded by the FY21 CIP Budget and was included in the total project cost for the new vehicle.

Attachments

Agreement for Air Packs and Cylinders with Municipal Emergency Services

Agreement for Air Packs and Cylinders

This Agreement is entered into and effective as of the ____ day of _____, 2021 by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Municipal Emergency Services**, a corporation of the State of Nevada ("Contractor").

This Agreement consists of the following documents:

- This document
- The Houston-Galveston Area Council Cooperative Agreement No. EE08-19, effective date August 1, 2019 through July 31, 2022 (hereinafter, HGAC Agreement)
- Contractor's Proposal QT1528751 dated 11/23/2021 and Contractor's HGACBuy Pricing Worksheet dated 11/24/2021
- 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, the Houston-Galveston Area Council Cooperative Agreement No. EE08-19, effective date August 1, 2019 through July 31, 2022 (HGAC Agreement)
- Lastly, HGACBuy's Contract Pricing Worksheet prepared by Contractor dated 11/24/2021 and Contractor's Proposal QT1528751 dated 11/23/2021

1. Duties and Responsibilities of Contractor. Contractor agrees to provide, and City agrees to purchase:

*Twelve (12) X8914025305A04 Air-Pak X3 Pro SCBA Air Packs,

*Twenty-four (24) 200129-01 Snap-C Air Cylinders,

as per descriptions listed on HGACBuy's Pricing Worksheet dated 11/24/2021, the HGAC Agreement, and Contractor's Proposal QT1528751 dated 11/23/2021. Furthermore, the City may utilize this Contract to procure additional equipment from Contractor per the HGAC Agreement No. EE08-19 throughout the term of the contract. Such future procurements shall be executed through a Purchase Order after purchases exceeding \$25,000 have been approved by City Council.

2. Term. This Agreement shall not be effective until approved by the City Council and signed by all required parties. The term of this Contract shall be from the Effective Date to the expiration of the HGAC Agreement No. EE08-19 on July 31, 2022, or as amended by HGAC.

3. Termination. Contractor's performance may be terminated in whole or in part:

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

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

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

4. Price; Compensation; Method of Payment.

- a. The price for the goods and other items to be provided under this Agreement is set forth in the HGAC Agreement and the Contractor's Proposal QT1528751 which reflects a price each of \$6,565.00 for twelve (12) X8914025305A04 Air-Pak X3 Pro SCBA Air Packs and a price each of \$1,143.25 for twenty-four (24) Item No. 200129-01 Snap-C Air Cylinders for **Total Purchase Price of Ninety-Two Thousand Four Hundred Ninety-Nine Dollars (\$92,499.00).**
- b. 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. Provided goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order, the City agrees to pay Contractor at net 30 days after receiving an invoice. Invoices must bear the purchase order number.
- c. Deliveries of all items shall be made within 8-10 weeks of order to: 202 East Vine Street, Murfreesboro, TN 37130. Delivery Contact: Assistant Chief Kaye Jernigan (tel.: 615-893-1422, email: kjernigan@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 on Contractor's Proposal. 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 that fail to meet the specifications set forth in either Contractor's Proposal.
- 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.

5. Warranty. Contractor agrees to the standard manufacturer's warranty. The warranty period begins on the date the equipment is delivered and accepted by City.

6. 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.

- 7. 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.
- 8. Insurance.** Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement. In addition, Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."
- 9. 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.

10. 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:
Municipal Emergency Services
Attn: Tom Bottoms
12 Turnberry Ln.
Sandy Hook CT 06482
tbottoms@mesfire.com

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

12. 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.

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

14. 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.

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

16. Employment. Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under

federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.

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

- a. **The City and Contractor shall abide by the requirements of 41 CFR 60-1.4(a). This regulation prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires federal government contractors and sub-contractors to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.**
- b. **The City and Contractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and sub-contractors to employ and advance in employment qualified protected veterans.**
- c. **The City and Contractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and sub-contractors to employ and advance in employment qualified individuals with disabilities.**

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

civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

- 19. Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
- 20. Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
- 21. Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, epidemic, pandemic, public health crisis, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
- 22. Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
- 23. Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 24. Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 25. 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 _____ 2021 (the “Effective Date”).

CITY OF MURFREESBORO, TENNESSEE

MUNICIPAL EMERGENCY SERVICES

By: _____
Shane McFarland, Mayor

By: _____
Tom Bottoms, Regional Vice President

Approved as to Form:

Adam F. Tucker, City Attorney



6701-C Northpark Blvd
Charlotte, NC 28216

Quote

Date 11/23/2021
Quote # QT1528751
Expires 12/08/2021
Sales Rep Moore, Jeffrey S
PO #
Shipping Method FedEx Ground

Bill To
 CITY OF MURFREESBORO
 PO Box1139
 Murfreesboro TN 37133
 United States

Ship To
 Teri Herron
 MURFREESBORO FIRE DEPT (TN)
 1311 Jones Blvd
 Murfreesboro TN 37129
 United States

Item	Alt. Item #	Units	Description	QTY	Unit Sales Pri...	Amount
200129-01			Snap-Change Cylinder, Carbon-Wrapped, Pressure 4500, 45 Minutes (at 40 lpm)	12	1,143.25	13,719.00
X8914025305A04			Air-Pak X3 Pro SCBA (2018 Edition) with Snap-Change Cylinder Connection, 4.5, Standard Harness with Parachute Buckles, Standard Belt with No Escape Rope, E-Z Flo Regulator with Quick Connect Hose (Rectus fittings), Universal EBSS Accessory Hose, No Airline Connection, No Spare Harness Kit, SEMS II Pro, No Case, Packaged 2 SCBA Per Box (Black)	12	6,565.00	78,780.00
200129-01			Snap-Change Cylinder, Carbon-Wrapped, Pressure 4500, 45 Minutes (at 40 lpm)	12	0.00	0.00

Subtotal 92,499.00
Shipping Cost (FedEx Ground) 0.00
Total \$92,499.00

NEW Pumper

This Quotation is subject to any applicable sales tax and shipping & handling charges that may apply. Tax and shipping charges are considered estimated and will be recalculated at the time of shipment to ensure they take into account the most current local tax information.

All returns must be processed within 30 days of receipt and require a return authorization number and are subject to a restocking fee.

Custom orders are not returnable. Effective tax rate will be applicable at the time of invoice.



QT1528751

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Purchase of RAE Gas Monitors

Department: Fire Rescue

Presented by: Mark A. Foulks

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

Purchase of RAE Gas Monitors for new Ladder Truck.

Staff Recommendation

Approve the purchase of RAE Gas Monitors.

Background Information

MFRD desires to purchase 4 RAE Gas Monitors and accessories (calibration gases, batteries, etc.) at a cost of \$38,514. These gas monitors are for the new Ladder Truck that will be received by the end of December. MFRD requests approval to purchase the gas monitors through All Safe Industries. MFRD vehicles are currently equipped with All Safe gas monitors and purchasing additional RAE Gas Monitors will maintain interoperability within the Department. Purchasing directly from All Safe Industries eliminates a increase costs from redistributors. All Safe is the sole source vendor for the calibration gases uses in the RAE monitors.

Council Priorities Served

Maintain public safety

Gas monitors are a critical piece of equipment for ensuring a safe environment for MFRD personnel and citizens while on scene.

Fiscal Impact

Total expenditure, \$38,514, is funded by the FY19 CIP Budget as part of the project cost for the vehicle purchase.

Attachments

1. All Safe Contract
2. All Safe Quote
3. All Safe Sole Source Items

**AGREEMENT BETWEEN
CITY OF MURFREESBORO
AND
ALL SAFE INDUSTRIES, INC.
FOR PURCHASE OF GAS MONITORS & ACCESSORIES**

This Agreement is entered into and effective as of the 16th day of December, 2021, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **All Safe Industries, Inc.**, a corporation of the State of Kentucky ("Contractor").

This Agreement consists of the following documents:

- This document
- Contractor's Sales Quote #QUO-07491, dated November 29, 2021, for gas monitors and accessories ("Contractor's Proposal 1");
- Contractor's Sales Quote #QUO-07393, dated November 29, 2021, for calibration gases and training ("Contractor's Proposal 2");
- Any properly executed amendments to this Agreement.

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

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, Contractor's Proposals 1 & 2.

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase Gas Monitors, Gases, Accessories, and Training as set forth in Contractor's Proposals 1 and 2.
2. **Term.** The term of this Contract shall begin on December 16, 2021 (the "Effective Date") for a period of six months. Contractor's performance may be terminated in whole or in part:
 - a. Upon 30-day prior notice, for the convenience of the City.
 - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
 - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
 - e. Should the appropriation for this procurement be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.
3. **Price; Compensation; Method of Payment.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Contractor's Proposal 1 (\$31,057.46) and Proposal 2 (\$7,456.78), which reflects a **total purchase price of \$38,514.24**, including estimated freight charges. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
 - b. Deliveries of all items shall be made within 20-22 weeks of order to: 202 East Vine Street, Murfreesboro, TN 37130. Delivery Contact: Assistant Chief Kaye Jernigan (tel.: 615-893-1422, email: kjernigan@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
 - c. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
 - d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Proposals.
 - e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.
4. **Warranty.** Contractor agrees to the standard manufacturer's warranty. The warranty period begins on the date the equipment is delivered and accepted by the City.
5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
6. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.
7. **Insurance.** During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."
8. **Indemnification.**

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and 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.

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

If to the City of Murfreesboro:

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

If to Contractor:

Steve Haise, President
10711 Electron Dr.
Louisville, KY 40299

10. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
11. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
12. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
13. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
14. **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.
15. **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.
16. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or

statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

- a. The City and Contractor shall abide by the requirements of 41 CFR 60-1.4(a). This regulation prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires federal government contractors and subcontractors to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- b. The City and Contractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
- c. The City and Contractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities."

17. **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.

18. **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.

19. **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.

20. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
21. **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.
22. **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.
23. **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.
24. **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 December 16, 2021 (the "Effective Date").

CITY OF MURFREESBORO, TENNESSEE

ALL SAFE INDUSTRIES, INC.

By: _____
Shane McFarland, Mayor

By: _____
Steve Haise, President

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney



Certified Veteran-Owned
Small Business

Quote

Quote #
Date

QUO-07491
11/29/2021

All Safe Industries, Inc.
10711 Electron Dr
Louisville KY 40299
888-972-3389
www.allsafeindustries.com

Sales Rep Cathy S Dehning
Expires 12/29/2021
Cust Ref#
Terms Net 30
Shipping Method UPS® Ground

Bill To

A/P
Murfreesboro Fire Dept - TN
PO Box 1139
Murfreesboro TN 37129
United States

Ship To

Murfreesboro Fire Dept - TN
Attn Scott Duncan
1311 Jones Blvd
Murfreesboro TN 37129

GSA Contract: GS-07F-5501R
D&B: 94-269-4308
CAGE: 1FZK7
EIN: 61-1338843

Item #	Description	QTY	UOM	Unit Price	Total Amount	Est. Lead
MCB3-A3C1REZ-420	MultiRAE Pro 10.6 ev ppb PID/O2/LEL/CO+H2S/Gamma, rechargeable li-ion battery, Wireless. Meter only Includes: protective rubber boot, swivel belt clip, continuous datalogging, travel charger, desktop charger, ac adapter, calibration adapter, alkaline battery pack, toolkit , PID sensor cap removal tool, PID zeroing filter, (3) spare filters, 6' flexi probe with inlet adapter, quick state guide, CD with documentation, PRORAE Studio II, Calibration and test certificate, warranty/registration card, (10) charcoal VOC filters for CO sensor, pelican case with custom foam.	4		5,179.56	20,718.24	
G02-B710-100	ToxiRAE Pro for HCN w/ datalogging, Li-Ion battery, charging cradle, non-wireless.	2		398.99	797.98	
911-FC000-08	Sensit gold G2 gas meter for O2/LEL/CO/H2S	3		2,123.02	6,369.06	
911-FC000-01	Sensit gold G2 gas meter for LEL	3		1,019.06	3,057.18	



Quote

Quote #
Date

QUO-07491
11/29/2021

All Safe Industries, Inc.
10711 Electron Dr
Louisville KY 40299
888-972-3389
www.allsafeindustries.com

Item #	Description	QTY	UOM	Unit Price	Total Amount	Est. Lead
	*** Price if ordered after the 1st of the year.***					
MCB3-A3C1REZ-420	MultiRAE Pro O2/LEL/CO+H2S/ppb PID/Gamma, with Li-Ion battery, Wireless, Meter only	0		6,039.53	0.00	
G02-B710-100	ToxiRAE Pro for HCN w/ datalogging, Li-Ion battery, charging cradle, non-wireless.	0		517.89	0.00	
911-FC000-08	Sensit gold G2 gas meter for O2/LEL/CO/H2S	0		2,462.70	0.00	
911-FC000-01	Sensit gold G2 gas meter for LEL	0		1,182.10	0.00	
ASI-Training	Four(4) hour training session by All Safe Industries Training Team to cover Gas Detection 101, Daily Use and Start-up and Advanced Maintenance.	1		0.00	0.00	

Subtotal	30,942.46
Est. Shipping Cost (UPS® Ground)	115.00
Total	\$31,057.46

Quote valid for 30 days. Shipping is an estimate and will be prepaid and added to your invoice. Delivery time is estimated as of quote date and may be subject to change.



Certified Veteran-Owned
Small Business

GSA Quote

Quote #
Date

QUO-07393
11/29/2021

All Safe Industries, Inc.
10711 Electron Dr
Louisville KY 40299
888-972-3389
www.allsafeindustries.com

Sole Source Items

Sales Rep
Expires
Cust Ref#
Terms
Shipping Method

Cathy S Dehning
12/29/2021
Net 30
UPS® Ground

Bill To

A/P
Murfreesboro Fire Dept - TN
PO Box 1139
Murfreesboro TN 37129
United States

Ship To

Murfreesboro Fire Dept - TN
Attn Dillon Harris
1311 Jones Blvd
Murfreesboro TN 37129

GSA Contract: GS-07F-5501R
D&B: 94-269-4308
CAGE: 1FZK7
EIN: 61-1338843

Item #	Description	QTY	UOM	Unit Price	Total Amount	Est. Lead
AS1-R7-81241	Quad Gas Mix: 18% O2, 10ppm H2S, 50 ppm CO, 50% LEL Methane Gas Cylinder, Balance Nitrogen Contained in a 34L Aluminum Cylinder	1		158.69	158.69	
AS1-R1-9A084	Calibration Gas: 100 ppm Isobutylene (C4H8), Balance Air contained in a 105L aluminum C-10 cylinder	1		136.01	136.01	
AS1-DFR-2004	Demand Flow Regulator (2004) for use w/ Reactive Gases. Fits aluminum and 103L and 105L steel cylinders.	7		258.44	1,809.08	
AS1-XS-97082-10	Calibration Gas: 10 ppm Hydrogen Cyanide (HCN), Balance Air contained in a 58L aluminum C-10 cylinder (previously AS1-RS-97082)	1		310.00	310.00	
AS3-RC2C-0062	AutoRAE 2 Kit with inCase Calibration configured for AutoRAE2 System with Controller, one MultiRAE cradle and one ToxiRAE Pro cradle. Kit with AR2 only, no meters, no gas, no regulators.	1		4,931.00	4,931.00	
ASI-Training	Four(4) hour training session by All Safe Industries Training Team to cover	1		0.00	0.00	



Quote

Quote #
Date

QUO-07393
11/29/2021

All Safe Industries, Inc.
10711 Electron Dr
Louisville KY 40299
888-972-3389
www.allsafeindustries.com

Item #	Description	QTY	UOM	Unit Price	Total Amount	Est. Lead
	Gas Detection 101, Daily Use and Start-up and Advanced Maintenance.					

Subtotal	7,344.78
Est. Shipping Cost (UPS® Ground)	112.00
Total	\$7,456.78

Quote valid for 30 days. Shipping is an estimate and will be prepaid and added to your invoice. Delivery time is estimated as of quote date and may be subject to change.



November 24, 2021

Subject: Sole Source Justification

To Whom It May Concern:

Please be advised that All Safe Industries® is the exclusive provider of our private label calibration gases and accessories such as regulators, tubing and fittings. These items are an integral component for the testing of gas detection instruments. We are the sole source of these private label items and All Safe Industries calibration gases shown here, typically denoted by part numbers that begin with AS1.

All Safe Industries® is a Kentucky corporation and the exclusive provider/sole source representative for these products. Only All Safe Industries® and its representatives are authorized to provide quotations for these private label items. They are offered through our GSA Schedule GS-07F-5501R and via open market quotes.

Please do not hesitate to contact us if there are any questions, comments or concerns as to the authenticity of this statement.

Sincerely,

Steve Haise, Founder and President
All Safe Industries, Inc.®





November 29, 2021

Subject: Sole Source Justification

To Whom It May Concern:

Please be advised that All Safe Industries® is the exclusive provider of gas detection kits featuring **inCase Calibration®** brand devices. **inCase Calibration®** is the registered trademark (U.S. Reg. No. 4,833,917) for an integral component of a gas detection kit manufactured and marketed by All Safe Industries®, which provides the ability to calibrate portable instruments.

All Safe Industries® is a Kentucky corporation and the exclusive manufacturer and sole source representative of these products. Only All Safe Industries® and its representatives are authorized to provide quotations for gas detection kits in their various configurations that feature **inCase Calibration®** brand devices. The kits are offered through our GSA Schedule GS-07F-5501R and via open market quotes for custom configurations and non-TAA Compliant products.

Please do not hesitate to contact us if there are any questions, comments or concerns as to the authenticity of this statement.

Sincerely,

Steve Haise,
Founder and
President

All Safe Industries,
Inc.®

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Central Square (Tritech) Contract Extension

Department: Police

Presented by: Bill Terry, Public Safety IT 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

Extension of contracts with Central Square for maintenance.

Staff Recommendation

Approve the extension of the contract with Central Square for payment of annual maintenance contracts.

Background Information

The Central Square contract is for ongoing support of our Computer Aided Dispatch, Mobile Dispatch, Police Records and ancillary interfaces and systems for Police and Fire. The initial Central Square contract was submitted and approved on October 15, 2015. Extension of this contract allows for continuing support for these products.

Council Priorities Served

Maintain public safety

These systems provide an automated solution for call handling and remote dispatch, which enhances quality of service to the citizens calling for emergency services. This allows for emergency services to provide enhanced service to the citizens.

Fiscal Impact

The total annual maintenance fee of \$308,695 is provided for in the FY22 operating budget and will continue to be budgeted as a Departmental operating expense.

Attachments

1. Central Square Software Support Agreement
2. Central Square System Purchase Agreement
3. Central Square Invoice 338906



TriTech Software Systems
9477 Waples Street, Ste. 100
San Diego, CA 92121
Phone: 858.799.7000
Fax: 858.799.7011
www.tritech.com

SYSTEM PURCHASE AGREEMENT

TRITECH SOFTWARE SYSTEMS

FOR

MURFREESBORO, TN

SYSTEM PURCHASE AGREEMENT
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SYSTEM PURCHASE AGREEMENT

Client: City of Murfreesboro
Address: 111 West Vine Street
City, State, Zip: Murfreesboro, TN 37130
Phone, Fax: 615-849-2629, 615-849-2679
Contact Name: Althea Pemsel, Purchasing Director

1.0 INTRODUCTION

1.1 This Agreement, is made by and between TriTech Software Systems, referred to herein as “TriTech”, with offices at 9477 Waples Street, Ste. 100, San Diego, California 92121, and the Client name above, who together may also be referred to herein as the “Parties” or singularly as a “Party”), with reference to the following facts:

1.2 Client and TriTech (successor in interest to VisionAIR, Inc.) entered into a Contract for Purchase of Public Safety Software and Annual Software Maintenance dated March 27, 2008 (the “Contract”) which included the license of certain Vision software applications.

1.3 Client desires to replace its existing TriTech licensed VisionCAD and VisionMOBILE applications with TriTech’s Inform CAD and Inform Mobile applications as more fully defined in this Agreement and its Addenda.

1.4 This Agreement is for the purchase of an integrated computer system, which includes the license of TriTech’s Inform CAD and Inform Mobile software applications, applicable Interfaces, third party software, and provision of services (the “Project”), as more fully described in this Agreement and its Addenda.

1.5 In consideration of the terms, promises, mutual covenants and conditions contained in this Agreement, Client and TriTech agree as follows:

2.0 ADDENDA

2.1 The following documents are attached as Addenda to this Agreement and incorporated by reference as though set forth in full:

- | | | |
|-----|------------|---------------------------------------|
| (a) | Addendum A | Contract Price and Payment Milestones |
| (b) | Addendum B | Statement of Work |
| (c) | Addendum C | System Planning Document |

3.0 DEFINITIONS

3.1 “Acceptance” or “Accept” means the processes described in the ACCEPTANCE section of this Agreement.

3.2 “Archive Server” or “Reporting Server” means a Server or other storage unit on which Client’s data resides for archival purposes.

3.3 “Contract Price” means the total of the purchase price of the items as specified in Addendum A, including, as applicable, equipment, software licenses, services, fees, expenses and other items acquired under this Agreement, and if included as a line item in Addendum A, any applicable sales, use, value added, or other such governmental charges.

3.4 “Deliverable” means an item of equipment, software, services and other items acquired under this Agreement as listed in the addenda hereto.

3.5 “Delivery” with respect to the System means physical delivery of substantially all components of each Subsystem to the Designated Location. Delivery shall be deemed to have occurred despite the absence of incidental components provided that Installation of the Subsystem, training and system configuration can begin with the items then delivered and Client has acknowledged in writing such Delivery. A separate Delivery may occur with respect to each such Subsystem.

3.6 “Designated Location(s)” means the physical site(s) at which the TriTech Software is Installed.

3.7 “Disaster Recovery Computer System” (with reference to the CAD System) means a server operating in a standby mode used to maintain a duplicate copy of the program and data contained in the Primary Computer System.

3.8 “Documentation” means any standard user manuals or other related instructional and/or reference materials, provided by TriTech or other Software Vendors, including on-line help information and Release Notes issued in connection with Updates. In case of a conflict between written documentation (user manuals or Release Notes in printed or CD-ROM format) and on-line help information, the printed and CD ROM documentation will control.

3.9 “Equipment” means the computer equipment on which the TriTech Software operates which equipment, meeting TriTech’s recommended specifications, will be provided by the Client.

3.10 “Go Live” means the event that occurs when the Client first uses the TriTech Software for Live Operations. A separate Go Live may take place with respect to each Subsystem (e.g. Inform CAD, Inform Mobile), and each Interface.

3.11 “Help Desk” means the TriTech function consisting of receiving calls from Client concerning System problems and assisting Client with resort to the manufacturers of Equipment, Software and other items acquired under this Agreement under the applicable warranties and/or maintenance support agreements.

3.12 “Installation” with respect to Subsystems means the process of running the Subsystem under a procedure to demonstrate basic inter-operability of the applicable Subsystem components at the Designated Location for that Subsystem. “Installation”, with respect to the Modifications, means the process of running each Modification under a procedure to demonstrate basic interoperability with the applicable Subsystem at its Designated Location(s). “Installation”, with respect to the Interfaces, means the process of running each Interface under a procedure to demonstrate basic interoperability of the Interface with the applicable Subsystem and the hardware and/or Software with which it is interfaced at its Designated Location(s).

3.13 “Interface”, collectively or individually, means the interface software described in Addendum A.

3.14 “Live Operations” means use of a Subsystem (e.g., the TriTech Software less Interfaces and Modifications) as the primary means of performing its functions.

3.15 “Object Code” means any instruction or set of instructions of a computer program in machine-readable form.

3.16 “Primary Computer System” means the live operations production system.

3.17 “Project Schedule” means the mutually agreed upon schedule for tasks to be completed by TriTech and the Client. The Project Schedule is subject to change only at the mutual written agreement of TriTech and Client.

3.18 “Server” means a computer in a local area network that runs administrative software which controls access to all or part of the network and its resources and makes such resources available to computers acting as workstations on the network. With respect to the CAD System, this term includes, without limitation, the Primary Computer System and the Disaster Recover Computer System.

3.19 “Software” means collectively or individually the computer programs provided under this Agreement, including, without limitation, the programs for each Subsystem.

3.20 “Software Error” means an error in coding or logic that causes a program not to substantially function as described in the applicable Specifications.

3.21 “Software Support” means Telephone Support, Software Error Correction, and Software Update services provided by TriTech for the TriTech Software, in accordance with the Software Support Agreement to be entered into concurrent with this Agreement.

3.22 “Software Support Agreement” means collectively or individually agreements of that name (or a similar name) for the rendering of Software Support services entered into between the parties coincident with this Agreement and renewed from time to time thereafter.

3.23 “Source Code” means the original mnemonic or high-level statement version of Software.

3.24 “Specifications” means, as applicable, (i) the TriTech specifications for each Subsystem; (ii) the Interface Requirements Document (“IRD”); and (iii) applicable end user documentation including but not limited to User’s Guides, System Administration Guides, and Release Notes.

3.25 “Statement of Work” means the document defining the implementation process for the Project, and Deliverables, including both TriTech’s and the Client’s responsibilities as set forth in Addendum B hereto.

3.26 “Subcontractor Equipment” if applicable, means the third party equipment provided by a subcontractor to TriTech under this Agreement. Subcontractor Equipment, if applicable, is identified in Addendum A hereto.

3.27 “Subcontractor Services” if applicable, means the third party services provided by a subcontractor to TriTech under this Agreement. Subcontractor Software, if applicable, is identified in Addendum A hereto

3.28 “Subcontractor Software” if applicable, means the third party software provided by a subcontractor to TriTech under this Agreement. Subcontractor Software, if applicable, is identified in Addendum A hereto.

3.29 “Subsystem” means each of the core applications (Inform CAD and Inform Mobile) provided under this Agreement.

3.30 “System Software” means third party software, which includes, without limitation, operating system software, DBMS Software, and communications software. System Software meeting TriTech’s recommended specifications will be provided by the Client.

3.31 “Task Completion Report” or “TCR” means the document presented by TriTech’s Project Manager to the Client for signature upon completion of a Deliverable.

3.32 “Telephone Support” means the service provided by TriTech for access to the TriTech Customer Service Department by telephone, as further defined in the Software Support Agreement.

3.33 “TriTech Business Hours” means TriTech’s corporate business hours of 8:30 a.m. to 5:30 p.m. (Pacific Time), Monday through Friday, excluding TriTech holidays.

3.34 “TriTech Software” means the Object Code version of the software specified in Addendum A of this Agreement, including any Updates or upgrades provided subsequent to this Agreement.

3.35 “Update” means revisions or additions to the TriTech Software, or if applicable third party software provided by TriTech. The term "Update" does not include separate modules or functions that are separately licensed and priced, or new products that are developed and marketed as separate products.

3.36 “Use” means copying of any portion of Software from a storage unit or media into a computer or Server and execution of the software thereon. This term shall be construed to refer to a grant of reproduction rights under 17 U.S.C. 106(1), and shall not be construed to grant other rights held by the copyright owner, including without limitation the right to prepare derivative works.

3.37 “User” means the operator of a Subsystem Workstation that is configured to access and/or utilize the capabilities and features of the Subsystem Software.

3.38 “Workstation” means any computer input station that utilizes the functionality of a Subsystem, whether the software resides locally or on a Server.

4.0 PRICES AND PAYMENT

4.1 Unless otherwise stated herein, all dollar amounts contained in this Agreement are in U.S. dollars. The Contract Price for the purchased and/or licensed items hereunder is \$808,851.00 as more completely specified in Addendum A. Client shall pay the Contract Price without deduction or offset on the terms specified in Addendum A, pursuant to invoices issued by TriTech which shall be due upon receipt unless otherwise stated in the invoice.

4.1.1 The Contract Price for the Deliverables and Services defined in Addendum A is based on a firm fixed price, subject to the following adjustments. In the event that Client in its sole discretion chooses to delay implementation of any Deliverable for more than six (6) months beyond the Go Live date set forth in the Project Schedule, and the then current pricing for such Deliverable(s) including applicable Services has increased since the date of execution of this Agreement, such then current pricing will apply. A change order for signature by both parties will be processed to adjust the Contract Price.

4.2 All undisputed amounts due and payable to TriTech hereunder shall, if not paid when due, bear a late charge equal to one percent (1%) per month, or the highest rate permitted by law, whichever is less, from thirty (30) days after their due date until paid. Client shall have the right to withhold payment of a disputed invoice or disputed portions of an invoice. In the event Client disputes any invoices, or portions of an invoice hereunder, Client shall promptly notify TriTech of the nature of the dispute and the parties will cooperate in good faith to expeditiously resolve such dispute. The remittance address (payments only) is:

TriTech Software Systems
P.O. Box 203223
Dallas, TX 75320-3223

4.2.1 In the event that Client is in arrears on undisputed invoice payments due to TriTech of more than sixty (60) days from the due date, TriTech in its sole discretion may elect upon five (5) business days’ notice to Client to stop work on the Project for non-payment until Client becomes current on such payments due. In such event the Project Schedule will be adjusted accordingly, and TriTech shall not be considered to be in default for delays caused by Client’s non-payment of an undisputed invoice.

5.0 SOFTWARE LICENSES

5.1 In consideration for, and subject to, the payment of the license fee(s) specified in Addendum A of this Agreement, and the other promises, covenants and conditions herein, Client is granted the following licenses to the Software:

5.1.1 The TriTech Software: A nontransferable, nonexclusive right and license to Use the TriTech Software and the Documentation for said Software for Client's own internal use at the Designated Location(s) and as permitted by Section 5.4, in the quantity set forth in Addendum A. Client may make additional copies of the TriTech Software as reasonably required for backup purposes, provided that such copies contain all copyright notices and other proprietary markings contained on the original, and are kept confidential in accordance with Section 11.0 herein. Additional TriTech Software licenses purchased after the execution of this Agreement shall also be licensed in accordance with the provisions of this Section 5.0.

5.1.1.1 Each copy of the TriTech Software provided under this license that is not identified in Addendum A of this Agreement as a Disaster Recovery license may be used on only one Primary Computer System at any one time.

5.1.1.2 Each copy of the TriTech Software provided under this license and identified in Addendum A of this Agreement as a Disaster Recovery license may be used in a standby mode on only one Disaster Recovery System at any one time as a backup in the event of a failure, malfunction or other out of service condition of its Primary Computer System. In the event its Primary Computer System fails to operate, the Disaster Recovery System and the Designated Application Software identified as a Disaster Recovery license may be enabled to function in its place. When the Primary Computer System returns to its normal operational mode, the Disaster Recovery System and the Designated Application Software identified as a Disaster Recovery license must be returned to its standby mode.

5.1.1.3 Client shall be entitled to have a copy of the TriTech Software residing on the Primary Server(s), and the Archive or Reporting Server.

5.1.1.4 Notwithstanding anything to the contrary in this Section, the TriTech Software is designed to enable Client to develop original applications which interface with the TriTech Software. The development and use of such interfacing applications is specifically permitted under the licenses herein and shall not be deemed derivative works provided that they are not, in fact, derived from the TriTech Software or the ideas, methods of operation, processes, technology or know-how implemented therein. Other than the licenses granted herein, Client shall not acquire any right, title or interest in the TriTech Software by virtue of the interfacing of such applications, whether as joint owner, or otherwise. Likewise, TriTech shall not acquire any right, title or interest in such Client developed non-derived applications, whether as owner, joint owner or otherwise.

5.1.2 Third Party Software, Including System Software: The licenses set forth in the applicable vendor's license agreements that accompany such software. Third party products providing supplemental software code to the TriTech Software and not subject to separate licensing provisions shall be licensed in accordance with the provisions of this Section 5.

5.2 Each Workstation and Server that is configured to utilize the functionality of any Subsystem Software must have a full-user license under this Agreement.

5.3 Title to all TriTech Software and its associated Documentation provided to Client under this Agreement shall remain with TriTech. The applicable software vendor of any third party or System Software retains all rights to its specific software and the associated Documentation not expressly granted in this Agreement.

5.4 Software (including without limitation Subsystem Software) may not be used to operate a service bureau or time-sharing service, outsourcing service, application service provider service or other services or businesses that provide computer-aided vehicle dispatching to third parties. Notwithstanding the above, Client shall be entitled to Use Subsystem Software at the applicable Designated Location for the purpose of the application(s) described in the Statement of Work for itself and other agencies/entities in the area within Rutherford County, TN, provided that the Subsystem Software is installed and operated at only one physical location. The Software shall not be used for other than the application(s) described in the Statement of Work.

5.5 Client shall not Use, copy, rent, lease, sell, sublicense, create derivative works, or transfer the Software or any Subsystem Software or Documentation, or permit others to do said acts, except as provided in this Agreement or the applicable software license agreement. Any such unauthorized Use shall be void and may result in immediate and automatic termination of the applicable license, at the option of TriTech, or the applicable third party vendor. In such event, Client shall not be entitled to a refund of the license fees paid hereunder.

5.6 The Software licenses granted in this Agreement or in connection with it are for Object Code only and do not include a license or any rights to Source Code. Without limiting the generality of the foregoing, Client is specifically prohibited from accessing, copying, using, modifying, distributing or otherwise exercising any rights to such Source Code, even if such Source Code is loaded on the Client's equipment. The loading and/or using of Source Code to any Subsystem Software by TriTech or its employees on the Client's computer system equipment at the Designated Location or any other location associated with Client shall not constitute a waiver of this provision, or any express or implied license or other permission to copy, use or exercise other rights to the Source Code.

5.7 Client may not export any Software or Documentation outside the United States without further prior written agreement of TriTech or the applicable third party vendor. In the event of such agreed export, Client agrees to comply with the requirements of the United States Export Administration Act of 1979 and any amendments thereto, and with all relevant regulations of the Office of Export Administration, U.S. Department of Commerce.

5.8 These licenses are effective until surrendered or terminated hereunder or under the terms of the applicable software license agreements.

5.9 Client may surrender any software licenses provided in connection with this Agreement at any time by performing the actions described in paragraph 13.5 of this Agreement, or the applicable third party software license agreement. Such surrender shall be subject to the other provisions of this Agreement with respect to termination of the software license, and shall not affect TriTech's right to receive and retain any fees, charges, and expenses earned hereunder through the date of such surrender.

5.10 Rutherford County shall be licensed to use the TriTech Software identified in Addendum A for Rutherford County Sheriff's Office in accordance with the Software License provisions of this Agreement. Client shall ensure that Rutherford County is provided with a copy of such provisions.

6.0 DELIVERY AND RISK OF LOSS

6.1 TriTech shall provide the Deliverables and Services under this Agreement in accordance with Addendum B Statement of Work and the Project Schedule.

6.2 Risk of loss of any Deliverable shall be borne by TriTech until Delivery of the Deliverable to Client. Thereafter, the risk of loss shall be borne by Client.

6.3 Client shall pay all freight charges, if applicable, associated with Delivery of the System to Client's Designated Location if such charges are included as a line item in the Contract Price, in which event they shall be paid according to the payment terms in Addendum A.

7.0 SITE PREPARATION

7.1 Client agrees to provide, at its own expense, those required facilities and equipment specified in Addendum C (the System Planning Document), or in the applicable Documentation or otherwise specified by TriTech in writing, to meet the hardware/software configuration requirements and the requirements for proper electrical power quality and other computer facility resources. Client shall also provide and maintain during the term of this Agreement, a high speed data connection (as more fully defined in the System Planning Document), a separate data quality telephone modem line and a dedicated voice line (in each case as specified by TriTech) for maintenance and software support purposes in each physical area where a Server or interface equipment is located. Such facilities and equipment shall be in place and operational prior to Delivery of the items purchased and/or licensed under this Agreement.

7.2 TriTech shall assist Client in meeting its obligations under this section by providing the necessary guidelines and specifications for site preparation.

8.0 SERVICES

8.1 TriTech will provide those services specified in Addendum A in accordance with Addendum B Statement of Work and the Project Schedule. Any services desired by Client in addition to those specified in this Agreement will be subject to the availability and scheduling of TriTech personnel and to TriTech's then-current rates, plus reasonable out-of pocket expenses actually incurred in performing such Services. Prior to performing any of the aforementioned additional services, TriTech will provide a written quotation detailing the associated price to be paid for such services, and such quotation shall be subject to written acceptance by Client.

8.2 The work to be performed shall include the furnishing of all software and services specified in this Agreement in accordance with Addendum B Statement of Work.

8.3 TriTech shall appoint a competent TriTech Project Manager to act as its representative and single point of contact, and to monitor its employees in the Delivery and Installation of the Subsystems provided under this Agreement. TriTech's Project Manager will coordinate and meet with the Client Project Manager as may be reasonably required to discuss any operational issues or the status of the Project. TriTech shall not change TriTech Project Managers without Client's prior written approval, which approval shall not be unreasonably withheld or delayed. In the event of unforeseen circumstances such as, but not limited to, termination, illness, or death, TriTech may appoint a replacement TriTech Project Manager of equivalent skill level, and shall notify Client with as much written notice as is reasonably possible.

9.0 ACCEPTANCE

9.1 General. Testing of the System and Subsystems shall occur throughout the Project life cycle as further defined in the Statement of Work (SOW). Prior to conducting Acceptance testing as defined below, the Client shall receive for review Acceptance Test Procedures (ATP's) for the System and Subsystems. Upon approval by the Client of the ATPs, TriTech shall perform the ATPs with the Client's participation in accordance with the Project plan. Individual test cases within the ATP shall have a pass/fail criteria with results reported to the Client when the individual tests are complete with a Test Report. Client shall not suspend testing when problems are experienced and restart Acceptance testing when the problems are corrected unless the problems prevent continuing with Acceptance testing. If Acceptance testing must be suspended pending corrective action, Client shall promptly advise TriTech by the fastest available means.

9.2 Following completion of the DOLF process for the Production Site (which is further defined in the SOW), the System will be Delivered and Installed at the Designated Location. During the Functional Acceptance Test ("FAT") process as further defined in the SOW, any FAT issues detected will be mutually defined and agreed upon as Pre-Go Live Issues to be corrected prior to Go Live, or Post Go Live Issues that do not affect the Go Live readiness of the System and will be corrected following Go Live. TriTech and the Client will mutually agree upon the Go Live date for the System.

9.3 Final System Acceptance – Inform CAD Subsystem. Upon Go Live in the Production Site, the Client shall utilize the Subsystem for a thirty (30) day Acceptance test period (“the Acceptance Test Period”) to verify operational system and Subsystem functionality in a live environment. If no Critical Priority or Urgent Priority Software Errors (as those terms are defined in Addendum E) are reported during such thirty (30) day period, the Subsystems shall be deemed to have achieved Final Acceptance. In the event that a Critical Priority or Urgent Priority Software Error occurs during the Acceptance Test Period, TriTech shall commence actions in accordance with the Software Support Agreement to correct the reported error.

9.3.1 In the event that a Critical Priority Software Error is reported between day one (1) and day thirty (30) of the Acceptance Test Period, the test will be stopped and restarted from day one (1) once a resolution has been provided in accordance with the Software Support Agreement.

9.3.2 In the event that an Urgent Priority Software Error is reported between day one (1) and day fifteen (15) the test will be stopped and restarted from day one (1) once a resolution has been provided in accordance with the Software Support Agreement. If an Urgent Priority Software Error is reported between day sixteen (16) and day thirty (30), the test will resume from the day the resolution has been provided.

9.4 Inform Mobile Acceptance. Client will receive Train the Trainer training, as further defined in the Statement of Work, on the operational use and installation of Inform Mobile. TriTech will Deliver and configure, to the Client’s requirements, the Inform Mobile software to the Designated Location and provide installation services on at least five (5) mobile units. Installation of the remaining mobile units will be conducted by Client. TriTech’s project team will test the system configuration and functionality on the TriTech installed mobile unit by running the approved ATP with the Client. TriTech and Client will document any issues detected and agree upon a required resolution plan, if applicable. At the conclusion of the above-described installation and testing in the Production Site, the parties shall jointly acknowledge Inform Mobile Subsystem Acceptance. Client is responsible for mobile server and unit connectivity to the mobile network infrastructure and the wireless network.

10.0 CONFIDENTIALITY AND PROPRIETARY RIGHTS

10.1 The copyright to the Software and Documentation (including without limitation the Subsystem Software and Documentation) is owned by TriTech, or the applicable third party vendor thereof. Said software and documentation is licensed, not sold. Nothing in this Agreement shall be construed as conveying title in the Software or Documentation to Client.

10.2 Provided that Client’s confidential business information and confidential data is marked with the legend “CONFIDENTIAL INFORMATION”, “PROPRIETARY INFORMATION”, or a substantially similar legend, or the information is such that a reasonable person would understand it to be confidential regardless of whether it is so marked, or information disclosed orally which by its nature would reasonably be considered confidential, TriTech agrees to maintain Client’s confidential business information and confidential data, including patient identifying data, to which TriTech gains access in confidence and to not disclose such information except as required to perform hereunder or as required by law. Notwithstanding the above, TriTech, or applicable third party vendor, shall own the copyrights, trade secrets, patent rights and

other proprietary rights in and may use without restriction knowledge, information, ideas, methods, know-how, and copyrightable expression learned or acquired as a result of or in connection with this Agreement to make modifications and enhancements to Software or Documentation. Client shall acquire no intellectual property ownership rights to Software or Documentation as a result of its use, whether as author, joint author, or otherwise.

10.3 The TriTech Software and TriTech Documentation (including without limitation Subsystem Software and Documentation) including, but not limited to, the Source Code, Object Code, the Interface Requirements Documents, the software design, structure and organization, software screens, the user interface and the engineering know-how implemented in the software (collectively "TriTech Proprietary Information") constitute the confidential and proprietary information of TriTech. Nothing herein shall be deemed to preclude TriTech from asserting that the TriTech Proprietary Information also constitutes valuable properties and trade secrets of TriTech, embodying substantial creative efforts which are secret, confidential, and not generally known by the public, and which secure to the vendor a competitive advantage.

10.3.1 The material presented in TriTech's training courses represents the confidential and proprietary information of TriTech, not intended for public disclosure or disclosure to third parties. Clients may videotape training sessions provided on-site at the Client's facilities by TriTech staff for the Client's own internal use only; provided, however, that the TriTech training staff have consented in writing to such videotaping. Client shall endeavor to notify TriTech in writing two (2) weeks prior to scheduled training if videotaping will be conducted. The Client is responsible for managing access to and copying of any TriTech provided training materials or Client-made videotapes of TriTech training sessions.

10.4 Client agrees during the term of this license, and thereafter, to hold the TriTech Proprietary Information, including any copies thereof and any documentation related thereto, in confidence and to not permit any person or entity to obtain access to it except as required for Client's exercise of the license rights granted hereunder or as required by law, including specifically the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et, seq. In exercising its rights hereunder, Client shall employ the same degree of care it utilizes in protecting its own confidential information, but at least a reasonable degree of care.

10.4.1 In the event Source Code is loaded on the Client's computer system equipment at any Designated Location or any other location in connection with TriTech's performance under this Agreement, or for any other purpose, Client shall keep such Source Code confidential and shall not, without the written authorization of TriTech or unless otherwise required by law, access, use, copy, modify, distribute, disclose or otherwise exercise or permit the exercise of any rights to such Source Code by any person, including but not limited to Client's employees, agents or contractors. This provision is intended by the parties to prohibit, among other things, Client access to Source Code by any person and for any reason unless expressly authorized herein.

10.5 Client shall not attempt or authorize others to attempt to learn the trade secrets, technology, ideas, processes, methods of operation, know-how and/or confidential information contained in the Software by duplication, decompilation, disassembly, other forms of reverse engineering, or other methods now known or later developed.

10.6 Client shall inform TriTech promptly in writing of any actual or suspected unauthorized Use, copying, or disclosure of the TriTech Proprietary Information.

10.7 If any TriTech Proprietary Information is subject to any Federal or State statutes(s) providing for public access or disclosure of public records, documents or other material, to the extent permitted by law, Client shall (i) provide to TriTech written notice of any request or other action by a third party under said statute(s) for release, access, or other disclosure thereof, (ii) provide to TriTech a reasonable opportunity to respond to and/or oppose such action in the appropriate forum and (iii) take such steps as are permitted under said statutes to assert in response to such action any exemptions or other protections available thereunder to prevent, restrict and/or control the public release, access and/or disclosure of the TriTech Proprietary Information.

10.8 Section 10 shall not apply to any information which (i) is at the time of its disclosure publicly known or becomes publicly known through no breach of the terms of this Agreement; (ii) was already known by the receiving party at the time of disclosure; (iii) is lawfully received from a third party not bound under a confidentiality agreement with either party; (iv) is disclosed under legal compulsion (provided, however, that prior to a disclosure pursuant to an order or applicable law, the receiving party, to the extent permitted by law, promptly provides the other party written notice of such proposed disclosure and reasonably cooperates with the other party in its attempts to limit or prevent such disclosure); (v) is disclosed with the disclosing party's written approval; or (vi) is independently developed by the receiving party without access to or the benefit of the disclosing party's Confidential or Proprietary Information.

10.9 The obligations specified under the CONFIDENTIALITY AND PROPRIETARY RIGHTS section of this Agreement shall survive the termination or rescission of this Agreement.

11.0 LIMITED WARRANTIES

11.1 As an existing Client, the implementation of the TriTech Software licenses at Murfreesboro Police Department, which will be the Production Site, will be provided "as is" without warranty. Support will be provided beginning on the date of Go Live in accordance with the Software Support Agreement.

11.2 The TriTech Software licenses to be implemented at Rutherford County Sheriff's Office, which will be the Disaster Recovery Site, will be warranted in accordance with TriTech's standard warranty provisions below:

11.3 TriTech warrants that the TriTech Software will perform in accordance with TriTech's Documentation for a period of twelve (12) months from the date of Go Live. If a warranty defect is reported, TriTech will, at its discretion, either correct the defect or replace the TriTech Software. Correction of software errors will be in accordance with the Software Support Agreement.

11.4 TriTech further warrants and represents that the TriTech Software does not contain any "back door", "time bomb", "Trojan horse", "worm", "drop dead device" or other program routine or hardware device inserted and intended by TriTech to provide a means of unauthorized access to, or a means of disabling or erasing any computer program or data, or otherwise disabling

the TriTech Software. (Nothing herein shall be deemed to constitute a warranty against viruses. The provisions of paragraph 11.5.5, below, shall constitute the agreement of the parties with respect to viruses.) Client's sole remedy with respect to the foregoing warranty shall be to receive an Update to the TriTech Software that does not contain any of the above-described routines or devices.

11.5 If the TriTech Software is unable to function as warranted due to any one or more of the following factors, additional charges may be imposed by TriTech for actions necessary to correct or work-around such factors:

11.5.1 Unauthorized modification of the TriTech Software, System Software or Equipment by Client or a third party.

11.5.2 Misuse or neglect, including without limitation failure to use the TriTech Software as described in the Documentation, or other instructions provided by TriTech.

11.5.3 Software not provided by TriTech, not specified as compatible in the Documentation, or Client not following the procedures for loading third party software on a Workstation or Server as set forth in the Software Support Agreement and further defined in TriTech's System Planning Document.

11.5.4 Equipment which does not meet the configuration requirements specified in the Documentation, by failure of Client to provide and maintain the site and facility requirements described in Section 7.0 herein.

11.5.5 Computer viruses that have not been introduced into Client's system by TriTech. Client shall maintain up to date virus checking software and shall check all software received from TriTech or any other person or entity for viruses before introducing that software into any part of the System including, but not limited to, Workstations or Servers. If desired by Client, TriTech will provide Updates on media rather than direct downloading to facilitate this virus checking. If, despite such check, a virus is introduced by TriTech, TriTech will provide a virus-free copy of the TriTech Software, including TriTech Interfaces provided under this Agreement, and will, at its expense, reload said software (but not Client's data) on Client's Equipment. Client shall be responsible for reloading its data and, to that end, shall practice reasonable back-up procedures for the System to mitigate the consequences of any virus. TriTech will assist Client in reloading its data from the Client's backup media.

11.5.6 Equipment or software provided by third parties with which the TriTech Software interfaces or operates (including but not limited to system software), including but not limited to problems caused by changes in such equipment or software. If such changes occur which require modifications or other actions with respect to the TriTech Software, such modifications or actions shall (unless identified in Addendum A as a line item in this Agreement) be subject to the mutual written agreement of the parties, including but not limited to, additional charges by TriTech at its then current rates for engineering and technical support.

11.5.7 After the Warranty Period, TriTech's obligations with respect to operation of the items purchased and/or licensed hereunder shall be as specified in the Software Support Agreement.

11.5.8 If mapping information is supplied with the TriTech Software, TriTech makes no representation or warranty as to the completeness or accuracy of the mapping data provided with the TriTech Software. The completeness or accuracy of such data is solely dependent on the information supplied by the Client or the mapping database vendor to TriTech.

11.6 Problems in the TriTech Software or transmission of data caused by wireless services are not warranted by TriTech, or covered under the terms of this Agreement. Client's use of services provided by wireless service providers or carriers, and the security, privacy, or accuracy of any data provided via such services is at Client's sole risk.

11.7 Client is responsible for maintaining the required certifications for access to Client's state CJIS system(s), NCIC and/or other local state, federal and/or other applicable systems.

11.8 Equipment, System Software and Subcontractor Hardware and Software, and any other items provided under this Agreement, if applicable, and not manufactured by TriTech (collectively "Third Party Items"). Third Party Items are warranted by the manufacturers or Vendors thereof, not by TriTech. TriTech shall pass through to Client any warranties on Third Party Items granted to it. If, during the warranty period for Third Party Items Client determines that they do not perform as warranted, Client shall contact TriTech using the procedures described in the Software Support Agreement. TriTech shall perform Help Desk functions by receiving calls and providing reasonable assistance to Client in determining the causes of the reported problem and in assisting Client in making claims under applicable third party warranties. Reasonable assistance consists of an evaluation of the reported problem in order to determine if the problem is being caused by a TriTech Software issue or an issue with a Third Party Item that needs to be addressed by the applicable Vendor. As part of the evaluation process, TriTech will share with the Client non-proprietary information related to the diagnosis such as error messages, database trace information and other information that led TriTech to diagnose the Third Party Item as the likely cause and which may aid the Client in seeking a resolution from the applicable manufacturer or Vendor. For issues involving Windows O/S software (Microsoft) that generally affects the operation of the TriTech Software and is not caused by a Client specific installation or configuration of the O/S, TriTech will work with Microsoft to coordinate the resolution. Notwithstanding the foregoing, TriTech warrants that, during the Warranty Period for the TriTech Software, the TriTech Software shall be compatible with the Third Party Items (i.e., shall communicate, share data and otherwise work together without additional software or hardware not provided under this Agreement) provided that all Subsystem components are used and maintained by Client as specified or instructed by TriTech, or the respective Vendors thereof, provided further that such items have not been changed since the Delivery thereof such that the TriTech Software is no longer compatible without modification.

11.8.1 Notice: The design of keyboards, computer desks, chairs and other items in the workplace ("ergonomic characteristics") affect the comfort, efficiency and safety of such items with respect to people who use them. Such ergonomic characteristics are determined by the manufacturer of such items, and the manner of their use in the workplace. To the extent allowed by law, TriTech disclaims all warranties, express or implied, with respect to the ergonomic characteristics of said items.

11.9 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TRITECH MAKES AND CLIENT RECEIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.0 MAINTENANCE AND SOFTWARE SUPPORT

12.1 Software support shall be provided in accordance with the Software Support Agreement to be entered into coincident with this Agreement. The initial term of annual Software Support for the TriTech Software shall begin upon the date of Go Live and end twelve (12) months thereafter, in accordance with the provisions of the Software Support Agreement.

13.0 DEFAULT AND TERMINATION

13.1 TriTech may terminate this Agreement and the TriTech Software licenses granted herein at any time if (i) Client fails to comply with any material term or condition of this Agreement unless (a) in the case of failure to pay monies due to TriTech, Client cures such failure within thirty (30) days after written notice of such failure by TriTech or (b) in other cases, Client cures such failure(s) within thirty (30) days of such notice or in the case of failures not reasonably susceptible to cure within thirty (30) days, Client commences action to cure such failure within such period and continues such action with due diligence until the failure is cured, or (ii) Client's normal business operations are disrupted or discontinued for more than thirty (30) days by reason of insolvency, bankruptcy, receivership or business termination. Except as set forth in this Agreement, any proper termination permitted by this Section 13.1 shall not affect TriTech's other rights or remedies under this Agreement, at law or in equity, or TriTech's to receive and retain the fees, charges and expenses earned hereunder up to the date of such termination.

13.2 Client may terminate this Agreement if (i) TriTech fails to comply with any material term or condition of this Agreement unless (a) TriTech cures such failure within thirty (30) days after written notice thereof from Client or (b) in the case of failures not reasonably susceptible to cure within thirty (30) days, TriTech commences action to cure such failure within such period and continues such action with due diligence until the failure is cured, or (ii) TriTech's normal business operations are disrupted or discontinued for more than thirty (30) days by reason of insolvency, bankruptcy, receivership or business termination and no successor or assignee is appointed who is ready, willing and able to assume and perform TriTech's executory obligations under this Agreement. Except as set forth in this Agreement, such termination shall not affect Client's other rights or remedies under this Agreement, at law or in equity.

13.3 Termination Without Cause. In the event that Client desires to terminate this Agreement without cause, Client shall provide thirty (30) days prior written notice to TriTech. In such event TriTech shall be paid for all fees and expenses earned under this Agreement up to the date of such termination. Any resumption of the Project shall be subject to negotiation of a new Agreement.

13.4 Termination Due to Lack of Funding. Should funding for this Agreement be discontinued, Client shall have the right to terminate the Agreement immediately upon written

notice to TriTech. In the event of termination under this provision, TriTech shall be paid for all fees and expenses earned under this Agreement up to the date of such termination. Any resumption of the Project shall be subject to negotiation of a new Agreement.

13.5 Upon termination, Client shall permanently remove and destroy all copies of the Software from its computer system, media, or other locations, destroy all copies of the Documentation and associated materials and certify to TriTech in writing that Client has performed said actions and has not retained or permitted others to retain any such copies whether on a computer system or Server, hard copy or CD-ROM, magnetic or other media, backup or archival copies, or otherwise. Upon termination, TriTech shall return any Client Confidential Information or Client owned data to Client.

14.0 LIABILITY

14.1 TriTech shall indemnify, defend, save, and hold Client harmless from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising from a wrongful or negligent act, error or omission, or violation of applicable Federal or State Laws, rules, or regulations by TriTech, its employees, agents, contractors, or any subcontractor as a result of TriTech's or any subcontractor's performance pursuant to this Agreement; however, TriTech shall not be required to indemnify Client for any claims or actions caused to the extent of the negligence or wrongful act of Client, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of Client, or its employees, agents or contractors, TriTech's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

14.2 Notwithstanding the foregoing, the total liability of TriTech for any claim or damage arising from or otherwise related to this Agreement, whether in contract, tort, by way of indemnification (except indemnification under section 16.0) or under statute shall be limited to direct damages which shall not exceed (i) the Contract Price or (ii) in the case of bodily injury, personal injury or property damage, the coverage limits of TriTech's insurance for such claims.

14.3 The total liability of Client for any claim or damage arising from or otherwise related to this Agreement, whether in contract, tort or under statute shall be limited to direct damages which shall not exceed (i) the Contract Price or (ii) in the case of bodily injury, personal injury, or property damage, the limitations on liability imposed by the Tennessee Governmental Tort Liability Act.

14.4 Except for actions for copyright, trade secret, intellectual property, or trademark infringement, no arbitration, action or proceeding arising out of any claimed breach of this Agreement or transaction may be brought by either party more than four (4) years after the cause of action has accrued.

14.5 IN NO EVENT SHALL EITHER PARTY OR ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE WHETHER IN CONTRACT OR IN TORT FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY

OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF, OR OTHERWISE RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER A PARTY HAS NOTICE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

15.0 INSURANCE

15.1 Beginning at the start of TriTech's performance under this Agreement, and ending when TriTech is no longer providing to Client annual Software Support pursuant to a Software Support Agreement, TriTech shall maintain the following minimum insurance policies:

15.1.1 General Liability Insurance with coverage limits of \$1,000,000 per occurrence, \$2,000,000 aggregate;

15.1.2 Workers' Compensation Insurance that complies with applicable statutory requirements;

15.1.3 Technology Errors and Omissions Insurance with coverage limits of \$1,000,000 per occurrence, \$2,000,000 aggregate; and

15.1.4 Third-Party Fidelity Insurance with coverage limits of \$1,000,000 per occurrence, \$2,000,000 aggregate.

15.2 Prior to the Client's execution of this Agreement, and from time to time thereafter upon renewal of any of the above-described policies of insurance, TriTech shall provide the Client with certificates of insurance evidencing the above coverages and naming the Client as an additional insured under the General Liability Insurance and certificate holder entitled to thirty (30) day's written notice following any cancellation, reduction, or change in coverage. TriTech shall also provide Client with a copy of the General Liability Insurance policy endorsement naming Client as an additional insured. In addition, TriTech shall have the duty to notify Client of any cancellation, reduction, or change in any of the above-required policies.

16.0 COPYRIGHT & TRADE SECRET INFRINGEMENT

16.1 TriTech will at its expense defend, indemnify and hold Client harmless against any claim, action or proceeding by a third party ("Action" herein) for infringement by the TriTech Software of copyright or trade secrets. Client shall promptly notify TriTech in writing of such Action and reasonably cooperate with TriTech and its legal counsel in the defense thereof at TriTech's expense. TriTech may in its discretion (i) contest, (ii) settle, (iii) procure for Client the right to continue using the TriTech Software, or (iv) modify or replace the TriTech Software so that it no longer infringes (as long as the functionality and performance described in the Specifications substantially remains following such modification or replacement.) Notwithstanding the foregoing, in the event that any settlement (a) has a finding that Client is liable or at fault in any way for the alleged infringement and/or (b) includes any financial obligation or a monetary award that the Client would be liable to pay, such settlement shall be subject to the prior written approval of the Client. Client may participate in the defense of such Action at its own expense. If TriTech concludes in its sole judgment that none of the foregoing options are commercially reasonable, and Client's use of the TriTech Software is permanently enjoined as a

result of a judgment of a court of competent jurisdiction in such Action, then TriTech will return to Client the TriTech Software license fee(s) paid by Client under this Agreement less a prorated portion of said fee(s) for Client's use of the TriTech Software (calculated by multiplying the ratio of the number of months of actual Use in Live Operations to sixty (60) months times the license fees paid) and the licenses granted in this Agreement shall terminate.

16.2 Notwithstanding the above, TriTech shall have no duty under this section 16.0 to the extent any claim, action or proceeding is caused by (i) System Software, Subcontractor Hardware or Software, or Equipment, (ii) modifications to the TriTech Software and/or Documentation not made by or under the direction or consent of TriTech, (iii) use of the TriTech Software to practice any method or process which does not occur wholly within the TriTech Software, or (iv) modifications to the TriTech Software or Documentation prepared pursuant to specifications or other material furnished by or on behalf of Client. This section 16.0 states the entire obligation of TriTech regarding infringement of intellectual property rights, and it will survive the termination of this Agreement.

17.0 DISPUTE RESOLUTION

17.1 The parties desire to resolve certain disputes, controversies and claims arising out of this Agreement without litigation. Accordingly, except as provided in Section 17.4, the parties agree to use the following procedure set forth in Sections 17.2 and 17.3 to attempt to resolve any dispute, controversy or claim arising from or relating to this Agreement or its breach before resorting to litigation. The term "Dispute" means any dispute, controversy or claim arising under or related to this Agreement.

17.2 At the written request of a party, each party shall appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute arising under this Agreement. The parties intend that these negotiations be conducted primarily by non-lawyer, business representatives. (However, the parties may be assisted by legal counsel in such negotiations.) The discussions shall be left to the discretion of the representatives. Upon their mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted, may be produced in discovery, and may, if otherwise admissible, be admitted in evidence in a lawsuit.

17.3 If the negotiations described above do not resolve the Dispute within sixty (60) days of the initial written request, either party may institute an action in a court of competent jurisdiction identified in Section 29.2.

17.4 Nothing in this Section 17.0 shall preclude either party from obtaining from a court of competent jurisdiction provisional relief such as a temporary restraining order or a preliminary injunction.

17.5 THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY WITH RESPECT TO THIS AGREEMENT, AND THEY HEREBY WAIVE SUCH RIGHT.

18.0 SALES, USE AND PROPERTY TAX

18.1 Client is exempt from State sales tax and will issue a tax exemption certificate to the TriTech if requested. Client shall not be responsible for any taxes that are imposed on TriTech. Furthermore, TriTech understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Client.

19.0 SEVERABILITY

19.1 If any term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement is held to be invalid or unenforceable, for any reason, it shall not affect, impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement so adjudged to be invalid or unenforceable.

20.0 FORCE MAJEURE/EXCUSABLE DELAY

20.1 Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in Delivery or performance as a result of war, acts of terrorism, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond its reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, contractors or elected officials and/or other similar occurrences beyond the party's reasonable control ("Excusable Delay" herein). In the event of any such Excusable Delay, Delivery or performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay. The party affected by an Excusable Delay hereunder shall provide written notice to the other party of such delay as soon as reasonably possible.

21.0 CONSTRUCTION AND HEADINGS

21.1 The division of this Agreement into sections and the use of headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

22.0 WAIVER

22.1 The failure or delay of any party to enforce at any time or any period of time any of the provisions of this Agreement shall not constitute a present or future waiver of such provisions nor the right of either party to enforce each and every provision.

22.2 No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of or excuse for any other, different or subsequent breach.

23.0 NON-DISCRIMINATION; AFFIRMATIVE ACTION.

23.1 It is the policy of the Client 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 contract, TriTech certifies and warrants it will comply with this policy.

23.2 TriTech further acknowledges that the Client is a federal government contractor, and that by virtue of this Contract, TriTech qualifies as a federal government subcontractor under 41 CFR 60-1.3.. Therefore, in accordance with federal law, TriTech specifically acknowledges and agrees as follows:

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

23.2.2 The Client and TriTech shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

23.2.3 The Client and TriTech shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors

to employ and advance in employment qualified individuals with disabilities.

24.0 MAINTENANCE OF RECORDS

24.1 TriTech shall maintain documentation for all charges against Client. The books, records, and documents of TriTech, insofar as they relate to work performed or money received under this Agreement, 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 Client or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

25.0 MODIFICATION OF AGREEMENT

25.1 This Agreement may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of Client's governing body may be required. Minor modifications to the Agreement may be executed by signature of the City Manager in lieu of Client's signatory hereto.

26.0 PARTNERSHIP; JOINT VENTURE

26.1 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.

27.0 COMPLIANCE WITH LAWS

27.1 TriTech agrees to comply with all applicable federal, state and local laws and regulations.

28.0 ENTIRE AGREEMENT

25.1 This Agreement and its Addenda or Amendment(s) represent the entire agreement between the parties hereto and a final expression of their agreements with respect to the subject matter of this Agreement and supersedes all prior written agreements, oral agreements, representations, understandings or negotiations with respect to the matters covered by this Agreement.

29.0 APPLICABLE LAW; VENUE

29.1 Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Tennessee without regard to its conflict of law provisions and not including the United Nations Convention on Contracts for the International Sale of Goods if such convention would otherwise be applicable.

29.2 The parties agree that all exclusive venue for all disputes or claims concerning this

Agreement shall be instituted and prosecuted in the state courts located in Rutherford County, Tennessee or the U.S. District Court for the Middle District of Tennessee and each party irrevocably consents to personal jurisdiction before such courts and waives all objections thereto including, any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction.

30.0 ASSIGNMENT

30.1 Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party, which consent will not be unreasonably withheld. For purposes of this Agreement, it is agreed, but not by way of limitation, that TriTech's withholding of consent is not unreasonable if the proposed assignee is a person, company or other entity which competes with TriTech directly or indirectly, whether itself or through a parent, subsidiary, or entity which is owned or controlled by a competitor of TriTech. Further, TriTech may require the proposed assignee to execute and agree to be bound by this Agreement. Notwithstanding the foregoing, upon notice to Client, TriTech may assign this Agreement to the surviving party in a merger of TriTech with or into another entity without the need to obtain Client's consent.

31.0 NOTICES

31.1 All notices required to be given under this Agreement shall be made in writing by (i) first-class mail, postage prepaid, certified, return receipt, (ii) by regularly scheduled overnight delivery, (iii) by facsimile or e-mail followed immediately by first-class mail, or (iv) by personal delivery, to the address set forth herein, or such other address as provided in writing. Such notices shall be deemed given three (3) days after mailing a notice or one (1) day after overnight delivery thereof.

To Client:

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

To TriTech:

TriTech Software Systems
9477 Waples Street, Ste. 100
San Diego, Calif. 92121
Attn: Christopher D. Maloney,
President and CEO

32.0 ORDER OF PRECEDENCE

32.1 The following documents shall comprise the Agreement between the parties concerning the subject matter of this Agreement, and in the event of any dispute arising from or related to this Agreement, shall have the following order of precedence:

- A. Amendments to this Agreement;
- B. This Agreement and all Addenda and other documents attached to or incorporated by reference herein. In the event of a conflict between this Agreement and an Addendum, this body of this Agreement shall take precedence.

33.0 GENERAL TERMS

33.1 TriTech and Client agree that TriTech is acting in the capacity of an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

33.2 This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent to any assignment of this Agreement by either party except as provided in the ASSIGNMENT section of this Agreement.

33.3 This Agreement shall not become a binding contract until signed by an authorized officer of each party, and it is effective as of the date so signed.

33.4 This Agreement may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original thereof.

33.5 The provisions contained herein shall not be construed in favor of or against either party because that party or its counsel drafted this Agreement, but shall be construed as if all parties prepared this Agreement.

33.6 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders.

33.7 A facsimile of this Agreement, its exhibits and amendments, and notices and documents prepared under this Agreement, generated by a facsimile machine (as well as a photocopy thereof) shall be treated as an original.

SIGNATURE PAGE FOLLOWS


33.8 EACH PARTY'S ACCEPTANCE HEREOF IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT AND NO DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER, CONFIRMATION OR OTHER WRITING SHALL HAVE ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY THE PARTIES.

CITY OF MURFREESBORO

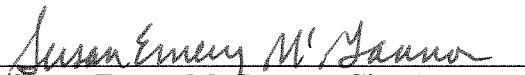

Accepted By (Signature)



Printed Name


Title


Date

Approved as to form:


Susan Emery McGannon, City Attorney



Adam F. Tucker, Assistant City Attorney

TRITECH SOFTWARE SYSTEMS


Accepted By (Signature)

Christopher D. Maloney
Printed Name

President and CEO
Title


Date

ADDENDUM A

CONTRACT PRICE AND PAYMENT MILESTONES

Except as otherwise noted, pricing for TriTech Software and Services is provided in accordance with TriTech's GSA Schedule GS-35F-0006U.

TriTech Software License Fee(s) City of Murfreesboro- Open Market

Inform CAD Software License Fee(s)	Unit Price	Qty	List Price	Credit	Total Price
Inform CAD Server Software (B 6-20 Positions)		1			
Inform CAD Position - Murfreesboro		11			
Inform CAD Position – Rutherford EMS		5			
Inform CAD Administration License (CAD monitor)		2			
Inform CAD Standard Operating Procedure		1			
Inform CAD Routing Server		1			
Inform CAD The GISLink Utility		1			
NCIC/State Message Switch		1			
Inform CAD Rotation Provider		1			
Standard ANI/ALI Interface		1			
Standard RMS to Inform CAD Premise Data Transfer Interface (One-way flow)		1			
Standard Alpha Numeric Paging Interface		1			
<i>Inform CAD Software License Fee(s) Subtotal:</i>					\$38,700.00

Inform Mobile Software License Fee(s)	Unit Price	Qty	List Price	Credit	Total Price
Inform Mobile Server Software (Positions)		1			\$0.00
Inform Mobile Base Position (with NCIC Access)		205			\$0.00
Inform Mobile Base Position		20			\$0.00
Inform Mobile Interface Server	included	1	included		\$0.00
<i>Inform Mobile Software License Fee(s) Subtotal:</i>					\$0.00

ADDENDUM A (Continued)

TriTech Software License Fees - Rutherford County Sheriff

SIN #	Product Code	Inform CAD Software License Fee(s)	Unit Price	Qty	Total Price
132-33 SW License	IN-SW-120015-001	Inform CAD the Archive Server Software	\$16,650.00	1	\$16,650.00
132-33 SW License	IN-SW-120007-001	Inform CAD Position	\$9,000.00	7	\$63,000.00
132-33 SW License	IN-SW-110001-001	Inform CAD Browser (A - 1-40 Concurrent Users)	\$9,000.00	1	\$9,000.00
132-33 SW License	IN-SW-120060-001	Standard Inform CAD to External System Incident Data Transfer Interface	\$13,500.00	1	\$13,500.00
132-33 SW License	IN-SW-120048-001	Standard EMD Integration	\$450.00	7	\$3,150.00
132-33 SW License	IN-SW-120033-001	NCIC/State Query Position for Inform CAD	\$450.00	7	\$3,150.00
132-33 SW License	IN-SW-120055-001	Standard ANI/ALI Interface Additional PSAP	\$2,700.00	1	\$2,700.00
<i>Inform CAD Software License Fee(s) Subtotal:</i>					\$111,150.00

SIN #	Product Code	Inform Mobile Software License Fee(s)	Unit Price	Qty	Total Price
132-33 SW License	IN-SW-170009-001	Inform Mobile Base Position with CJIS/NCIC Forms	\$900.00	90	\$81,000.00
<i>Inform Mobile Software License Fee(s) Subtotal:</i>					\$81,000.00

TriTech Software License Fee(s) Total: \$192,150.00

Custom Solutions – Rutherford County Sheriff

SIN #	Product Code	Product Name	Unit Price	Qty	Total Price
Open Market Product	IN-SW-100069-001	Inform CAD Server Software -- Open Market Server Uplift		1	
Open Market Product	IN-SW-100069-001	Inform Mobile Server Software -- Open Market Server Uplift		1	

Custom Solution(s) Total: \$31,500.00

Addendum A (continued)

TriTech Implementation Service Fee(s) – Murfreesboro- Open Market

CAD & Mobile Project Service Fee(s)	Unit Price	Qty	List Price	Credit	Total Price
Installation services for Vision Customers: 1) Inform CAD Server; 2) Inform Mobile Server and Interfaces; 3) up to 3 Interface Servers - Production site only		1			
CAD User Training Course (Per class - 4-day class up to 10 students)		2			
CAD System Administration Training Course (Per student - 4-5 days at TriTech)		1			
CAD BA & Configuration services, including the following: 1- Four (4) remote configuration/review sessions for the duration of 2 hours each 2- One Validation Workshop at the customer site, for 4 days. (validation workshop) 3- Up to 40 hours of remote configuration services		1			
Onsite Go Live Support Services for CAD and Mobile (1 person - 2 days, single shift coverage)		1			
Systems Engineering Services for the configuration of ANI/ALI, Paging, and CAD to RMS Interfaces.		1			
BA Services for Configuration of Mobile (remote services only) (maximum 24 hours)		1			
Mobile Administration Training Course (Per class - 1-day up to 3 students)		1			
BA Services for Configuration of Mobile (onsite) (One day)		2			
Custom CAD Mapping Conversion Services (client supplied data)		1			
Mobile Train the Trainer Course (Per class - 1-day up to 3 students)		1			
Project Management		1			
Custom Mobile Mapping Conversion Services (client supplied data)		1			
Inform GISLink Training Course (3 day on-site)		1			
Estimated Travel Expenses					
<i>TriTech Project Service Fee(s) Subtotal</i>					\$112,975.00

Addendum A (continued)

TriTech Implementation Service Fee(s)- Rutherford County Sheriff

SIN #	Product Code	Inform CAD Implementation Service Fee(s)	Unit Price	Qty	Total Price
132-51 Professional Services	IT IN-SV-120034-001	Inform CAD Archive Server Configuration	\$1,890.00	1	\$1,890.00
132-51 Professional Services	IT IN-SV-120059-001	Disaster Recovery Interface Configuration: Standard Inform CAD to External System Incident Data Transfer Interface	\$2,160.00	1	\$2,160.00
132-51 Professional Services	IT IN-SV-120047-001	Disaster Recovery Interface Configuration: Standard ANI/ALI Interface (Inform CAD)	\$1,440.00	1	\$1,440.00
132-51 Professional Services	IT IN-SV-120028-001	Inform CAD Disaster Recovery Server Configuration	\$2,520.00	1	\$2,520.00
132-51 Professional Services	IT IN-SV-120046-001	Disaster Recovery Interface Configuration: Standard Alpha Numeric Paging Interface (Inform CAD)	\$1,440.00	1	\$1,440.00
132-51 Professional Services	IT IN-SV-190026-001	Inform CAD Browser Server Configuration	\$1,260.00	1	\$1,260.00
132-50 Training	IN-SV-120019-001	Inform CAD Supervisor Training (Five days, up to 10 students)	\$6,300.00	1	\$6,300.00
132-50 Training	IN-SV-120015-001	Inform CAD User Training Course (Per class - 4-day class up to 10 students)	\$5,040.00	3	\$15,120.00
132-50 Training	IN-SV-190009-001	Inform CAD and Mobile System Administration Training Course (Per student - 4-5 days at TriTech)	\$1,305.00	1	\$1,305.00
132-51 Professional Services	IT IN-SV-190076-001	Onsite Go Live Support Services for Inform CAD and Mobile (1 person - 2 days, 24 hour coverage)	\$7,650.00	1	\$7,650.00
132-51 Professional Services	IT IN-SV-120042-001	CAD Data Conversion Services (Caution Notes, Premises and Historical Data Conversion). This includes up to 2 years (8 quarters) of historical data from a single source. Over 2 years, or multiple data sources will require a custom quote.	\$36,000.00	1	\$36,000.00
132-51 Professional Services	IT IN-SV-120013-001	Inform CAD Business Analysis and Consultation Services	\$20,000.00	1	\$20,000.00
<i>Inform CAD Implementation Service Fee(s) Subtotal:</i>					<i>\$97,085.00</i>

Addendum A (continued)

SIN #	Product Code	Inform Mobile Implementation Service Fee(s)	Unit Price	Qty	Total Price
132-51 IT Professional Services	IN-SV-170016-001	Inform Mobile Position Configuration (5 units)	\$1,575.00	1	\$1,575.00
132-51 IT Professional Services	IN-SV-170020-001	Inform Mobile Interface Server Configuration (per Interface Server)	\$1,575.00	1	\$1,575.00
132-50 Training	IN-SV-170014-001	Inform Mobile Train-The-Trainer (Per class - 1-day up to 8 students) 1 Day	\$1,620.00	1	\$1,620.00
132-50 Training	IN-SV-170015-001	Inform Mobile Administration Training Course (Per class - 1-day up to 3 students)	\$1,620.00	1	\$1,620.00
Inform Mobile Implementation Service Fee(s) Subtotal:					\$6,390.00

TriTech Implementation Service Fee(s) Total: \$103,475.00

TriTech Project Related Fee(s) – Rutherford County Sheriff

SIN #	Product Code	Product Name	Unit Price	Qty	Total Price
132-51 IT Professional Services	IN-SV-190002-001	Project Management Services	\$157.50	330	\$51,975.00
Open Market Product	IN-SV-100055-001	Inform Mobile System Configuration and BA services - Open Market for Custom Band		1	
Open Market Product	IN-SV-100055-001	Inform CAD System Orientation/Analysis - Open Market for Custom Band		1	
Open Market Product	IN-SV-100055-001	Inform CAD System Configuration & DOLF - Open Market for Custom Band		1	
Open Market Product	IN-SV-190035-001	Travel Expenses - Estimate (To be billed as incurred)		1	

Project Related Fee(s) Total: \$133,225.00

Addendum A (continued)

Annual Software Support Fee(s) (Year 1) – Murfreesboro- Open Market

Product Name	Support Level	Annual Maintenance Amount
Inform CAD & Mobile	24 x 7	\$145,544.00

Annual Software Support Fee(s) (Year 1) – Rutherford County

SIN #	Product Code	Product Name	Unit Price	Qty	Total Price
132-33 SW License	IN-SW-110001-001-M-24	Inform CAD Browser (A - 1-40 Concurrent Users) - Maintenance 24x7	\$1,980.00	1	\$1,980.00
132-33 SW License	IN-SW-120007-001-M-24	Inform CAD Position - Maintenance 24x7	\$1,980.00	7	\$13,860.00
132-33 SW License	IN-SW-120015-001-M-24	Inform CAD the Archive Server Software - Maintenance 24x7	\$3,663.00	1	\$3,663.00
132-33 SW License	IN-SW-120033-001-M-24	NCIC/State Query Position for Inform CAD - Maintenance 24x7	\$99.00	7	\$693.00
132-33 SW License	IN-SW-120048-001-M-24	Standard EMD Integration - Maintenance 24x7	\$99.00	7	\$693.00
132-33 SW License	IN-SW-120060-001-M-24	Standard Inform CAD to External System Incident Data Transfer Interface - Maintenance 24x7	\$2,970.00	1	\$2,970.00
132-33 SW License	IN-SW-170009-001-M-24	Inform Mobile Base Position with CJIS/NCIC Forms - Maintenance 24x7	\$198.00	90	\$17,820.00
Open Market Product	IN-SW-100067-001	Inform CAD Server Maintenance - Open Market on Custom Band	\$990.00	1	\$990.00
Open Market Product	IN-SW-100067-001	Inform Mobile Server Maintenance - Open Market on Custom Band	\$5,940.00	1	\$5,940.00
132-33 SW License	IN-SW-190113-001	Inform CAD Disaster Recovery System Maintenance (C - 21-40 Users)	\$2,079.00	1	\$2,079.00
132-33 SW License	IN-SW-120055-001-M-24	Standard ANI/ALI Interface Additional PSAP – Maintenance 24x7	\$594.00	1	\$594.00

Annual Software Support Fee(s) (Year 1) Total: \$51,282.00

Addendum A (continued)

Contract Summary

Murfreesboro

TriTech Software	\$	38,700.00
TriTech Services	\$	112,975.00
First Year Annual Software Support	\$	145,544.00
Subtotal	\$	297,219.00

Rutherford County Sheriff

TriTech Software	\$	223,650.00
TriTech Services	\$	236,700.00
Initial Term of Annual Software Support (Begins at Go Live and ends 12 months thereafter)	\$	51,282.00
Initial Term of Annual Software Support discount		(51,282.00)
Year 2 Annual Software Support due 12 months from date of Go Live	\$	51,282.00
Subtotal	\$	511,632.00
Project Total	\$	808,851.00

Addendum A (continued)

Payment Milestones

Software and Services due at Contract Signature	\$ 122,405.00
Software and Services due at Installation (Production Site)	\$ 122,405.00
Software and Services due at Completion of DOLF (Production Site)	\$ 91,803.75
Software and Services due at Completion of Pre-Go Live End User Training	\$ 153,006.25
Software and Services Due at Go Live (Production Site)	\$ 61,202.50
Software and Services due at System Acceptance	\$ 61,202.50
Subtotal	\$ 612,025.00
Annual Software support fees for Year 1 due at Go Live	\$ 145,544.00
Annual Software support fees due 12 months from Go Live	\$ 51,282.00
Subtotal	\$ 196,826.00
Project Total	\$ 808,851.00

INSTALLATION AT DESIGNATED LOCATION AND SHIPPING INSTRUCTIONS

Deliver To:

Disaster Recovery Site
Rutherford County Sheriff's Office
940 New Salem Hwy
Murfreesboro, TN 37129-3340

Production Site
Murfreesboro Police Department
302 South Church Street
Murfreesboro, TN 37130-3732

Client (Murfreesboro) is currently licensed to use the following TriTech Software applications, which licenses shall remain in effect. This Agreement does not include replacement or upgrade of the following:

Applications	
TN Tracs Accident to Inform RMS DMV Interface	Inform RMS Evidence and Bar Code 50-150K pop
Inform 50-150K pop	Inform RMS Intelligence, IA, Narcotics 50-150K pop
Inform RMS Server License 50-150K pop	Inform RMS Top Gun Barcode Interface
Inform RMS Workstation	Inform FBR Workstations
Inform RMS Auto Citation	Inform FBR Server License 50-150K pop
Inform RMS MNHS Base Package 50-150 K pop	Inform DataVault – annual subscription
Inform RMS Barcode Interface	Inform DataValut additional server backup – annual subscription
Inform RMS Equip Maint 50-150K pop	

ADDENDUM B

STATEMENT OF WORK

(ATTACHED)

The Statement of Work shall be treated as confidential information in accordance with TCA 10-7-504 (a) (18).

ADDENDUM C

SYSTEM PLANNING DOCUMENT

(ATTACHED)

The System Planning Document shall be treated as confidential information in accordance with TCA 10-7-504 (a) (18).

Police Department
W. GLENN CHRISMAN
Chief of Police
(615) 849-2673
gchrisman@ci.murfreesboro.tn.us



Approved by Council

10/15/15
gm

October 13, 2015

Honorable Mayor and Members of City Council:

CONSENT AGENDA

RE: A.: Request to Enter into System Purchase and Software Support Agreements for Trittech Computer-Aided Dispatch Software

ITEM A: Request to Enter into System Purchase and Software Support Agreements for Trittech Computer-Aided Dispatch Software

As an item for the consent agenda at the next scheduled Council meeting, it is the recommendation of the Chief of Police that City Council approve the request to enter into Software Purchase and Support Agreements with Trittech for a Cooperative Computer-Aided Dispatch (CAD) software.

Background

Purpose:

Enter into Software Purchase and Support Agreements with Trittech for a Cooperative Computer-Aided Dispatch (CAD) software.

Scope of Work:

On March 26, 2015, Council approved a request by the Murfreesboro Police Department to pursue an agreement to upgrade our existing CAD software and pursue an inter-local agreement with the Rutherford County Sheriff's Office to work jointly in forming a cooperative CAD System between the agencies. On January 9, 2015, RCSO presented Rutherford County Emergency Communications District (RCECD) with a grant proposal to upgrade their CAD system to the Trittech Inform product of which we are currently under contract at this time. With the merger of Visionair and Trittech in 2011, we would be migrating to their Inform CAD and Records products in the future. Trittech offered the RCSO the opportunity, if approved by City Management, to implement the Trittech CAD system from



Police Department
302 South Church Street • Murfreesboro, Tennessee 37130-3732 • Fax 615-848-3260
www.murfreesborotn.gov



Honorable Mayor and Members of City Council
Consent Agenda Request
October 13, 2015

our existing contract and provide a cooperative redundant system between the agencies. This would provide data sharing between our law enforcement agencies and between RCEMS and Murfreesboro Fire and Rescue.

Fiscal Impact

In the grant proposal RCSO presented to RCECD, the cost breakdown was \$457,650 for the County and \$151,675 for the City. This cost would be paid out of Unforeseen and would be reimbursed by RCECD upon presentation of payments by the City. There was an additional \$9,954 added to the RCSO proposal for ANI / ALI interfaces that the RCSO approved.

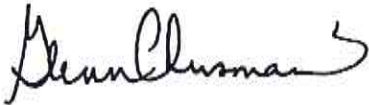
Recommendation

It is recommended that City Council approve the entering into agreements with for the purchase and maintenance of the Trittech CAD System software for the Police Department.

This is an opportunity for our departments to begin sharing a multitude of data between agencies. The RCSO plans to proceed with adding the Records Management and Jail Management modules in the future. This would allow for data to flow automated between an original call for service to the jail booking process and eliminate redundant paperwork for our employees. It will also allow for warrant and jail information to be ported to our Mobile system to provide officers with current information in the field.

Attachments

1. Murfreesboro - System Purchase Agreement - Inform CAD Upgrade
2. Murfreesboro - Software Support Agreement



W. Glenn Chrisman
Chief of Police

C: Deputy Chief Mike Bowen

Police Department
W. GLENN CHRISMAN
Chief of Police
(615) 849-2673
gchrisman@murfreesborotn.gov



October 15, 2015

Honorable Mayor and Council Members:

I respectfully request Council acceptance of **changes** to a Consent Agenda item (**Item 1.F. - Request to Enter into System Purchase and Software Support Agreements for Trittech Computer-Aided Dispatch Software**) presented to Council for consideration this evening, October 15, 2015.

Please replace the Fiscal Impact section paragraph with the following:

In the grant proposal RCSO presented to RCECD, the cost breakdown was \$457,650 for the County and \$151,675 for the City. The costs would be paid out of Unforeseen and then would be reimbursed by RCECD upon presentation of payments. There is an additional \$2,700 cost to the RCSO proposal for ANI / ALI interfaces which the RCSO has approved to fund. Future annual maintenance costs will be \$145,544 for the City and \$51,282 for the County. Total contractual cost of purchase and maintenance will be \$808,851.00 (City - \$297,219.00 and County - \$511,632.00) as shown on Addendum A of the System Purchase Agreement.

The changes reflect the cost of annual maintenance and the removal of one (1) software component to the County.

Sincerely,

W. Glenn Chrisman
Chief of Police

WGC:gc

c: Robert J. Lyons, City Manager
Jim Crumley, Assistant City Manager
Jennifer Moody, Assistant City Manager
Deputy Chief Michael Bowen



Police Department
W. GLENN CHRISMAN
Chief of Police
(615) 849-2673
gchrisman@murfreesborotn.gov



October 15, 2015

Honorable Mayor and Council Members:

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The changes reflect the cost of annual maintenance and the removal of one (1) software component to the County.

Sincerely,

W. Glenn Chrisman
Chief of Police

WGC:gc

c: Robert J. Lyons, City Manager
Jim Crumley, Assistant City Manager
Jennifer Moody, Assistant City Manager
Deputy Chief Michael Bowen





TriTech Software Systems
9477 Waples Street, Ste. 100
San Diego, CA 92121
Phone: 858.799.7000
Fax: 858.799.7011
www.tritech.com

SOFTWARE SUPPORT AGREEMENT

TRITECH SOFTWARE SYSTEMS

SOFTWARE SUPPORT AGREEMENT

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SOFTWARE SUPPORT AGREEMENT

Client: City of Murfreesboro
Address: 111 West Vine Street
City, State, Zip: Murfreesboro, TN 37130
Phone, Fax: 615-849-2629, 615-849-2679
Contact Name: Althea Pemsel, Purchasing Director

This Agreement is made by and between TriTech Software Systems, referred to herein as "TriTech", with offices at 9477 Waples Street, Ste. 100, San Diego, California 92121 and Client named above, referred to herein as "Client".

A. WHEREAS, TriTech and Client have entered into a System Purchase Agreement (the "System Purchase Agreement") dated 10/15/15; and

B. WHEREAS, TriTech and Client previously entered into a Contract for Purchase of Public Safety Software and Annual Software Maintenance dated March 27, 2008 (the "Contract"); and

C. WHEREAS, this Software Support Agreement (this "Agreement") supersedes and replaces Contract Attachment C Software Services Agreement, and is entered into to provide Software Support for the Client's existing licensed TriTech Software, as well as the TriTech Software licensed under the System Purchase Agreement for a period of one year, subject to annual renewal thereafter; and

D. WHEREAS, during the initial term of this Agreement, if applicable, TriTech shall act as the Prime Contractor for maintenance of the System and shall provide the single point of contact with the Client as further defined herein;

NOW, THEREFORE, in consideration of the terms, promises, mutual covenants and conditions contained in this Agreement, TriTech and Client agree as follows:

1.0 DEFINITIONS

1.1 All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings given them in the Definitions section of the Purchase Agreement, which section is incorporated by reference herein as though set forth in full.

2.0 TERM AND TERMINATION

2.1 The initial term of Software Support services provided under this Agreement shall begin at first Go Live for the TriTech Software and end twelve (12) months thereafter. Software Support for subsequent annual terms shall be subject to renewal of this Agreement and payment of the renewal Software Support fees. Following the initial term, either party may terminate this Agreement upon written notice to the other party ninety (90) days prior to the end of the then current annual support term. Provided that notice of termination has not been provided, on or before the expiration of the then current support term, and at each annual anniversary thereof, TriTech shall provide to Client a Software Support Renewal Notice for signature. TriTech reserves the right to change the terms and conditions upon which Software Support shall be offered for renewal terms, subject to written notice to Client.

2.2 If applicable, following the initial term of this Agreement, either party shall have the option, upon prior written notice as provided in this section, to terminate support and maintenance for Subcontractor Software which is provided through TriTech as the Prime Contractor. In such event the Client shall enter directly into Support Agreement(s) with the individual Subcontractor(s). In order to provide continuity of support, either party shall notify the other party at least ninety (90) days prior to the end of the initial term of this Agreement of its intentions for continuation through TriTech as the Prime Contractor of support and maintenance for such Subcontractor Software. Support for Subcontractor Software if applicable under this Agreement will be provided in accordance with the applicable Subcontractor's terms for support which are attached hereto at Addendum C.

2.3 Either party may terminate this Agreement upon written notice to the other party in the event that (i) the other party fails to comply with any material term or condition of this Agreement, provided that such failure has not been cured within thirty (30) days receipt of written notice of such failure; or (ii) the other party's business operations are disrupted or discontinued for more than thirty (30) days by reason of insolvency, bankruptcy, receivership or business termination; or (iii) written notice of termination for convenience is provided by one Party to the other Party within ninety (90) days' prior to the end of the then current support term.

3.0 SUPPORT FEE(S)

3.1 Software Support fee(s) to be paid by Client for the initial term of this Agreement are established based on the software licenses purchased under the System Purchase Agreement. The Software Support fee for the first renewal term shall be the amount specified in Addendum A hereto, subject to the adjustments as described in 3.2.

3.2 Unless otherwise terminated as provided herein, TriTech shall notify Client prior to the end of the initial support term of the Software Support fees for the first renewal term. Unless otherwise agreed in writing, Software Support fees shall be due on or before the commencement of each annual support term and are due for all TriTech Software applications and modules licensed to Client. Software Support fee for the first renewal term and all renewals thereafter shall be subject to increase on an annual basis at a rate of 5%. Additional

licenses purchased by Client during any annual support period will result in additional support fees which shall be prorated to be coterminous with Client's then current support period.

3.3 Software Support fees do not include reasonable travel, food or lodging expenses incurred by TriTech for support services provided at Client's site or other locations remote from TriTech's principal place of business. Such expenses shall be paid by Client on receipt of TriTech's invoice for such expenses. Travel costs submitted for reimbursement will be actual costs.

3.4 If Client ceases to keep in force an annual Software Support Agreement, any resumption of such annual support shall be subject to payment by Client of all past unpaid Software Support fees in addition to the Software Support fee for the current support year. Payment of applicable fees for any additional services required to bring Client's system current, which fees shall be charged at TriTech's then current rates for such services, shall also be the responsibility of the Client. Client acknowledges and agrees that the preceding clause is reasonable in light of the fact that the expenses incurred and resources devoted by TriTech to further development, enhancement and support of the TriTech Software must be spread over TriTech's client base and fairly shared by all TriTech Software users.

3.5 All undisputed amounts due and payable to TriTech hereunder shall, if not paid when due, bear a late charge equal to one percent (1%) per month, or the highest rate permitted by law, whichever is less, from thirty (30) days after their due date until paid. Client shall have the right to withhold payment of a disputed invoice or portion thereof. In the event Client disputes any invoices hereunder, Client shall promptly notify TriTech of the nature of the dispute and the parties will cooperate in good faith to expeditiously resolve such dispute. Failure to pay annual Software Support fees when due may result in a notice of termination in accordance with section 2.3.

Remittance Address for Payments Only:

TriTech Software Systems
P.O. Box 203223
Dallas, TX 75320-3223

3.5.1 Payments may be made by check; wire transfer; or Automated Clearing House ("ACH"). TriTech will provide banking information if Client requests to pay by wire transfer or ACH.

3.6 Except for taxes for which Client provides TriTech with written certification of its tax-exempt status, if TriTech is required to collect or pay sales, use, property, value-added, or other such taxes based on the software or services provided under this Agreement, and/or Client's use thereof, then such taxes shall be invoiced to and paid by Client on receipt of such invoice.

4.0 SUPPORT SERVICES, POINT OF CONTACT, AND CODE OF CONDUCT

4.1 TriTech will provide support services as more fully described in Addendum B.

4.2 Client shall appoint a principal point of contact with a level of knowledge of the TriTech Software and Client's computer environment to manage the reporting of Software Errors to TriTech in accordance with the Software Error Guidelines and Procedures set forth in Addendum B. TriTech reserves the right to request that Client appoint a replacement point of contact upon reasonable written notice to Client.

4.3 At all times during the term of this Agreement or any renewal period, each party shall ensure that its employees do not engage in a disrespectful, disruptive, demeaning, or otherwise inappropriate or abusive manner in dealing with the other party and its employees. Any such behavior shall be reported to the party's supervisor, manager, or executive as applicable for corrective action. A party's failure to remedy any reported issues related to employee misconduct, including removal of the offending employee from direct contact with the other party, may be cause for termination in accordance with section 2.3 herein.

5.0 SOFTWARE ERROR CORRECTION AND ACCESS

5.1 If, during the term of this Agreement, Client determines that Software Error(s) exist, it will first follow any error procedures specified in the TriTech Documentation. If following the error procedures does not correct the Software Error, Client shall promptly notify TriTech pursuant to the guidelines and procedures described in Addendum B, setting forth the defects noted with specificity requested by TriTech. Upon notification of a reported Software Error, TriTech shall attempt to reproduce and verify the error and, if so verified, will manage the Software Error(s) in accordance with Addendum B. If TriTech is unable to reproduce the Software Error at TriTech's facility, the Client will assist in the research of a support issue including logging or other diagnostic tools as provided by TriTech. TriTech will provide onsite assistance if the Client and TriTech determine that it is necessary for TriTech personnel to travel to Client's site to reproduce the error. If it is determined that reported problem was caused by the TriTech Software, TriTech will be responsible for its travel and related expenses for the onsite visit. In the event that the reported problem is determined to be the result of Equipment, Subcontractor Software or Hardware, or System Software, or is otherwise not attributable to the TriTech Software Client shall reimburse TriTech for its travel expenses incident to the on-site visit, as well as TriTech's labor related to the on-site visit at its then current hourly rates for technical support and engineering.

5.2 TriTech maintains a Security program for security managing access to Client data – particularly HIPAA and CJIS information. This includes 1) a Pre-employment background check, 2) security training required by Federal CJIS regulations, and 3) criminal background checks/fingerprints required by Federal or State regulations. TriTech will work with the Client to provide required documentation (such as the CJIS Security Addendum Certification form and VPN documents).

5.3 If required by the Client, TriTech will provide paper fingerprint cards for such Security Approved personnel with the fingerprinting performed in the state of the TriTech staff's job assignment. If the Client requires fingerprints submitted in a form other than paper prints (such as Live Scan) or that such fingerprints be performed at the Client's site, the Client will reimburse TriTech for the cost of TriTech Security Approved Personnel traveling to the Client's site or for a vendor (such as Live Scan) to travel to the applicable TriTech Offices. This provision will apply during the duration of this Agreement.

6.0 SOFTWARE UPDATES

6.1 From time to time, TriTech, in its sole discretion, may develop Updates to the TriTech Software and TriTech Documentation; such Updates shall be provided to Client free of additional charge provided that Client remains current on payment of Client's annual software support fee. All Updates to the TriTech Software and TriTech Documentation shall be subject to the terms and conditions of the Purchase Agreement and shall be deemed licensed TriTech Software thereunder. (Updates do not include new versions or separate modules or functions that are separately licensed and priced.)

7.0 LIMITATIONS

7.1 Software Support for the TriTech Software shall be subject to and conditional on Client's implementation and use of a version of the TriTech Software that is the most current general release version thereof that is offered to Client. If Client does not implement the most current general release version when it is made available, TriTech shall only be obligated to provide Software Support for Client's version of the TriTech Software for a period of twelve (12) months thereafter.

7.2 TriTech shall not be obligated to provide Software Support if Client is not current on the payment of all Software Support fees and expenses.

7.3 If any of the following circumstances exist, TriTech shall be entitled to charge additional Software Support fees plus expenses at its then current rates:

7.3.1 Problems in the TriTech Software are caused by modification of the TriTech Software, Subcontractor Software or Hardware, System Software, or Equipment by Client or a third party whether or not permitted hereunder.

7.3.2 Problems in the TriTech Software are caused by the TriTech Software not being used in accordance with the TriTech Documentation, or other instructions provided by TriTech, or by misuse or neglect.

7.3.3 Problems in the TriTech Software are caused by software not provided by TriTech, not approved by TriTech in writing or not specified as compatible in the TriTech

Documentation. (The procedures for loading third party software on a Workstation or Server are set forth in paragraph 7.4 of this Agreement.)

7.3.4 Problems in the TriTech Software are caused by equipment which does not meet the configuration requirements, or Client does not maintain the site and facility as specified in the TriTech Documentation.

7.3.5 Problems in the TriTech Software are caused by one or more computer viruses that have not been introduced into Client's system by TriTech. Client shall maintain up to date virus checking software in accordance with TriTech Documentation and shall check all software received from TriTech or any other person or entity for viruses before introducing that software into any part of the TriTech System. If desired by Client, TriTech will provide Updates on media rather than direct downloading to facilitate this virus checking. If, despite such check, a virus is introduced by TriTech, TriTech will provide a virus-free copy of the TriTech Software, and will, at its expense, reload said software on Client's Equipment. Client shall practice reasonable back-up procedures for the TriTech System in accordance with TriTech Documentation.

7.3.6 Problems in the TriTech Software are caused by Subcontractor Software or System Software, including but not limited to operating system software.

7.3.7 Problems in the TriTech Software are caused by Equipment or software provided by Client or third parties with which the TriTech Software interfaces or operates (including but not limited to Subcontractor Software or Hardware or System Software), including but not limited to problems caused by changes in such Equipment or software.

7.4 If, at any time after installation of the System, Client desires to load on a Workstation or Server any software not provided by TriTech, it shall, before loading such software, follow the procedures regarding third party software compatibility in the TriTech Documentation, and contact the TriTech Customer Service Department at the telephone numbers listed in Addendum B for assistance as required. **Such action shall not constitute approval, express or implied, for the loading of specific software on a Workstation or Server, nor any express or implied warranty, representation or other obligation by TriTech with respect to such software, including but not limited to its suitability, operability or capability to meet Client's needs or expectations.** Client agrees that if the loading of such third party software degrades the performance of the System, Client shall immediately uninstall such software. Client shall absolve, discharge and release TriTech from any obligations or liabilities related to operation or performance of the System, the TriTech Software, Subcontractor Software, or any other item provided by TriTech under this Agreement, including but not limited to any liabilities for damages related thereto in connection with the installation of such third party software.

7.5 TriTech Software Support under this Agreement, or any renewal or extension thereof, shall not include design, engineering, programming, testing, implementation or other services rendered necessary by changes in Subcontractor Software, System Software or Equipment, or in any other hardware, firmware or software provided by third parties or Client ("Third Party Changes"). Any such services shall be subject to additional charges by TriTech and the mutual agreement of the parties as to the terms and conditions under which such services

are rendered. Absent such agreement, TriTech shall be under no obligation, express or implied, with respect to such Third Party Changes.

7.6 Problems in the TriTech Software or transmission of data caused by wireless services are not warranted by TriTech, or covered under the terms of this Agreement. Client's use of services provided by wireless service providers or carriers, and the security, privacy, or accuracy of any data provided via such services is at Client's sole risk.

7.7 Client is responsible for maintaining the required certifications for access to Client's state CJIS system(s), NCIC and/or other local state, federal and/or other applicable systems.

8.0 EQUIPMENT, SUBCONTRACTOR SOFTWARE AND HARDWARE, AND SYSTEM SOFTWARE

8.1 Maintenance and support for Equipment provided under the Purchase Agreement if applicable, is not included under this Agreement. However, since proper computer equipment maintenance is required for proper system operation, Client shall acquire and keep in force equipment maintenance agreements for the computer and peripheral equipment used to operate the TriTech Software, or to provide such maintenance in-house with qualified personnel. If Client determines that an item of Equipment provided under this Agreement does not perform as provided in the applicable specifications, Client may contact TriTech using the procedures described in Addendum B. TriTech shall thereupon provide Help Desk services to Client with respect to the reported problem and reasonable assistance, as defined in 8.2 below, in determining the cause of the reported problem. Notwithstanding the above, TriTech is not and shall not be a party to such third party maintenance agreements nor shall TriTech have any obligation or liability thereunder.

8.2 Maintenance and support for Subcontractor Software, Subcontractor Hardware, or System Software sold or licensed under the Purchase Agreement shall be subject to and provided in accordance with any maintenance agreements between Client and the suppliers thereof, or other third party maintenance providers, or the provisions of the applicable Subcontract support terms provided hereto at Addendum C if continued annual support for the applicable Subcontractor Software is provided under this Agreement as further defined herein. If Client determines that an item of Subcontractor Software or Hardware, or System Software provided under the Purchase Agreement does not perform as provided in the applicable Specifications, Client may contact TriTech using the procedures described in Addendum B. TriTech shall thereupon provide Help Desk services to Client with respect to the reported problem and provide reasonable assistance to Client in determining the causes of the reported problem. Reasonable assistance consists of an evaluation of the reported problem in order to determine if the problem is being caused by a TriTech Software issue or an issue with a Third Party Item that needs to be addressed by the applicable vendor. As part of the evaluation process, TriTech will share with the Client non-proprietary information related to the diagnosis such as error messages, database trace information and other information that led TriTech to diagnose the Third Party Item as the likely cause and which may aid the Client in seeking a resolution from the applicable manufacturer or vendor. For issues involving Windows O/S software (Microsoft) that generally affects the operation of the TriTech Software and is not caused by a Client specific installation or

configuration of the O/S, TriTech will work with Microsoft to coordinate the resolution. Notwithstanding the above, TriTech is not and shall not be a party to such third party maintenance agreements nor shall TriTech have any obligation or liability thereunder.

9.0 LIMITATION OF LIABILITY

9.1 The total liability of TriTech for any claim or damage arising under this Agreement or renewals thereof, whether in contract, tort, by way of indemnification or under statute shall be limited to (i) direct damages which shall not exceed the Software Support fees paid under this Agreement by Client to TriTech for the twelve (12) month term during which the cause of action for such claim or damage arose or (ii) in the case of bodily injury or property damage for which defense and indemnity coverage is provided by TriTech's insurance carrier(s), the coverage limits of such insurance.

9.2 IN NO EVENT SHALL TRITECH BE LIABLE, WHETHER IN CONTRACT OR IN TORT, FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF THE USE OR NON-USE OF THE TRITECH SOFTWARE, OR OTHERWISE RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER TRITECH HAD KNOWLEDGE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

10.0 DISPUTE RESOLUTION

10.1 The parties desire to resolve certain disputes, controversies and claims arising out of this Agreement without litigation. Accordingly, except as provided in Section 10.4, the parties agree to use the following procedure set forth in Sections 10.2 and 10.3 to attempt to resolve any dispute, controversy or claim arising from or relating to this Agreement or its breach. The term "Dispute" means any dispute, controversy or claim arising under or related to this Agreement.

10.2 At the written request of a party, each party shall appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute arising under this Agreement. The parties intend that these negotiations be conducted primarily by non-lawyer, business representatives. (However, the parties may be assisted by legal counsel in such negotiations.) The discussions shall be left to the discretion of the representatives. Upon their mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted, may be produced in discovery, and may, if otherwise admissible, be admitted in evidence in a lawsuit.

10.3 If the negotiations described above do not resolve the Dispute within sixty (60) days of the initial written request, either party may institute an action in a court of competent jurisdiction identified in Section 16.2.

10.4 Nothing in this Section 10.0 shall preclude either party from obtaining from a court of competent jurisdiction provisional relief such as a temporary restraining order or a preliminary injunction.

10.5 THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY WITH RESPECT TO THIS AGREEMENT, AND THEY HEREBY WAIVE SUCH RIGHT.

11.0 SEVERABILITY

11.1 If any term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement is held to be invalid or unenforceable, for any reason, it shall not affect, impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement so adjudged to be invalid or unenforceable.

12.0 FORCE MAJEURE/EXCUSABLE DELAY

12.1 Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of Equipment or software from suppliers, default of a subcontractor or vendor to the party if such default arises out of causes beyond the reasonable control of such subcontractor or vendor, the acts or omissions of the other party, or its officers, directors, employees, agents, contractors, or elected officials, and/or other occurrences beyond the party's reasonable control ("Excusable Delay" hereunder). In the event of such Excusable Delay, performance shall be extended on a day for day basis or as otherwise reasonably necessary to compensate for such delay.

13.0 CONSTRUCTION AND HEADINGS

13.1 The division of this Agreement into sections and the use of headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

14.0 WAIVER

14.1 The failure or delay of any party to enforce at any time or any period of time any of the provisions of this Agreement shall not constitute a present or future waiver of such provisions nor the right of either party to enforce each and every provision.

14.2 No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of or excuse for any other, different or subsequent breach.

15.0 ENTIRE AGREEMENT

15.1 This Agreement and its Addenda or Amendment(s) represent the entire agreement between the parties hereto and a final expression of their agreements with respect to the subject matter of this Agreement and supersedes all prior written agreements, oral agreements, representations, understandings or negotiations with respect to the matters covered by this Agreement.

16.0 APPLICABLE LAW

16.1 Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Tennessee without regard to its conflict of law provisions and not including the United Nations Convention on Contracts for the International Sale of Goods if such convention would otherwise be applicable.

16.2 The parties agree that all exclusive venue for all disputes or claims concerning this Agreement shall be instituted and prosecuted in the state courts located in Rutherford County, Tennessee or the U.S. District Court for the Middle District of Tennessee and each party irrevocably consents to personal jurisdiction before such courts and waives all objections thereto including, any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction.

17.0 ASSIGNMENT

Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party, which consent will not be unreasonably withheld. For purposes of this Agreement, it is agreed, but not by way of limitation, that TriTech's withholding of consent is not unreasonable if the proposed assignee is a person, company or other entity which competes with TriTech directly or indirectly, whether itself or through a parent, subsidiary, or entity which is owned or controlled by a competitor of TriTech. Further, TriTech may require the proposed assignee to execute and agree to be bound by this Agreement. Notwithstanding the foregoing, upon notice to Client, TriTech may assign this Agreement to the surviving party in a merger of TriTech with or into another entity without the need to obtain Client's consent.

18.0 NOTICES

18.1 All notices required to be given under this Agreement shall be made in writing by (i) first-class mail, postage prepaid, certified, return receipt, (ii) by regularly scheduled overnight delivery, (iii) by facsimile or e-mail followed immediately by first-class mail, or (iv) by personal delivery, to the address set forth below, or such other address as provided in writing. Such notices shall be deemed given three (3) days after mailing a notice or one (1) day after overnight delivery thereof.

To Client:

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

To TriTech:

TriTech Software Systems
9477 Waples Street, Ste. 100
San Diego, Calif. 92121
Attn: Christopher D. Maloney,
President and CEO

19.0 NON-DISCRIMINATION; AFFIRMATIVE ACTION.

19.1 It is the policy of the Client 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 contract, TriTech certifies and warrants it will comply with this policy.

19.2 TriTech further acknowledges that the Client is a federal government contractor, and that by virtue of this Contract, TriTech qualifies as a federal government subcontractor under 41 CFR 60-1.3. Therefore, in accordance with federal law, TriTech specifically acknowledges and agrees as follows:

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

19.2.2 The Client and TriTech shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

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

20. MAINTENANCE OF RECORDS

20.1 TriTech shall maintain documentation for all charges against Client. The books, records, and documents of TriTech, 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 Client or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

21. MODIFICATION OF AGREEMENT

21.1 This Agreement may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of Client's governing body may be required. Minor modifications to the Agreement may be executed by signature of the City Manager in lieu of Client's signatory hereto.

22. PARTNERSHIP; JOINT VENTURE

22.1 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.

23. COMPLIANCE WITH LAWS

23.1 TriTech agrees to comply with all applicable federal, state and local laws and regulations.

24.0 GENERAL TERMS

24.1 This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent to any assignment of this Agreement by either party except as provided in the ASSIGNMENT section of this Agreement.

24.2 This Agreement shall not become a binding contract until signed by an authorized officer of both parties, and it is effective as of the date so signed.

24.3 This Agreement may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original thereof.

24.4 The provisions contained herein shall not be construed in favor of or against either party because that party or its counsel drafted this Agreement, but shall be construed as if all parties prepared this Agreement.

24.5 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders.

24.6 A facsimile of this Agreement, its exhibits and amendments, and notices and documents prepared under this Agreement, generated by a facsimile machine (as well as a photocopy thereof) shall be treated as an original.

24.7. This Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree to any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

SIGNATURE PAGE FOLLOWS

24.8 EACH PARTY'S ACCEPTANCE IS EXPRESSLY LIMITED TO THE TERMS HEREOF AND NO DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER, CONFIRMATION OR OTHER WRITING SHALL HAVE ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY EACH PARTY.

CITY OF MURFREESBORO


Accepted By (Signature)


Shane McFarland
Printed Name

Mayor
Title


10/15/15
Date

Approved as to form:


Susan Emery McGannon, City Attorney


Adam F. Tucker, Assistant City Attorney

TRITECH SOFTWARE SYSTEMS


Accepted By (Signature)

Christopher D. Maloney
Printed Name

President and CEO
Title

10/14/15
Date

ADDENDUM A

SUPPORT FEES

Support fees for the initial term beginning at first Go Live for the TriTech Software and ending twelve (12) months thereafter, are included as line items under the Contract Price in the System Purchase Agreement. Based on the licenses purchased under the System Purchase Agreement, the annual support fee for the first renewal term (to begin 12 months post Go Live) will be \$196,826 for those licenses only, and does not include the support fee for Client's existing TriTech Software licenses which be added to the renewal invoice as further defined below.

Client's current annual support term for its existing TriTech Software licenses is July 1 through June 30. If applicable, support fees for the Client's existing TriTech Software licenses up to the date of Go Live for the TriTech Software licenses granted under the System Purchase Agreement will be prorated (or credited as applicable) and added to the first support renewal term hereunder to provide a single coterminous annual Software Support Term.

Prior to the end of the then current support term, and each subsequent annual support term, TriTech will forward an invoice to Client for the annual support fee, which fees are subject to increase in accordance with section 3.2 of this Agreement. An increase in the TriTech Software licenses granted to Client will result in an increase in the Software Support fee.

TriTech's Software Support fees do not include fees for third party applications, or embedded software required, including but not limited to CAD mapping or Mobile mapping fees.

Option:

As further defined in Addendum B hereto, standard Software Support for Inform RMS, Inform Jail and Inform FBR applications is provided on an 8x5 basis. Support fees for 8x5 support is calculated at a lesser rate than 24x7 support. However, as an optional upgrade, Client may purchase Software Support for these TriTech Software applications on a 24x7 basis with the applicable adjustment in support fee. **If this option has been chosen, check the box below:**

Optional Support Upgrade to 24x7 for Inform RMS Yes ☐

Optional Support Upgrade to 24x7 for Inform Jail Yes ☐

Optional Support Upgrade to 24x7 for Inform FBR Yes ☐

ADDENDUM B

SOFTWARE ERROR CORRECTION GUIDELINES AND PROCEDURES

(1) All TriTech Software Errors reported by Client's personnel shall be resolved as set forth below. The response and resolution plan will be based upon the Service Level Agreement terms specified below by product. The Client may elect to downgrade the urgency of the issue if the operational impact is not severe. The Client may also request an upgraded response to a lower priority issue if the issue has a significant operation impact by requesting to speak to a supervisor/manager from TriTech's Customer Service Group.

(2) If Client determines a Software Error exists, Client shall immediately notify TriTech by telephone, followed by an error report in writing, setting forth the defects noted with specificity requested by TriTech.

Note (a): Critical Priority and Urgent Software Errors must be reported via telephone at the number listed in the Support Issues Priority and Response Matrix under section (9) below. If Critical Priority or Urgent Priority Software Errors are not reported via the telephone, the stated response and resolution times will not apply.

Note (b): High, Medium, and Lower Priority Software Errors may be reported via email to the address listed in the matrix below, or through TriTech's Support website via the Customer Service portal on TriTech's website.

(3) "Normal Customer Service Hours" (Business Hours) are 7:30a.m. through 7:30p.m. (Central), Monday through Friday, excluding TriTech holidays.

(4) The main support line will be answered by TriTech's Customer Service Department, or TriTech's answering service, depending on the time/day of the call. During Normal Customer Service Hours, a Customer Service Representative will directly answer the support telephone call. If a Customer Service Representative is not available to answer your call during Normal Customer Service Hours, the call will automatically be routed to the TriTech operator. If all Customer Service Representatives are busy, the operator will offer the option to leave a message, or in the case of a Critical Priority problem, as described below, locate a Customer Service Representative.

(5) Following Normal Customer Service Hours, the call will be automatically routed to TriTech's answering service. Any calls routed to the answering service will be escalated to an on-call Customer Service Representative on-call for prompt follow-up and resolution, if required.

(6) During Normal Customer Service Hours, each issue will be assigned a ticket number. This number should be used for all subsequent inquiries relating to the original reported issue. Problems reported after Normal Customer Service Hours will be logged and assigned an issue number the next business day. Enhancement requests should be emailed to support@tritech.com.

(7) As more fully defined in the TriTech System Planning Document, TriTech has approved VPN (virtual private network) connectivity as the sole primary form of support connectivity for TriTech's Inform CAD, Inform Mobile, Inform Browser and related Interfaces Software. Client shall establish a dependable VPN form of access for TriTech's use in order to be supported to enable TriTech to access, diagnose, update, repair, and/or install a workaround to the system. Backup support connectivity is also required. The Client will ensure there is either reliable cellular coverage or a landline telephone in each physical area in which a Server or interface equipment is located to allow the Client's team to assist in troubleshooting. Citrix GotoAssist is utilized for remote connectivity for Inform RMS, Inform FBR, Inform Jail, and Inform IQ.

(8) Reported software errors will be responded to and resolved in accordance with the Priorities and Response Matrix in Section 9 below. If requested or specified in the response time criteria below, a TriTech representative will return the call in a manner consistent with the priority and order in which the call was received. Client will make every effort to respond to TriTech in a timely fashion when requests are made for follow-up calls or additional documentation on the reported problem.

- a. If a response is not received, or a resolution is not provided in accordance with the Priorities and Response Matrix, the Client may request escalation of the issue in accordance with the TriTech Documentation.

(9) Priorities and Support Response Matrix

The following priority matrix relates to software errors resulting from the TriTech Software as further defined in this Agreement. Causes related to non-covered causes - such as hardware, network, and third party products - are not included in this priority matrix and are outside the scope of this Agreement.

Inform CAD, Mobile, Browser, Interface, and GIS Link Response Matrix

Priority	Issue Definition	Response Time
Priority 1 – Critical Priority	<p>24x7 Support for live operations on the production system: A system down event which severely impacts the ability of Users to dispatch emergency units. This is defined as the following:</p> <ul style="list-style-type: none"> • Inform CAD, Inform Mobile, or Interfaces are down as further defined in the Special Note #1 below. • Critical servers inoperative, as listed in Special Note #1. • Complete interruption of call taking and/or dispatch operations • Loss of transactional data & transactional data corruption <p>This means one or more critical server components are non-functional disabling Inform CAD, or Inform Mobile workstations. These Software Errors are defined in <i>Special Note #1</i>, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be immediately answered and managed by the first available representative but not longer than 5 minutes.</p> <p>After Normal Customer Service Hours: Thirty (30) minute callback after client telephone contact to 800. 987.0911.</p> <p>Priority 1 issues must be called in via 800. 987.0911 in order to receive this level of response.</p>
Priority 2 – Urgent Priority	<p>24x7 Support for live operations on the production system: A serious Software Error with no workaround not meeting the criteria of a Critical Priority, but which severely impacts the ability of Users to enter incoming calls for service and/or dispatch emergency units. Such errors will be consistent and reproducible.</p> <p>A significant number of the Inform CAD, or Inform Mobile, workstations are negatively impacted by this error (e.g., does not apply to a minimal set of Inform CAD or Inform mobile workstations). These Software Errors are defined in more detail in Special Note #2, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be answered and managed by the first available representative but not longer than 5 minutes.</p> <p>After Normal Customer Service Hours: One (1) hour callback after client telephone contact to 800. 987.0911.</p> <p>Priority 2 issues must be called in via 800. 987.0911 in order to receive this level of response.</p>
Priority 3 - High Priority	<p>Normal Customer Service Hours Support: A Software Error not meeting the criteria of a Critical or Urgent Priority, has a workaround available, but which does negatively impact the User from entering incoming calls for service and/or dispatching emergency units, or perform a common call taking or dispatch function. Such errors will be consistent and reproducible.</p> <p>A significant number of Inform CAD, or Inform Mobile, workstations are negatively impacted by this error (e.g., does not apply to a minimal set of workstations).</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 by the first available representative but not longer than 5 minutes after the initial phone call.</p> <p>High Priority issues may also be reported via support@tritech.com.</p> <p>High Priority Issues are not managed after Normal Customer Service Hours.</p>

Priority	Issue Definition	Response Time
Priority 4 – Medium Priority	Normal Customer Service Hours Support: A Software Error related to a user function which does not negatively impact the User from entering incoming calls for service and/or dispatch emergency units, or perform a common call taking or dispatch function. This includes system administrator functions.	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be answered and managed by the first available representative but not longer than 5 minutes after the initial phone call.</p> <p>Medium Priority issues may also be reported via support@tritech.com.</p> <p>Medium Priority issues are not managed after Normal Customer Service Hours.</p>
Priority 5 – Low Priority	Normal Customer Service Hours Support: Cosmetic or Documentation errors, including Client technical questions or usability questions	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be answered and managed by the first available representative but not longer than 5 minutes after the initial phone call.</p> <p>Low Priority issues may also be reported via support@tritech.com.</p> <p>Low Priority issues are not managed after Normal Customer Service Hours.</p>

Priority	Resolution Process	Resolution Time
Priority 1 – Critical Priority	TriTech will provide a procedural or configuration workaround or a code correction that allows the Client to resume live operations on the production system.	<p>TriTech will work continuously (including after hours) to provide the Client with a solution that allows the Client to resume live operations on the production system.</p> <p>TriTech will use commercially reasonable efforts to resolve the issue as soon as possible and not later than 12 hours after notification.</p>
Priority 2 – Urgent Priority	TriTech will provide a procedural or configuration workaround or a code correction that allows the Client to resume normal operations on the production system.	<p>TriTech will work continuously (including after hours) to provide the Client with a solution that allows the Client to resume normal operations on the production system.</p> <p>TriTech will use commercially reasonable efforts to resolve the issue as soon as possible and not later than 36 hours after notification.</p>
Priority 3 - High Priority	TriTech will provide a procedural or configuration workaround that allows the Client to resolve the problem.	TriTech will work to provide the Client with a resolution which may include a workaround or code correction within a timeframe that takes into consideration the impact of the issue on the Client and TriTech's User base. Priority 3 issues have priority scheduling in a subsequent release.
Priority 4 – Medium Priority	If TriTech determines that a reported Medium Priority error requires a code correction, such issues will be addressed in a subsequent release when applicable.	TriTech will work to provide the Client with a resolution which may include a workaround or code correction in a future release of the software. Priority 4 issues have no guaranteed resolution time.
Priority 5 – Low Priority	Low Priority issues are logged by TriTech and addressed at the company's discretion according to TriTech's roadmap planning process.	There is no guaranteed resolution time for Low Priority issues.

Special Note #1: Priority 1 - Critical Priority issues meeting the previously noted criteria are defined as follows:

1. Inform CAD:
 - a. The Inform CAD System is down and all workstations will not launch or function.
 - b. The Inform CAD System is inoperable due to transactional data corruption caused by TriTech Software.
 - c. The Inform CAD Reporting and Archiving Server is down and the system is configured to use the Reporting Server for dispatching functions (e. g., Premise History).
 - d. Law enforcement users are unable to send or receive justice queries (this priority applies if the functionality is available through no other available methods).
2. Inform Mobile:
 - a. The Inform Mobile System is down and all unit mobile devices are unable to log in or function.
 - b. The Inform Mobile System is inoperable due to data corruption caused by TriTech Software.
 - c. Law enforcement users are unable to send or receive justice queries (this priority applies if the functionality is available through no other available methods).
3. Inform Browser, and GISLink:
 - a. There are no Critical Priority (Priority 1) issues for these products.

Special Note #2: Priority 2 - Urgent Priority issues, meeting the previously noted criteria, are defined as follows:

1. Inform CAD:
 - a. Inform CAD users are severely impacted due to one of the following conditions:
 - i. Unable to enter new requests for service via the emergency or scheduled call-taking screen (using all available methods).
 - ii. A user is unable to verify an address from within the emergency or scheduled call-taking screen.
 - iii. The inability to view/edit premise or caution note information.
 - iv. The inability to send and receive text messaging (within CAD, CAD to Mobile, or Mobile to Mobile).
 - v. The system does not perform unit recommendations.
 - vi. Inability to assign a unit to an incident (using all available methods).
 - vii. Inability to change a unit's status (using all available methods).
 - viii. Inability to close an incident (using all available methods).
 - ix. Inability to view incident information needed to dispatch an incident (using all available methods).
 - x. Disaster Recovery System, following a test failover is inoperable for more than one (1) business day.
2. Inform Mobile:
 - a. Inform Mobile users are severely impacted due to one of the following conditions:
 - i. Inability to receive new requests for service from Inform CAD (using all available methods).
 - ii. Inability to view incident information needed to dispatch an incident (using all available methods).
 - iii. The inability to send and receive text messaging (within CAD, CAD to Mobile, or Mobile to Mobile).
 - iv. Inability to enter a traffic stop or on-view incident.
 - v. The inability to view premise or caution note information.
 - vi. Disaster Recovery System, following a test failover is inoperable for more than one (1) business day.
3. Inform CAD/Mobile Interfaces:
 - a. An Inform CAD Station Alerting Interface is down or Inform CAD Station Alerting Interface repeatedly fails to process a station alert, as part of a unit assignment, or if there is a reoccurring significant delay in the interface processing a station alert as part of a unit assignment (once it is diagnosed that is not being caused by the station alerting system).
 - b. An Inform CAD Paging Interface is down.
 - c. An interface used for personnel rostering is down.
 - d. A CAD-to-CAD interface is down or repeatedly fails to process information into an incident.
 - e. An Inform CAD Paging Interface repeatedly fails to process a unit alert as part of a unit assignment.
 - f. An ANI/ALI interface repeatedly fails to process information into an incident.
 - g. An interface to an external rostering system used to logon units is down.
 - h. An AVL interface fails to process updates for over 50% of units.
 - i. A mobile interface (MDT or MDC) repeatedly fails to process incident or status change information.
 - j. A Standard CAD to External System Incident Data Transfer Interface License (RMS) is down.
4. Inform Browser and GISLink:
 - a. There are no Urgent Priority (Priority 2) issues for these products.

Additional Information:

- Disaster Recovery and Training CAD/Mobile Systems do not generally qualify for after Normal Customer Service Hours support. This would change if the Production System has failed over to the Disaster Recovery System or following a test failover it is inoperable for more than one (1) business day, TriTech will work to resolve the problem according to the Priority 2 response and resolution criteria included above.
- Modifications to installed Inform CAD/Mobile Licensed Software that operates with State and National Criminal Justice Information Systems (State CJIS/NCIC) systems to accommodate Government Mandated Changes, as necessary, dictated by State and Federal agencies having authority over these programs will be provided in a subsequent update.

Inform RMS, Inform Jail and Inform FBR

Priority	Issue Definition	Response Time
Priority 1 – Critical Priority	<p>Normal Customer Service Hours Support for live operations on the production system: A system down event which severely impacts the ability of Users to log on the system, or severely impacts the ability of Users to book or release inmates. This is defined as the following:</p> <ul style="list-style-type: none"> • TriTech Inform RMS, Inform Jail or Inform FBR server software inoperative • Loss of ability for all Inform RMS, Inform Jail or Inform FBR users to log on to system • Inform Jail system down • Loss of transactional data & transactional data corruption <p>This means one or more critical server components are non-functional disabling Inform RMS, Inform Jail, or Inform FBR, workstations. These Software Errors are defined in <i>Special Note #1</i>, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be immediately answered and managed by the first available representative but not longer than 5 minutes.</p> <p><i>After Normal Customer Service Hours: Unless optional 24x7 support is contracted, support for Inform RMS, Inform Jail, and Inform FBR is not managed after Normal Customer Service Hours.</i></p> <p><i>If optional 24x7 support is contracted, after Normal Customer Service Hours: Thirty (30) minute call back after Client telephone contact to 800.987.0911.</i></p> <p>Priority 1 issues must be called in via 800. 987.0911 in order to receive this level of response.</p>
Priority 2 – Urgent Priority	<p>Normal Customer Service Hours Support for live operations on the production system: A serious Software Error with no workaround not meeting the criteria of a Critical Priority, but which severely impacts the ability of Users from performing a common function, or severely impacts the ability of Users to book or release inmates. Such errors will be consistent and reproducible.</p> <ul style="list-style-type: none"> • Loss of ability for Inform RMS users to enter Case (Incident, Arrest and Custody) records into the system • Loss of ability to transfer Inform FBR Reports • Unable to book or release inmates <p>A significant number of the Inform RMS, Inform Jail or Inform FBR workstations are negatively impacted by this error (e.g., does not apply to a minimal set of Inform RMS, Inform Jail or Inform FBR workstations). These Software Errors are defined in more detail in <i>Special Note #2</i>, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be immediately answered and managed by the first available representative but not longer than 5 minutes.</p> <p><i>After Normal Customer Service Hours: Unless optional 24x7 support is contracted, support for Inform RMS, Inform Jail, and Inform FBR is not managed after Normal Customer Service Hours.</i></p> <p><i>If optional 24x7 support is contracted, after Normal Customer Service Hours: One (1) hour call back after Client telephone contact to 800.987.0911.</i></p> <p>Priority 2 issues must be called in via 800. 987.0911 in order to receive this level of response</p>

Priority	Issue Definition	Response Time
Priority 3 - High Priority	<p>Normal Customer Service Hours Support: A Software Error not meeting the criteria of a Critical or Urgent Priority, has a workaround available, but which does negatively impact the User from performing a common Inform RMS, Inform Jail, or Inform FBR function. Such errors will be consistent and reproducible.</p> <ul style="list-style-type: none"> Loss of Non-Critical Data (with "Non-Critical" being defined as not causing an error classified as a P1 or P2 error (above). NIBRS State reporting issues that cause agency reports to exceed State error submission limits UCR reporting multiple occurrence of inaccurate data <p>A significant number of Inform RMS, Inform Jail or Inform FBR workstations are negatively impacted by this error (e.g., does not apply to a minimal set of workstations).</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 by the first available representative but not longer than 5 minutes after the initial phone call.</p> <p>High Priority issues may also be reported via CH_ClientServicesTriage@tritech.com.</p> <p>High Priority issues are not managed after Normal Customer Service Hours.</p>
Priority 4 – Medium Priority	<p>Normal Customer Service Hours Support: A Software Error related to a user function which does not negatively impact the User by preventing routine use of the system. This includes system administrator functions.</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be answered and managed by the first available representative but not longer than 5 minutes after the initial phone call.</p> <p>Medium Priority issues may also be reported via CH_ClientServicesTriage@tritech.com.</p> <p>Medium Priority issues are not managed after Normal Customer Service Hours.</p>
Priority 5 – Low Priority	<p>Normal Customer Service Hours Support: Cosmetic or Documentation errors, including Client technical questions or usability questions</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be answered and managed by the first available representative but not longer than 5 minutes after the initial phone call.</p> <p>Low Priority issues may also be reported via CH_ClientServicesTriage@tritech.com.</p> <p>Low Priority issues are not manager after Normal Customer Service Hours.</p>

Priority	Resolution Process	Resolution Time
Priority 1 – Critical Priority	<p>TriTech will provide a procedural or configuration workaround or a code correction that allows the Client to resume live operations on the production system.</p>	<p>TriTech will work continuously (including after hours) to provide the Client with a solution that allows the Client to resume live operations on the production system.</p> <p>TriTech will use commercially reasonable efforts to resolve the issue as soon as possible and not later than 12 hours after notification.</p>

Priority	Resolution Process	Resolution Time
Priority 2 – Urgent Priority	TriTech will provide a procedural or configuration workaround or a code correction that allows the Client to resume normal operations on the production system.	TriTech will work continuously (including after hours) to provide the Client with a solution that allows the Client to resume normal operations on the production system. TriTech will use commercially reasonable efforts to resolve the issue as soon as possible and not later than 36 hours after notification.
Priority 3 - High Priority	TriTech will provide a procedural or configuration workaround that allows the Client to resolve the problem.	TriTech will work to provide the Client with a resolution which may include a workaround or code correction within a timeframe that takes into consideration the impact of the issue on the Client and TriTech's User base. Priority 3 issues have priority scheduling in a subsequent release.
Priority 4 – Medium Priority	If TriTech determines that a reported Medium Priority error requires a code correction, such issues will be addressed in a subsequent release when applicable.	TriTech will work to provide the Client with a resolution which may include a workaround or code correction in a future release of the software. Priority 4 issues have no guaranteed resolution time.
Priority 5 – Low Priority	Low Priority issues are logged by TriTech and addressed at the company's discretion according to TriTech's roadmap planning process.	There is no guaranteed resolution time for Low Priority issues.

Special Note #1: Priority 1 - Critical Priority issues meeting the previously noted criteria are defined as follows:

1. Inform RMS System:
 - a. The Inform RMS System Server is down and unavailable for queries.
 - b. The Inform RMS is inoperable due to data corruption caused by TriTech Software.
2. Inform Jail:
 - a. The Inform Jail System is down and all workstations will not launch or function.
 - b. The Inform Jail System is inoperable due to transactional data corruption caused by TriTech Software.
 - c. Inform Jail users are unable to book or release inmates.
3. Inform FBR System:
 - a. The Inform FBR Server is down and unavailable to process reports.
 - b. The Inform FBR Server is inoperable due to data corruption caused by TriTech Software.

Special Note #2: Priority 2 - Urgent Priority issues, meeting the previously noted criteria, are defined as follows:

1. Inform RMS, and Inform FBR:
 - a. Inform RMS - Inability to create and save reports.
 - b. Inform FBR – Inability to enter and transfer reports into RMS.
 - c. Inability to create UCR/NIBRS State Reports.
2. Inform Jail:
 - a. Inform Jail users are severely impacted due to one of the following conditions:
 - i. Unable to book or release inmates.

Additional Information:

- State and Federal mandates relating to justice queries and reporting change from time to time. The following changes are considered covered support items.
 - A. Modifications to installed Uniform Crime Reporting (UCR) Program or National Incident Based Reporting System (NIBRS) facilities within the Inform RMS Licensed Software, as necessary, in order to accommodate Government Mandated Changes dictated by State and Federal agencies having authority over these programs.

ADDENDUM C

SUBCONTRACTOR SUPPORT TERMS

(Attached, if applicable)



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Date

11/30/2021

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Tritech Software Systems, a CentralSquare Company
1000 Business Center Drive
Lake Mary, FL 32746

Billing Inquiries: Accounts.Receivable@centralsquare.com

Bill To

Murfreesboro
William Terry
1004 North Highland Ave.
Murfreesboro TN 37130-3732
United States

Ship To

Murfreesboro
William Terry
1004 North Highland Ave.
Murfreesboro TN 37130-3732
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
7009	Murfreesboro		USD	Net 30	1/16/2022

	Description	Units	Rate	Extended
Contract No. Q-68054				
1	Crimemapping.com Annual Subscription Fee - Annual Subscription Fee CrimeMapping Hosted Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$1,531.54	\$1,531.54
2	Field Ops - Fire/EMS Annual Subscription Fee - Annual Subscription Fee Field Ops (C - 101-250 Devices) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$26,741.14	\$26,741.14
3	IQ CrimeView Advanced Reports Annual Subscription Fee - Annual Subscription Fee IQ CrimeView Advance Reports Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,826.96	\$2,826.96
4	Custom 3rd Party Recurring Annual Maintenance Fee - Annual Maintenance Fee Additional Server Backup Agents Annual Subscription Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$1,005.07	\$1,005.07
5	Std Inform CAD to Inform CAD Basic Interface (single side) A - Annual Maintenance Fee Vision CAD to Inform CAD Position (Murfreesboro PD) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$30,886.02	\$30,886.02
6	Connectivity (Formerly Go to Assist) Annual Maintenance Fee - Annual Maintenance Fee Connectivity (Formerly Go to Assist) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$463.05	\$463.05
7	IQ CrimeView Desktop License Annual Maintenance Fee - Annual Maintenance Fee CrimeView Dashboard Hosting Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$8,806.34	\$8,806.34
8	Inform CAD Disaster Recovery Position License Annual Maintenance - Annual Maintenance Fee Disaster Recovery Option 20GB Annual Subscription Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,613.19	\$2,613.19



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7009	Murfreesboro		USD	Net 30	1/16/2022

	Description	Units	Rate	Extended
9	Inform FBR Server Software Annual Maintenance Fee - Annual Maintenance Fee FBR Server, 135 WS Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$19,063.43	\$19,063.43
10	Inform CAD Administrator Position License Annual Maintenance - Annual Maintenance Fee Inform CAD Administration License (CAD Monitor) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$1,684.70	\$1,684.70
11	Inform CAD Browser Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Browser (A - 1-40 Concurrent Users) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,527.04	\$2,527.04
12	Inform CAD Disaster Recovery System Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Disaster Recovery System Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,406.70	\$2,406.70
13	Inform CAD Disaster Recovery System Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Disaster Recovery System (6 21-40 Users) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,653.40	\$2,653.40
14	Inform CAD Mapping Test or Training Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Mapping Test or Training Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$126.36	\$126.36
15	Inform CAD Rotation Provider Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Rotation Provider Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,807.82	\$2,807.82
16	Inform CAD Routing Server Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Routing Server Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$5,250.62	\$5,250.62



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7009	Murfreesboro		USD	Net 30	1/16/2022

	Description	Units	Rate	Extended
17	Inform CAD Server Software Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Server Software Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$1,263.52	\$1,263.52
18	Inform CAD Standard Operating Procedure (SOP) Annual Mainten - Annual Maintenance Fee Inform CAD Standard Operating Procedure Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,105.87	\$2,105.87
19	Inform CAD Test or Training System Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Test or Training System Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,406.70	\$2,406.70
20	Inform CAD the Archive Server Software Annual Maintenance Fe - Annual Maintenance Fee Inform CAD the Archive Server Software Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$601.68	\$601.68
21	Inform CAD the Archive Server Software Annual Maintenance Fe - Annual Maintenance Fee Inform CAD the Archive Server Software Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$4,675.02	\$4,675.02
22	Inform CAD The GISLink Utility Position Annual Maintenance F - Annual Maintenance Fee Inform CAD The GISLink Utility Position Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$5,615.64	\$5,615.64
23	Inform Mobile Base Position Annual Maintenance Fee - Annual Maintenance Fee Inform Mobile Base Position Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$4,492.51	\$4,492.51
24	Inform Mobile Base Position Annual Maintenance Fee - Annual Maintenance Fee Inform Mobile Base Position (with NCIC Access) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$57,560.30	\$57,560.30



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7009	Murfreesboro		USD	Net 30	1/16/2022

	Description	Units	Rate	Extended
25	Inform Mobile Base Position with CJIS/NCIC Forms Annual Main - Annual Maintenance Fee Inform Mobile Base with CJIS/NCIC Forms Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$7,019.55	\$7,019.55
26	Inform Mobile Interface License Annual Maintenance Fee - Annual Maintenance Fee Inform Mobile Interface Server Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$0.00	\$0.00
27	Inform Mobile Mapping Annual Maintenance Fee - Annual Maintenance Fee Inform Mobile Mapping Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$1,403.91	\$1,403.91
28	Inform Mobile Server Software Annual Maintenance Fee - Annual Maintenance Fee Inform Mobile Server Software Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$7,581.11	\$7,581.11
29	Inform Mobile Server Software Annual Maintenance Fee - Annual Maintenance Fee Inform Mobile Server Software Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$28,078.22	\$28,078.22
30	MNHS Annual Maintenance Fee - Annual Maintenance Fee MNHS Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$4,938.85	\$4,938.85
31	Inform Mobile Mapping Annual Maintenance Fee - Annual Maintenance Fee Mobile Mapping Support Fees Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$6,201.56	\$6,201.56
32	NCIC/State Message Switch Server Software - Inform RMS Annua - Annual Maintenance Fee NCIC/State Message Switch Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$16,846.92	\$16,846.92



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7009	Murfreesboro		USD	Net 30	1/16/2022

	Description	Units	Rate	Extended
33	Inform RMS Server Software Annual Maintenance Fee - Annual Maintenance Fee RMS Server, 10 WS, RMS Bar Coding, Equip mtc, Traffic, IA, #10101076 30 WS Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$23,712.57	\$23,712.57
34	Standard Alpha Numeric Paging Interface Annual Maintenance F - Annual Maintenance Fee Standard Alpha Numeric Paging Interface Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,527.04	\$2,527.04
35	Standard ANI/ALI Interface Annual Maintenance Fee - Annual Maintenance Fee Standard ANI/ALI Interface Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$2,527.04	\$2,527.04
36	Standard ANI/ALI Interface Annual Maintenance Fee - Annual Maintenance Fee Standard ANI/ALI Interface Additional PSAP Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$758.11	\$758.11
37	Standard ANI/ALI Interface Annual Maintenance Fee - Annual Maintenance Fee Standard ANI/ALI Interface Additional PSAP Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$758.11	\$758.11
38	Std Inform CAD to External System Incident Data Transfer Int - Annual Maintenance Fee Standard Inform CAD to External System Incident Data Transfer Interface (Zoll Fire) Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$3,790.56	\$3,790.56
39	Inform RMS TRACs Interface Annual Maintenance Fee - Annual Maintenance Fee TN Tracs Interface Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$3,694.26	\$3,694.26
40	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee Vision CAD Server to Inform CAD Server (B 6-20 Positions) License Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$8,423.46	\$8,423.46



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Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
7009	Murfreesboro		USD	Net 30	1/16/2022

	Description	Units	Rate	Extended
41	Inform CAD Mapping Annual Maintenance Fee - Annual Maintenance Fee CAD Mapping Support Fees Maintenance: Start:1/17/2022, End: 1/16/2023	1	\$319.20	\$319.20

Date Difference: -17 // Due date is based on Billing Sch. Date + 30

**Please include invoice number(s) on your remittance advice,
made payable to Tritech Software Systems**

Subtotal \$308,695.09

Tax \$0.00

ACH:

Routing Number 121000358
Account Number 1416612641
E-mail payment details to: Accounts.Receivable@CentralSquare.com

Invoice Total \$308,695.09

Check:

12709 Collection Center Drive
Chicago, IL 60693

Payments Applied \$0.00

Balance Due **\$308,695.09**

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Purchase of Radio Equipment
Department: Police
Presented by: Bill Terry, Public Safety IT 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

Purchase of 35 new mobile, 35 new portable and 10 APXNxt radios for police vehicles and personnel.

Staff Recommendation

Approve the purchase of 80 new radios for police vehicles and personnel from Motorola Solutions.

Background Information

The purchase of the radio equipment is needed to equip sworn personnel and patrol units. Twenty units will outfit new patrol cars currently on order. This equipment is available for purchase through the current State of Tennessee contract SWC 424. Motorola is providing an additional customer discount of \$111,987 and providing a no cost replacement of shoulder microphones for MFRD.

Council Priorities Served

Maintain Public Safety

Properly equipped vehicles are necessary to provide officers all available resources while protecting citizens.

Fiscal Impact

The cost of the radio equipment is \$433,332 funded by the FY21 CIP for Radio Equipment. The remaining balance of \$94,794 is funded by the FY21 CIP for Police Vehicles.

Attachments

1. Agreement for Radio Equipment
2. Quote from Motorola Solutions

Agreement for Radio Equipment

This Agreement is entered into and effective as of the ____ day of _____ 20__, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Motorola Solutions Inc**, a Corporation of the State of Delaware ("Contractor").

This Agreement consists of the following documents:

- This document
- Motorola Quote 310821-3 dated September 9, 2021.
- State of Tennessee SWC #424 – "Radio Equipment, Maintenance, Repair, Accessories, and Test Equipment" – Edison #65725
- 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 Proposal – Motorola Quote 310821-3 dated September 9, 2021.
- Lastly, State of Tennessee SWC #424 – "Radio Equipment, Maintenance, Repair, Accessories, and Test Equipment" – Edison #65725

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase Radio Equipment from Motorola Services Inc. in accordance with State of Tennessee SWC #424 – "Radio Equipment, Maintenance, Repair, Accessories, and Test Equipment" – Edison #65725 and Motorola Quote 310821-3 dated September 9, 2021.

2. **Term.** The term of this contract shall be from _____ to the expiration of the with State of Tennessee SWC #424 – "Radio Equipment, Maintenance, Repair, Accessories, and Test Equipment" – Edison #65725, March 14, 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. Either party may terminate this Agreement and/or any Statement of Work where the other party fails in any material way to perform its obligations under this Agreement or the Statement(s) of Work. 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 thirty (30) days after receiving the notice. 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.

- e. In the event of termination for any reason other than default, the City will pay the Contractor for all equipment delivered and services rendered up to the date of termination.

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 Motorola Quote 310821-3 dated September 9, 2021 which reflects a total purchase of \$528,126.20. The Contractor will submit invoices to the City in accordance with the payment milestones in Section 3b. The City will pay invoices within forty-five (45) days of the invoice date. Invoices must bear the purchase order number. Final payment shall not be made until after final acceptance.
 - b. Payment Milestones – Motorola will invoice the City according to the following milestones.
 - i. 25% at Contract Signing
 - ii. 50% at Equipment and Software shipping from Locution
 - iii. 25% after final acceptance
 - c. Deliveries of all items shall be made within sixty (60) days of issuance Purchase Order to Attn: Bill Terry – Police Department – 1004 N. Highland Ave., Murfreesboro TN 37130 - Contact Person: Bill Terry (email: wterry@murfreesborotn.gov – phone: 615.907.2249) 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. Inspection of equipment must occur within 5 working days of delivery or will be considered accepted. 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 provided shall meet the warranty requirements set forth in the State of Tennessee SWC #424 – “Radio Equipment, Maintenance, Repair, Accessories, and Test Equipment” – Edison #65725 and Motorola Quote MURF-IP-1809-PTT-9ST-EZ-Zone, 3/26/2019.
5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. In the event, the City does not provide a tax exemption certificate to the Contractor, City will be liable for sales taxes. 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.** 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. City acknowledges that Contractor may use this information. 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 will indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, arising from personal injuries or direct damages to tangible property resulting from, in part or in whole, the negligence of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement if City gives Contractor prompt, written notice of any claim or suit., City will cooperate with Contractor in its defense or settlement of the claim or suit. This section sets forth the full extent of Contractor's general indemnification of City from liabilities that are in any way related to Contractor's performance under this Agreement. 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.
- b. Copyright, Trademark, Service Mark, or Patent Infringement.
 - i. Contractor will defend at its expense any suit brought against City to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Contractor's duties to defend and indemnify are conditioned upon: City promptly notifying Contractor in writing of the Infringement Claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and City providing to Contractor cooperation and, if requested by Contractor, reasonable assistance in the defense of the Infringement Claim. In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages finally awarded against City by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim.
 - ii. If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for City the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant City a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.
 - iii. Contractor will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any

software, apparatus or device not furnished by Contractor; (b) the use of ancillary equipment or software not furnished by Contractor and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with City's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Contractor; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by City to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Contractor's liability resulting from its indemnity obligation to City extend in any way to royalties payable on a per use basis or the City's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from City's from sales or license of the infringing Motorola Product.

- iv. This Section provides City's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. City has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim
- v.

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:

Motorola Solutions Inc.
Attn: Matt Brenneman
341 Cool Springs Blvd. #300
Franklin, TN 37067

9. **Compliance with Laws.** Contractor agrees to comply with all directly applicable federal, state and local laws and regulations concerning the performance of this Agreement. Under no circumstances is a failure to comply with an applicable law a breach of contract. Contractor has thirty (30) days to propose a plan to cure any failure to comply with applicable laws.
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, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy.

Contractor will also be required to acknowledge that the City is a federal government contractor, and that by virtue of this Contract, Contractor is a federal government subcontractor. Therefore, in accordance with federal law, Contractor shall specifically acknowledge and agree as follows:

- a. **The City and Contractor shall abide by the requirements of 41 CFR 60-1.4(a). This regulation prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires federal government contractors and subcontractors to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.**
 - b. **The City and Contractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
 - c. **The City and Contractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**
16. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or

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

17. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
18. **Integration.** This 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, pandemic, 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. **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 _____, 20__ (the "Effective Date").

CITY OF MURFREESBORO, TENNESSEE

By: _____
Shane McFarland, Mayor

MOTOROLA SOLUTIONS INC.

By: _____
Matt Brenneman, Regional Service Manager

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney



**STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE**

Statewide Multi-Year Contract Issued to:

Motorola Solutions Inc
1301 E Algonquin Rd

Schaumburg, IL 60196-4041

Vendor ID: 0000000498

Contract Number: 000000000000000000065725

Title: Radio Equipment and Services

Start Date : March 15, 2020 End Date: March 14, 2025

Is this contract available to local government agencies in addition to State agencies?: Yes

Authorized Users. This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b. Tennessee local governmental agencies;
- c. members of the University of Tennessee or Tennessee Board of Regents systems;
- d. any private nonprofit institution of higher education chartered in Tennessee; and,
- e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

Note: If "no", attach exemption request addressed to the Central Procurement Officer.

Contract Contact Information:

State of Tennessee
Department of General Services, Central Procurement Office
Contract Administrator: Richard Kotler
3rd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Phone: 615-253-4723
Fax: 615-741-0684
Email: Richard.Kotler@tn.gov

Line Information

Line 1

Item ID:
APCAT Catalog
Unit of Measure: EA
Vendor Item/Part #:
Manufacturer Item #:
Unit Price: \$ 0

State Usage Instructions Link

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/state-agencies-/statewide-contract-instruction--swc-.html>

APPROVED: _____
CHIEF PROCUREMENT OFFICER

BY: _____
PURCHASING AGENT

3/11/2020
DATE

Customer Name: Bill Terry <wterry@murfreesborotn.gov>
Murfreesboro Police Department

Prepared By: Alex Sherman <alexander.sherman@motorolasolutions.com>

Title: APX Portables and Mobiles

Date: 9-Sep-21

Quote# 310821-3

Detailed Equipment List for Each Configured Radio

				List Price	SWC-424 Price		Extended Price
APX6500	M25URS9PW1BN	APX6500 ENHANCED 7/800 MHZ MOBILE.	35	\$ 2,957.00	\$ 2,129.00		\$ 74,516.40
Single Band Mobile	QA09008AA	ADD: GROUP SERVICES.	35	\$ 150.00	\$ 108.00		\$ 3,780.00
Remote Mount	QA01648AA	ADD: HW KEY SUPPLEMENTAL DATA.	35	\$ 5.00	\$ 3.60		\$ 126.00
E5 Control Head	GA00318AF	ENH: 5 YEAR ESSENTIAL SVC.	35	\$ 352.00	\$ 352.00		\$ 12,320.00
	GA09007AA	ADD: OUT OF THE BOX WIFI PROVISIONING.	35	\$ -	\$ -		\$ -
	G831AD	ADD: SPKR 15W WATER RESISTANT.	35	\$ 60.00	\$ 43.20		\$ 1,512.00
	G996AS	ENH: OVER THE AIR PROVISIONING.	35	\$ 100.00	\$ 72.00		\$ 2,520.00
	GA00250AA	ADD: WIFI/GNSS STUBBY ANTENNA LMR240.	35	\$ 100.00	\$ 72.00		\$ 2,520.00
	GA00580AA	ADD: TDMA OPERATION.	35	\$ 450.00	\$ 324.00		\$ 11,340.00
	GA01576AB	ADD: SMA TO QMA ADAPTER.	35	\$ -	\$ -		\$ -
	G51AU	ENH: SMARTZONE OPERATION APX6500.	35	\$ 1,200.00	\$ 864.00		\$ 30,240.00
	G67DT	ADD: REMOTE MOUNT E5 APXM.	35	\$ 297.00	\$ 213.84		\$ 7,484.40
	GA09001AA	ADD: WI-FI CAPABILITY.	35	\$ 300.00	\$ 216.00		\$ 7,560.00
	G843AH	ADD: AES ENCRYPTION AND ADP.	35	\$ 475.00	\$ 342.00		\$ 11,970.00
	G444AH	ADD: APX CONTROL HEAD SOFTWARE.	35	\$ -	\$ -		\$ -
	QA03399AA	ADD: ENHANCED DATA APX.	35	\$ 150.00	\$ 108.00		\$ 3,780.00
	G806BL	ENH: ASTRO DIGITAL CAI OP APX.	35	\$ 515.00	\$ 370.80		\$ 12,978.00
	GA01670AA	ADD: APX E5 CONTROL HEAD.	35	\$ 652.00	\$ 469.44		\$ 16,430.40
	GA01693AA	ADD : LEGACY TRUNNION SCREW KIT.	35	\$ 10.00	\$ 7.20		\$ 252.00
	W22BA	ADD: STD PALM MICROPHONE APX.	35	\$ 72.00	\$ 51.84		\$ 1,814.40
	W969BG	ADD: MULTIKEY OPERATION.	35	\$ 330.00	\$ 237.60		\$ 8,316.00
	G174AD	ADD: ANT 3DB LOW-PROFILE 762-870.	35	\$ 43.00	\$ 30.96		\$ 1,083.60
	G361AH	ENH: P25 TRUNKING SOFTWARE APX.	35	\$ 300.00	\$ 216.00		\$ 7,560.00
	GA09012AA	ADD: MISSION CRITICAL GEOFENCE.	35	\$ 150.00	\$ 108.00		\$ 3,780.00
APX8000 M3.5	H91TGD9PW7AN	APX 8000 ALL BAND PORTABLE MODEL 3.5.	35	\$ 6,795.00	\$ 4,892.40		\$ 171,234.00
Multi-band Portable	H869BW	ENH: MULTIKEY	35	\$ 330.00	\$ 237.60		\$ 8,316.00
Accessories	QA01648AA	ADD: HW KEY SUPPLEMENTAL DATA.	35	\$ 5.00	\$ 3.60		\$ 126.00
	QA09012AA	ADD: MISSION CRITICAL GEOFENCING.	35	\$ 150.00	\$ 108.00		\$ 3,780.00
	Q806CB	ADD: ASTRO DIGITAL CAI OPERATION.	35	\$ 515.00	\$ 370.80		\$ 12,978.00
	Q361AN	ADD: P25 9600 BAUD TRUNKING.	35	\$ 300.00	\$ 216.00		\$ 7,560.00
	QA00580AA	ADD: TDMA OPERATION.	35	\$ 450.00	\$ 324.00		\$ 11,340.00
	Q887AU	ADD: 5Y ESSENTIAL SERVICE.	35	\$ 227.00	\$ 227.00		\$ 7,945.00
	QA09008AA	ADD: GROUP SERVICES.	35	\$ 150.00	\$ 108.00		\$ 3,780.00
	QA09007AA	ADD: OUT OF THE BOX WIFI PROVISIONING.	35	\$ -	\$ -		\$ -
	QA09001AB	ADD: WIFI CAPABILITY.	35	\$ 300.00	\$ 216.00		\$ 7,560.00
	QA03399AA	ADD: ENHANCED DATA APX.	35	\$ 150.00	\$ 108.00		\$ 3,780.00
	H38BS	ADD: SMARTZONE OPERATION.	35	\$ 1,500.00	\$ 1,080.00		\$ 37,800.00
	G996AP	ADD: PROGRAMMING OVER P25 (OTAP).	35	\$ 100.00	\$ 72.00		\$ 2,520.00
	Q629AH	ENH: AES ENCRYPTION AND ADP.	35	\$ 475.00	\$ 342.00		\$ 11,970.00
	PMNN4486A	BATT IMPRES 2 LION R IP67 3400T.	35	\$ 163.00	\$ 117.36		\$ 4,107.60
	PMMN4137A	XVE500 REMOTE SPEAKER MICROPHONE, NO CH KNOB	35	\$ 595.00	\$ 428.40		\$ 14,994.00
	PMLN5659B	APX6000 CC 2.75 SWL BL 4200MAH.	35	\$ 74.00	\$ 53.28		\$ 1,864.80
	RLN6554A	APX WIRELESS RSM W/ DUC US/NA/JP/TW.	35	\$ 300.00	\$ 216.00		\$ 7,560.00
	HLN6875A	BELT CLIP 3 INCH.	35	\$ 13.00	\$ 9.36		\$ 327.60
	T7913	RADIO MANAGEMENT OFFLINE	1	\$ -	\$ -		\$ -
	UA00048AA	INDIVIDUAL CLIENT LICENSE	70	\$ 100.00	\$ 85.00		\$ 5,950.00
	PMMN4107C	XE500 GREEN, NO CHAN KNOB, NEXTGEN MIC	100	\$ 513.33	\$ 189.00		\$

Proposal Summary	Equipment Sub-total per SWC-424 Pricing	1	\$ 659,013.65
	Fire XE Mic Discount	1	-\$ 18,900.00
	Loyal Customer Discount (APX Next)	1	-\$ 111,987.45
	Final Proposed Total		\$ 528,126.20

Notes:

1. Pricing, Terms and Conditions are per State of TN SWC424.
2. Shipping and Handling is included.
3. Installation and programming is not included.
4. APX Next portables include (2) seats for DMS training, initial smart application setup, chargers, spare batteries and RSMS.

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Agreement with Stansell Electric Co. for Traffic Signal/Electrical Maintenance

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

Contract for traffic signal and electrical maintenance with Stansell Electric Company Inc.

Staff Recommendation

Approve contract with Stansell Electric Company Inc.

Background Information

The City annually contracts for installation and maintenance of traffic signals, school zone signs, and citywide electrical repairs for this equipment located at 160 signalized intersections. The proposed contract is a one year agreement and is renewable annually for a total four-year period. The lowest responsible bid was received from Stansell Electric Company Inc. in the amount of \$349,500.

Council Priorities Served

Safe and Livable Neighborhoods

Traffic Signal Maintenance enhances the safety and operations of the City's roadway network.

Fiscal Impacts

The primary funding source for the City's traffic signal maintenance program is from State Street Aid with a portion from General Funds.

Attachments:

Contract with Stansell Electric Company Inc.

**Agreement between
The City of Murfreesboro
and
Stansell Electric Company, Inc.
for Traffic Signal and Electrical Maintenance**

This Agreement is entered into and effective as of the ____ day of _____ 2021, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Stansell Electric Company, Inc.**, a corporation of the State of Tennessee ("Contractor").

This Agreement consists of the following documents:

- This document
- ITB-16-2022, Traffic Signal and Electrical Maintenance issued November 16, 2021 (the "Solicitation");
- Contractor's Proposal, dated December 2, 2021 ("Contractor's Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor.

- a. Contractor is engaged to provide traffic signal and electrical maintenance to the City of Murfreesboro as set forth in ITB-16-2022, Traffic Signal and Electrical Maintenance, issued November 16, 2021.
- b. In undertaking the work set forth herein, Contractor must comply with all applicable federal, state, and local laws and regulations, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Contractor is solely responsible for any and all taxes imposed upon Contractor and acknowledges it cannot claim exemption from taxes by virtue of any municipal exemption from taxation.

2. Term. The term of this Agreement is from the Effective Date, January 1, 2022, through December 31, 2022, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. This Agreement shall be subject to four one-year optional renewals. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.

- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. Compensation; Method of Payment.

- a. The price for goods and other items and/or services shall be invoiced at the prices and charges fixed by the Contractor as per the attached bid.
- b. Contractor will be compensated upon the completion of tasks as outlined in the Price Proposal and upon the completion of a Task and submission of an invoice to the City at its address for Notices.
- c. Traffic signal maintenance and installation activities shall be adhered to as stated in the ITB and bid specifications.
- d. Services will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such work items, determined that they fully comply with specifications. Contractor will be compensated upon the completion of tasks as outlined in the Proposal and upon the completion of a Task and submission of an invoice to the City at its address for Notices after performance of the portion of services which each payment represents.

4. 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

5. Insurance. During the term of this Agreement, Contractor must maintain the following insurance:

- a. Workers' Compensation Insurance: Contractor shall procure and shall maintain during the life of this contract Workers' Compensation Insurance for all of its employees to be engaged in work on the project under this contract as required by Tennessee state law, and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance.
- b. Public Liability and Property Damages Insurance: Contractor shall take out and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect it and any subcontractor performing work covered by this contract from claims for damage for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this contract, whether such operations are by it or by any subcontractor or by anyone directly or indirectly employed by either of them. The amount of such insurance shall be as follows:
 - i. Public Liability Insurance in the amount of not less than \$1,000,000.00 on any account of any one accident.
 - ii. Property Damage Insurance in an amount not less than \$500,000.00 for any one damage claim.
 - iii. Combined Single Limit Public Liability and Property Damage in an amount of not less than \$1,000,000.00 per occurrence.
- c. Comprehensive General Liability Insurance with limits of not less than \$1,000,000.
- d. Automotive Insurance
- e. Proof of Carriage of Insurance. 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) an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents." (iii) Copies of insurance policies will be furnished to the City upon request. The City shall be furnished not less than ten (10) days advance notice of material changes or cancellation of insurance policies.

6. Indemnification.

- a. To the extent it is at fault, 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.

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:

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

If to Contractor:

Robert P. Elliott, President
860 Visco Drive
Nashville, TN 37210
relliott@stansellelectric.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 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.

- 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. 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 _____, 2021 (the "Effective Date").

City of Murfreesboro, Tennessee

Stansell Electric Company, Inc.

By: _____
Shane McFarland, Mayor

DocuSigned by:

Robert P. Elliott

Robert P. Elliott, President

Approved as to form:

DocuSigned by:

Adam F. Tucker

Adam Tucker, City Attorney

**PURCHASING DEPARTMENT
BID FORM**

NAME OF BID:
Annual Traffic Signal and Electrical Maintenance Contract

Name of Bidder: Stansell Electric
Date: 12/02/2021

INSTRUCTIONS:

Estimated Quantities Only. All prices must include all costs. Costs included in the bid prices shall include services rendered and parts, labor, accessories, shipping/freight, and any other standard equipment necessary provide this service. The City is not subject to sales tax.

Item No.	Description	Units	Estimated Quantity	Unit Price	Total
1	Bucket Truck with 2-person Crew (<80' extension)	HR	650	135	87,750
2	Bucket Truck with 2-Person Crew (>= 80' extension)	HR	100	120	12,000
3	Digger Truck (for soil) 2-Person Crew	HR	200	200	40,000
4	Digger Truck (for rock) 2-Person Crew	HR	100	220	22,000
5	Non-Evasive Excavating Equip. 2-Person Crew	HR	100	240	24,000
6	Compressor and Air Tools with Operator	HR	100	20	2,000
7	Mini-Excavator	HR	100	20	2,000
8	1 Worker with Pickup Truck or Van	HR	150	45	6,750
9	2 Workers with Pickup Truck or Van	HR	200	85	17,000
10	6-yard Dump Truck with Operator	HR	100	65	6,500
11	Trencher with 2-Person Crew	HR	100	105	10,500
12	Each additional worker	HR	100	35	3,500
13	Overtime Premium Charge	HR	100	30	3,000
14	Loop Cutting with 2-Person Crew, equipment, and all materials (wire must be IMSA spec. 51-7)	LF	15,000	6.00	90,000
15	Fiber Optic Fusion Splicing	EA	300	20	6,000
16	General Electrician with Pickup Truck or Van	HR	80	75	6,000
17	IMSA Level II Signal Technician with Pickup Truck or Van	HR	100	75	7,500
18	Traffic Control Interstate Syst. (Interstate Lighting Mainline Repair Only)	HR	50	60	3,000

Any materials used but not covered in Unit Price List will be paid for at cost plus 10%

349,500



INVITATION TO BID

This Invitation to Bid (ITB) is subject to the instructions, conditions, specifications, addenda, and any other elements of this ITB, including those incorporated by reference.

DATE ISSUED: 11/16/2021

BID TITLE: ITB-16-2022, Traffic Signal and Electrical Maintenance

CITY CONTACT PERSON: Cathy Smith

TELEPHONE NUMBER: (615) 849-2629

E-MAIL ADDRESS: purchasing@murfreesborotn.gov

All bid responses must be received and acknowledged by the Purchasing Department on or before the day and time listed below, at which time all bids will be publicly opened and read aloud via Zoom. [All bids must be submitted electronically via ProcureNow.](#)

BID OPENING DATE: 12/2/2021

BID OPENING TIME: 2:00 p.m., Central Standard Time (CST)

INSTRUCTIONS AND CONDITIONS

1.1. Bid Submission to the City.

The City is seeking bids for the provision of services set forth in the specifications for “ITB-16-2022 - Traffic Signal and Electrical Maintenance” located in the City of Murfreesboro, TN. The scope of work is set forth in the specifications in Section 2. Electronic bids will be received by the City of Murfreesboro until 2:00 p.m. local time on 12/2/2021 at which time the bids will be opened via Zoom. A Zoom link will be provided to all those proposers on file as following this ITB.

1.2. Deadline and Late Responses.

No bids received after bid opening date and time will be accepted. The City will accept bids submitted via our procurement portal, ProcureNow. The City will not accept bids submitted by mail, fax, or electronic mail.

1.3. Organization of Bid and Completeness.

Proposers must submit an electronic copy of their bid via ProcureNow at the website listed in Section 1.36. All bids must be clearly marked with the bidder’s name and the words, **“Traffic Signal and Electrical Maintenance, Bid Opening Date, 12/2/2021.”** It shall be the sole responsibility of the bidder to have the bid uploaded to the City before the bid deadline. Partial or incomplete bids will be rejected. All bid responses should be typewritten. If not typewritten, they must be written in ink and clearly legible. Erasures, whiteouts, typeovers, and other modifications should be initialed. Bidders are cautioned to verify their bid response prior to submission.

1.4. Signature.

All bids must be signed by a duly authorized officer of the company empowered with the legal right to bind the company. A typed name will not be acceptable without the person’s written signature as well. Signatures are required where indicated; failure to comply with this requirement shall be cause for rejection of bid. All submitted bids must be binding for a period of ninety (90) calendar days from the bid submission deadline. The Signature Sheet must be uploaded to ProcureNow with the bid submission.

1.5. Response to Terms and Conditions.

Unless an exception is taken, the awarded contract will contain the requirements of this Invitation to Bid. In its sole discretion, the City reserves the right to either consider or reject any bid which takes exception to the specifications or attached contract.

1.6. Completeness of Invitation to Bid (“ITB”).

These documents, and those listed on ProcureNow, constitute the complete set of specification requirements and ITB. The bidder is responsible for ensuring that all pages and all addenda are received. The City advises all bidders to closely examine this ITB package and immediately direct any questions regarding the completeness of this ITB package and any addenda thereto to the City’s Contact Person via [ProcureNow](#) using the [Question/Answer](#) tab. Any addenda issued will be posted on [ProcureNow](#) and email notifications will be sent to all those vendors listed as following this ITB.

- 1.7. Bid Interpretation and Communication with the Purchasing Department.** Cathy Smith is the City's contact for coordinating communications between the department and firms submitting bids. If additional information is required in order to make an interpretation of items in this ITB, written questions will be accepted until five (5) days prior (11/23/2021) to the bid opening date. All questions should be submitted through the [Question/Answer](#) tab in [ProcureNow](#). All questions and all responses will be visible to every bidder.

The City specifically requests that no contact concerning this ITB be made with any other City personnel until the selection process has been completed. Failure to honor this requirement will be viewed negatively in the selection process and may result in the disqualification of a bid.

1.8. Discrepancies, Errors, and Omissions.

Any discrepancies, errors, omissions, or ambiguities in this ITB, the specifications or addenda (if any) should be reported to the contact person at purchasing@murfreesborotn.gov. If necessary, a written addendum will be issued to firms on record and the addendum will be incorporated in the ITB and will become part of the contract. The City will NOT be responsible for any oral instructions, clarifications or other communications and no such oral communication may be relied on by any bidder.

1.9. Errors in bid documents.

Certain mistakes may be corrected so long as the intended correct bid response is clearly evident. In the event of a disagreement between unit price and extended price, the unit price will control.

1.10. Further Negotiation.

The City reserves the right to further negotiate, after the ITBs are opened, with any potential vendor if such is deemed necessary at the discretion of the City.

1.11. Economy of Preparation.

ITB should be prepared simply and economically, providing a straightforward, concise description of bidder's capabilities to satisfy the requirements of the ITB. Emphasis should be on completeness and clarity of content.

1.12. Subcontracting.

If any part of the work is, or is to be, subcontracted, the bidder shall provide within the ITB a description of the subcontracting organization and the contractual arrangements made therewith. All subcontractors will be subject to approval by the City. The successful bidder will also furnish the corporate or company name and the names of the officers or principals of said companies proposed as subcontractors by the bidder.

1.13. Bid Modification.

Bids may be modified, withdrawn, and/or resubmitted in writing to the City prior to the deadline for bid submission via the procurement portal, [ProcureNow](#). After this deadline, no withdrawals or resubmissions may be made for any reason.

1.14. Tax Exempt.

The City 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.

1.15. Pricing Effective for One (1) Year.

The successful bidder shall provide in the bid price the cost for services rendered and the various components of equipment, including all parts, labor, accessories and any other standard equipment, necessary to make these items function as intended. Pricing for each component shall be effective for one (1) year from date of bid award. If, in the bidder's opinion, additional equipment or services are necessary to make the system fully operational, this shall be included with explanation in the bid. It is requested that bidders raise any such questions in advance of submitting a bid to the City. To submit a bid implies consent to the terms set forth in this ITB.

1.16. Approval Required.

No award or acquisition can be made until approved by the City Council. The City will not be obligated to bidders for equipment, goods, and/or services until the completion of a signed contract approved by authorized officials of the City. This solicitation in no manner obligates the City to the eventual rental, lease, or purchase of any equipment or services described, implied, or which may be proposed, until confirmed by a written contract. Progress towards this end is solely at the discretion of the City and may be terminated at any time prior to the signing of a contract.

1.17. Consideration of Bid.

Any items proposed deemed not of equal and/or better and of comparable quality as that specified shall be cause for rejection of a bid. In addition to the price, the following aspects will be considered in the award of a contract:

- a. The ability of the bidder to perform the contract or to provide the material for service required;
- b. Whether the bidder can perform the contract and provide the material or service promptly or within the time specified without delay or interference;
- c. The character, integrity, reputation, experience and efficiency of the bidder;
- d. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- e. The ability of the bidder to provide future maintenance and service for the use of the subject contract;
- f. Terms and conditions stated in bid;
- g. Compliance with specifications or the ITB;

- h. Utilization of the format set forth in Section 3 for submittal of a bid; and,
- i. Bidder's past performance with the City.

1.18. Terms and Conditions.

The City reserves the right to reject any and all bids, to waive any irregularities in a bid, to make awards to more than one bidder, to accept any part or all of a bid, or to accept the bid (or bids) which, in the judgment of the governing body, is in the best interest of the City. The City also reserves the right to make revisions to any quantity shown on the bid form dependent upon bid prices and available funding. Prices bid on each item shall be firm regardless of the actual quantity of item(s) purchased.

1.19. Withdrawal of Bid.

No bidder may withdraw its bid for a period of ninety (90) calendar days after the date and time set for the opening of the responses. In the event the City awards a contract to a bidder and during such ninety (90) day period determines that such bidder will be unable to properly perform the contract, the City reserves the right to terminate the contract and award the contract to the next best offer without being required to re-advertise the project.

1.20. Cost of Response.

The City will not be liable for any costs incurred by the bidders in preparing a response to this solicitation. Bidders will submit responses at their own risk and expense. The City makes no guarantee that any equipment or services will be purchased as a result of the solicitation and reserves the right to reject any and all responses. All responses and their accompanying documentation will become the record of the City.

1.21. Contract.

The successful bidder's response to this ITB shall be included as an addendum to the contract. Should any conflict or discrepancy arise between the ITB and the contract, the contract shall control. All bidders who are awarded contracts pursuant to this ITB agree to be bound by the terms and conditions set forth in the sample City Contract provided at the end of this ITB. If the bidder objects to any contract terms or proposes any additional terms, such objections and terms must be set forth in the bid. Rejection of any proposed City Contract terms may be a basis for rejection of the bid.

1.22. Contract Termination.

The City reserves the right to cancel the contract for the work without cost or penalty to the City if, in the City's opinion, there is a failure at any time by the contractor to adequately perform the contract, or if there is any attempt to willfully impose upon the City a material or product or workmanship which is, in the opinion of the City, of an unacceptable quality. Cancellation of the contract shall not impair any rights or claim of the City to damages for the breach of any covenants of the contract by the contractor.

The contract awarded may be terminated upon any of, but not limited to, the following occurrences: a) bankruptcy or insolvency of the bidder or one or more of the bidder's principal owners; b) unauthorized substitution of products other than those identified in the specifications

or specifically approved by the City as a substitute prior to award of the contract; c) unsatisfactory performance of products supplied by the bidder or services provided by the bidder; d) fraud and e) any other breach of the terms of the ITB specifications or contract.

1.23. Contract Modification.

The contract may be modified only by written amendment executed by all parties and their signatories hereto.

1.24. Replacement or Repair.

No waiver of any provision of the 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. The City, at its option and in lieu of immediate termination, may request the awarded bidder replace or repair any defective goods or correct performance by written notice to the contractor. In that event, the contractor shall take corrective action within the amount of time specified by the City in the written notice. Exercise of this option shall not relieve the contractor of any liability to the City for damages for the breach of any covenants of the contract by the contractor.

1.25. Expense of Legal Action.

Awarded bidder agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the City prevails, awarded bidder shall pay all expenses of such action including the City's attorney fees and costs at all stages of the legal action.

1.26. Governing Laws.

The validity, construction and effect of the contract, and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.

1.27. Severability.

Should any provision of the 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 the contract. Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.

1.28. Indemnification and Hold Harmless.

Contractor shall indemnify and hold harmless the City, its officers, agents and employees from: i) any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omission of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of this contract; and ii) any claims, damages, penalties, costs, and attorney's fees arising from any failure of awarded bidder, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

1.29. Statutory Disqualification.

By submitting a response, it is represented that neither it nor any of its officers, directors, shareholders, member, or partners has been convicted or plead guilty or nolo contender to any violation of the Sherman Anti-Trust Act, mail fraud, or other state or federal criminal violation in

connection with a contract let by the City of Murfreesboro or any political subdivision of the State of Tennessee.

1.30. Contractor's Employment Practices.

Bidder, after being first duly sworn, affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color, national origin, age or sex and it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

1.31. City's Employment Practices.

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

1.32. Conflict of Interest.

By submitting a response, it is represented that no officer, committee member, or director of the City or other persons whose duty is to vote for, let out, overlook, or in any manner supervise any work on any contract for the City has a "direct interest", as defined by T.C.A. §12-4-101, in the bidder or in the work which is subject to this ITB.

1.33. Ethical Standards.

Bidder understands that it shall be 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 bid therefore.

1.34. Breach of Ethical Standards.

A breach of ethical standards could result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under City contracts.

1.35. Payments.

Payments under the contract shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The final payment shall not be made until after the performance is complete.

1.36. ProcureNow. Bidders must register with ProcureNow and are required to register for any addendums issued for the respective ITB to ensure that all relevant written communications are available to them in the preparation of their proposal. Registration can be accomplished through ProcureNow's website at: <https://secure.procurenow.com/portal/murfreesborotn>.

1.37. Progress Reports.

Periodic progress reports will be required to be submitted to the City.

1.38. Contract Term.

The initial term of this contract shall be from January 1st, 2022 – December 31st, 2022 with four one-year optional renewals.

1.39. Codes & Regulation.

All services and/or equipment must comply with city, county, state, and federal laws, rules, codes and regulations. The contractor will obtain and pay for all permits, if any, necessary to complete the work.

1.40. Insurance

Workers' Compensation Insurance: The awarded bidder shall procure and shall maintain during the life of this contract Workers' Compensation Insurance for all of its employees to be engaged in work on the project under this contract, and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance.

Public Liability and Property Damages Insurance: The awarded bidder shall take out and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect it and any subcontractor performing work covered by this contract from claims for damage for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this contract, whether such operations are by it or by any subcontractor or by anyone directly or indirectly employed by either of them. The amount of such insurance shall be as follows:

- a. Public Liability Insurance in the amount of not less than \$1,000,000.00 on any account of any one accident.
- b. Property Damage Insurance in an amount not less than \$500,000.00 for any one damage claim.
- c. Combined Single Limit Public Liability and Property Damage in an amount of not less than \$1,000,000.00 per occurrence.
- d. Proof of Carriage of Insurance. A Certificate of Insurance and endorsement shall be furnished to the City, and the City of Murfreesboro shall be named as an additional insured. Copies of insurance policies will be furnished to the City upon request. The City shall be furnished not less than ten (10) days advance notice of material changes or cancellation of insurance policies.

1.41. Contractor's License.

Pursuant to Tennessee Code Annotated Title 62, Chapter 6, Part 1, if a bid is \$25,000 or above, bidder must be a licensed contractor as required by the Contractor's Licensing Act of 1976,

Public Chapter No. 822 of the General Assembly of the State of Tennessee as amended. In accordance with T.C.A. §62-6-119, Bidder shall place their bid in an envelope showing: (1) the bidder's name, license number, expiration date thereof, and license classification of the contractor applying to bid for the prime contract; (2) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the masonry contract (if applicable) where the total cost of the materials and labor for the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000); (3) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the electrical, plumbing, heating, ventilation, or air conditioning contracts except when such contractor's portion of the construction project is less than twenty-five thousand dollars (\$25,000); (4) For each vertical closed loop geothermal heating and cooling project, the company name, department of environment and conservation license number, classification (G, L or G,L) and the expiration date, except when the geothermal portion of the construction project is in an amount less than twenty-five thousand dollars (\$25,000); (5) Prime contractor bidders who are to perform the masonry portion of the construction project which exceeds one hundred thousand dollars (\$100,000), materials and labor, the electrical, plumbing, heating, ventilation or air conditioning or the geothermal heating and cooling must be so designated; and (6) Only one (1) contractor in each of the classifications listed above shall be written on the bid envelope or provided within the electronic bid document.

Bids not conforming with this provision shall not be opened. Failure of any bidder to comply therewith shall void such bid and such bid shall not be considered.

1.42. Compliance with 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.

2. GENERAL SPECIFICATIONS

- 2.1. This work shall consist of installing and maintaining and new installation of traffic signals and other electrically operated traffic control devices for the City of Murfreesboro, including, but not limited to: flashing school zone signs; interchange, parking lot, and roadway lighting; fiber optic communications; and closed-circuit television (CCTV) systems. Installation and maintenance shall be conducted in accordance with the provisions of Section(s) 712, 714, 730, and other applicable provisions of the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction and the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices.

Work may also include minor electrical work in City-owned buildings and maintenance work on sports field lighting owned by the City. Installation and maintenance shall be conducted in accordance with the latest International Building Code adopted by the City Codes Department.

- 2.2. Guides to installation and maintenance of electrically operated or static traffic control devices shall be established as shown on the plans, if there are any, or as directed by the City.
- 2.3. Waste and debris generated by this work shall be promptly and properly removed from the job site before the end of each working day.
- 2.4. Installation and maintenance may be conducted on roadways and parking lots either free of traffic or open to traffic. Work zone traffic control shall be the responsibility of the Contractor and is to be considered an incidental item of the maintenance included in the total bid price, excluding traffic control necessary for interstate lane closures. The contractor shall provide whatever signage, barriers, flagmen, etc. necessary to reasonably protect the work put in place and other applicable persons and devices required for the protection of the contractor, its employees, and the general public. The contractor shall adhere to the policies and procedures of Section 712 of the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction and the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) and the direction of the City's Traffic Engineer or representative for work zone safety procedures during all phases of the installation or maintenance process. Absence of the Engineer shall not release the Contractor of this requirement. Upon failure to arrive with proper protective devices, the Engineer may, at their discretion, disallow or suspend work or may provide the necessary devices which cost shall be subtracted from the invoice associated with the work.
- 2.5. Maintenance activities shall be conducted by experienced personnel qualified to identify, evaluate, and repair electrically operated traffic control devices in a timely and efficient manner. Installation activities shall be conducted by experienced personnel qualified in the construction industry to install electrically operated traffic control devices and appurtenances in a timely and efficient manner.
- 2.6. The Contractor shall provide proper and well-maintained equipment as required to conduct the herein described installation and maintenance activities. The equipment and workers supplied must be reasonable with respect to the job at hand that will affect safe, timely, proficient, and professional quality installation and maintenance activities while providing minimal interruption to traffic.

- 2.7 The installer shall be required to perform work when scheduled. Conflicts and priority changes arising among either party shall not release the other party from the responsibility of notification. Repeated failure to respond to and carry out scheduled or requested work in a timely manner shall constitute grounds for termination of this contract.
- 2.8 Should any disagreement or difference arise as to the estimate or quantities or as to the meaning of the specifications or conditions, or any point concerning the character, acceptability and nature of the several kinds of work, materials and the application thereof, the decision of the City's Transportation Director shall be final and conclusive and binding upon the Contractor.

3. TECHNICAL SPECIFICATIONS

- 3.1 **Traffic Signal Installation and Maintenance.** The work shall consist of installing and/or troubleshooting failed devices or systems and installing and/or maintaining traffic signals and other electrically operated traffic control devices for the City of Murfreesboro, including, but not limited to, flashing school zone signs; interchange, parking lot, and roadway lighting; fiber optic/ethernet communication networks; and closed-circuit television (CCTV) systems. More typical and defined tasks include, but are not limited to, the following:

- Annual preventative maintenance program;
- Signal bulb outage;
- Signal head realignment;
- Traffic sensor repair or replacement;
- Structure(s) repair or replacement;
- Traffic signal upgrade or modification projects;
- Traffic signal, communication networks, and CCTV fiber optic and twisted pair communications system infrastructure;
- Repair, replacement and installation of school zone signs;
- Replacement and installation of static overhead street signage;
- Repair, replacement and installation of CCTV system components;
- Repair, replacement and installation of interchange high mast lighting;
- Repair, replacement and installation of interstate roadway lighting;
- Repair, replacement and installation of Central Business District (CBD) lighting;
- Repair, replacement and installation of public parking lot lighting.

In addition to the foregoing, the Contractor may be requested to perform minor unrelated electrical services for the City at the rates bid in Section 5 under the "General Electrician with Pickup Truck or Van" line item.

- 3.2 **Contractor's Obligation.** The Contractor shall and will, in a good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified, in accordance with the specifications covered by this Contract and any and all supplemental drawings and specifications, and in accordance with the directions of the City or its authorized representative as given from time to time during the progress of the work. The Contractor shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required. The

Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods, and for any damage which may result from their failure or other improper construction maintenance, or operation. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and Specifications, and shall do, carry on, and complete the entire work in a timely manner to the satisfaction of the City.

The Contractor shall be required to communicate with City inspectors on a daily basis regarding what work is being conducted for and on behalf of the City including, but not limited to, emergency work, maintenance work, and work involving installation of traffic signals and other infrastructure.

Work that has been authorized and performed under emergency dispatch procedures shall be reported the following day to the City inspectors and shall include the initial time of contact, date the work was performed, the nature of the work performed, amount of personnel and equipment that responded, and the time of completion in effecting the repairs that were the basis of the call-out.

Communications between the Contract and inspectors shall be conducted via e-mail, text message or in another manner as may be directed by the City.

- 3.3 **Traffic Equipment and Materials Specifications.** All equipment and materials provided shall conform to the standards of the National Electrical Manufacturers Association (NEMA) or the Radio Manufacturers Association (RMA), whichever is applicable. All material and work shall conform to the requirements of the National Electric Code (NEC), the standards of the American Society for Testing Materials (ASTM), the American National Standards Institute (ANSI), US Department of Transportation-Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), Institute of Transportation Engineers (ITE), International Municipal Signal Association (IMSA), and any other local ordinance which may apply. In the event of any conflict concerning the foregoing standards, the most restrictive shall apply. If the contractor is in doubt as to the applicable standard, the contractor shall contract the City Transportation Director, or designee, for an interpretation which shall be final and binding. It is the contractor's responsibility to obtain such standards and perform any work accordingly.
- 3.4 **Inspection.** Authorized representatives of the City shall be permitted to inspect all work, materials, timesheets and payrolls, records of personnel, work orders, invoices of materials, and other relevant data and records.
- 3.5 **License and Qualifications.** The work under this bid is specialized and requires a heightened level of skill, understanding and knowledge of the working environment, and electrical/electronic expertise. The contractor shall possess, maintain, and make available before award of any contract or extension thereto under this bid the following license, certifications, and qualifications as noted below:
- State License: A copy of the State Contractor's License, authorizing work associated with traffic signal installation and maintenance.
 - City License: A copy of the Contractor's Class 1-B City Electrical License.

- **IMSA Certification:** The Contractor's foreman shall be required to be certified, as a minimum, as a Level I Traffic Signal Electrician by the International Municipal Signal Association (IMSA).

Due to the specialization of the work herein described, the Contractor shall not utilize subcontracted labor without the expressed written permission of the Transportation Director or designee.

- 3.6 **Correction of Work.** All work, materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the City or its authorized representative who shall be the final judge of quality and suitability of work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should the Contractor fail to meet the City's approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall be immediately removed from the site. If in the opinion of the City or its authorized representative, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the City or its authorized representative deemed equitable.

3.7 **Availability of Contractor – Maintenance**

Emergency Work: Emergency work shall include work that if not expeditiously completed may result in loss of life, injuries, and/or property damage. The contractor shall make available a minimum of two (2) qualified employees, for the purpose of performing emergency work, twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In the event of an emergency, such designated employees shall be available at the location specified within ninety (90) minutes of initial contact and shall arrive at the scene with the appropriate equipment, materials, tools etc. to affect any needed repairs. The designated employees shall maintain in their possession phones, beepers or other communication devices that would provide for immediate communications between the Contractor's employees and City staff and/or emergency dispatch personnel.

Non-Emergency, Critical Maintenance: Non-emergency/critical maintenance work shall include such categories of repair that do not demonstrate a potential for loss of life or injury and/or damage to property if not immediately repaired but are determined to be critical to the operational efficiency of traffic operations. Non-emergency/critical maintenance work shall begin no later than two (2) days after notification to the Contractor by the City.

Non-Emergency, Non-Critical Maintenance: Non-emergency/non-critical work shall include repairs that do not negatively affect the operational or safety aspects of traffic flow but are nonetheless vital to the programmatic integrity of the City's maintenance plan. Non-emergency/non-critical work shall begin no later than five (5) days after notification to the Contractor by the City.

The City's Transportation Director, or designee, shall be the final authority as to classification of any required maintenance activity.

3.8 **Availability of Contractor – Installation.** Installation of new signalized intersections, school zone signs and other traffic infrastructure shall be planned and scheduled between the City and Contractor. Scheduling of installations may be determined by complexity of the project, availability of materials, coordination with utilities, availability of rights-of-way and /or easements and other factors that may affect project implementation. The Contractor and City shall negotiate in good faith the start and completion dates for these type projects and the Contractor shall then maintain the schedule once agreed upon by continuously supplying the necessary staff and/or equipment and other resources as are required for completion.

3.9 **Materials Supply.** The City shall generally supply larger traffic signal materials such as signal poles, signal heads, school zone signs, etc. that are City standard specification materials with long delivery lead times. The Contractor shall generally supply the smaller type materials that are part of normal repair and installation such as conduit, wire, fasteners, etc. that are more readily available.

The Contractor shall be entitled to reimbursement for materials purchased on a cost-plus overhead and profit basis. The City will reimburse the Contractor ten percent (10%) over and above its actual cost for materials purchased by the Contractor as overhead and profit. To be eligible for payment for overhead and profit, the Contractor must be able to document the actual amount paid for the materials for which overhead and profit payment is being requested. Overhead and profit shall not be paid for non-permanently affixed equipment or materials that may be purchased, rented, or leased to perform maintenance or installation functions required under this contract or for equipment or materials that are not under the ownership of the City at the conclusion of the work.

The City's Transportation Director, or designee, shall be the final authority as to who shall purchase and provide required equipment and/or materials for maintenance and installation activities.

3.10 **Overtime Work.** Any work conducted by the Contractor on an overtime basis, except for work conducted on an emergency dispatch basis, must first be authorized by the City. No payment will be made for overtime until after the employee for whom overtime eligibility is being claimed has previously worked 40 hours within the workweek for which the additional time has been incurred. Work is not to be scheduled in a manner that would intentionally provide the Contractor's employees overtime eligibility.

4. BID FORM

All prices must include all costs. Costs included in the bid prices shall include: installation and maintenance equipment, labor, accessories, traffic control devices, and any standard equipment necessary to conduct the maintenance and installation activities herein described. Pricing for each component shall be effective for the entirety of this contract.

In compliance with this ITB, and subject to all conditions thereof, the bidder agrees that if this bid response is accepted, to furnish the services and materials specified, at the price set opposite each item unless otherwise specified.

5. Bid Descriptions, Units, Quantities & Pricing

ESTIMATED QUANTITIES ONLY – The total purchases of any individual item in the contract are not known and are not guaranteed. The City has attempted to give an accurate estimate of the probable purchases of each item from the current contract period and projected estimates for the new contract period. The City does not guarantee that the City will buy any or all estimated amounts of any specified item or any total amount.

**BID FORM (ON FOLLOWING PAGE) TO BE SUBMITTED VIA
PROCURENOW**

**PURCHASING DEPARTMENT
BID FORM**

NAME OF BID:
Annual Traffic Signal and Electrical Maintenance Contract

Name of Bidder:
Date:

INSTRUCTIONS:

Estimated Quantities Only. All prices must include all costs. Costs included in the bid prices shall include services rendered and parts, labor, accessories, shipping/freight, and any other standard equipment necessary provide this service. The City is not subject to sales tax.

Item No.	Description	Units	Estimated Quantity	Unit Price	Total
1	Bucket Truck with 2-person Crew (<80' extension)	HR	650		
2	Bucket Truck with 2-Person Crew (>= 80' extension)	HR	100		
3	Digger Truck (for soil) 2-Person Crew	HR	200		
4	Digger Truck (for rock) 2-Person Crew	HR	100		
5	Non-Evasive Excavating Equip. 2-Person Crew	HR	100		
6	Compressor and Air Tools with Operator	HR	100		
7	Mini-Excavator	HR	100		
8	1 Worker with Pickup Truck or Van	HR	150		
9	2 Workers with Pickup Truck or Van	HR	200		
10	6-yard Dump Truck with Operator	HR	100		
11	Trencher with 2-Person Crew	HR	100		
12	Each additional worker	HR	100		
13	Overtime Premium Charge	HR	100		
14	Loop Cutting with 2-Person Crew, equipment, and all materials (wire must be IMSA spec. 51-7)	LF	15,000		
15	Fiber Optic Fusion Splicing	EA	300		
16	General Electrician with Pickup Truck or Van	HR	80		
17	IMSA Level II Signal Technician with Pickup Truck or Van	HR	100		
18	Traffic Control Interstate Syst. (Interstate Lighting Mainline Repair Only)	HR	50		

Any materials used but not covered in Unit Price List will be paid for at cost plus 10%

REFERENCE LISTING FORM

List a minimum of 3 references (other than the City of Murfreesboro) for similar projects and contracts, preferably governmental, which you have completed within the past 5 years.

1 CUSTOMER NAME: _____

ADDRESS: _____

TELEPHONE: () _____ EMAIL: _____

CONTACT NAME: _____

DATE OF COMPLETION OF PROJECT: _____

CONTRACT AMOUNT: \$ _____

2 CUSTOMER NAME: _____

ADDRESS: _____

TELEPHONE: () _____ EMAIL: _____

CONTACT NAME: _____

DATE OF COMPLETION OF PROJECT: _____

CONTRACT AMOUNT: \$ _____

3 CUSTOMER NAME: _____

ADDRESS: _____

TELEPHONE: () _____ EMAIL: _____

CONTACT NAME: _____

DATE OF COMPLETION OF PROJECT: _____

CONTRACT AMOUNT: \$ _____

My company has been in this type of business for years

State License Number: _____

Expires: _____

******SIGN AND SUBMIT WITH BID PACKAGE******

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____)

:

County of _____)

_____, being first duly sworn, deposes and says that;

- (1) The undersigned is the (owner, partner, officer, representative, or agent) of _____, the bidder submitting the attached bid.
- (2) Bidder is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
- (3) Such bid is genuine and is not a collusive or sham bid.
- (4) Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or, to fix any overhead, profit or cost element of the bid price or unlawful agreement any advantage against the City of Murfreesboro or any person interested in the proposed contract;
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agent, representatives, owners, employees, or parties in interest, including this affidavit.

(Signed) _____

(Title) _____

******SIGN AND SUBMIT WITH BID PACKAGE******

**BIDDER AFFIDAVIT ON COMPLIANCE
WITH DRUG-FREE WORKPLACE ACT AND CERTIFICATE**

Bidder, after being first duly sworn, affirms that it has a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9, in effect at the time of submission of its bid, at least to the extent required of governmental entities. Bidder affirms that:

1. it has received a Certificate of Compliance with the applicable sections of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this Affidavit; or,
2. it operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005, 3006, and 3023 of the City of Murfreesboro Employee Handbook and shall, upon request, provide documentation of such program to the City.

Name of Bidder

Printed Name and Title of Principal Officer

Signature by Principal Officer

******SIGN AND SUBMIT WITH BID PACKAGE******

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: _____

Title: _____

******SIGN AND SUBMIT WITH BID PACKAGE******

Agreement for _____

This Agreement is entered into and effective as of the ____ day of _____ 2021, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and _____, a _____ ("Contractor").

This Agreement consists of the following documents:

- This document
- ____ [Solicitation] _____ issued _____ (the "Solicitation");
- Contractor's Proposal, dated _____ ("Contractor's Proposal");
- Contractor's Price Proposal, dated _____ (the "Price Proposal"); and,
- Any properly executed amendments to this Agreement.

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

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

1. Duties and Responsibilities of Contractor.

- a. Contractor is engaged to provide _____ to the City of Murfreesboro
- b. In undertaking the work set forth herein, Contractor must comply with all applicable federal, state, and local laws and regulations, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Contractor is solely responsible for any and all taxes imposed upon Contractor and acknowledges it cannot claim exemption from taxes by virtue of any municipal exemption from taxation.

2. Term.

The term of this Agreement commences on the Effective Date [] and expires on [], unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein Termination. Contractor's services may be terminated in whole or in part:

- a. Upon 30-day prior notice, for the convenience of the City.
- b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City

has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

3. **Compensation; Method of Payment.** Contractor will be compensated upon the completion of tasks as outlined in the Price Proposal and upon the completion of a Task and submission of an invoice to the City at its address for Notices.
4. **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
5. **Insurance.** During the term of this Agreement, Contractor must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Contractor will provide to the City: (i) a standard certificate of insurance evidencing this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."
6. **Indemnification.**
 - a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
 - c. Copyright, Trademark, Service Mark, or Patent Infringement.
 - i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense

of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

- II. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - a. Procure for the City the right to continue using the products or services.
 - b. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
 - c. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
- III. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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:

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

If to Contractor:

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 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.
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. **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 _____, 2021 (the “Effective Date”).

City of Murfreesboro, Tennessee

By: _____
Shane McFarland, Mayor

Contractor

By: _____

Its: _____

Approved as to form:

Adam Tucker - City Attorney

This form, with all appropriate information completed, **must** be completed for the proper processing of the bid submittal. This form will be opened before any other bid document to assure licensing requirements are satisfied.

City of Murfreesboro

QUOTATIONS & PROPOSAL

Company Name: **Stansell Electric Company, Inc.**

Company Address: **860 Visco Drive, Nashville TN 37210**

Company Telephone Number: **615-329-4944**

PRIME CONTRACTOR:

License #: **3989**

License Status: **ACTIVE**

Expiration Date: **04/30/2023**

License Classification: **BC; CE; HRA-E.1**

Bond Limits: **UNLIMITED**

If applicable:

MASONRY CONTRACTOR (Total cost of materials & labor for masonry portion exceeds \$100,000)

Company Name: **N/A**

License #:

Expiration Date:

License Classification:

ELECTRICAL CONTRACTOR(Contractor's portion of the construction project is \$25,000 or more)

Company Name: **Stansell Electric Company**

License #: **3989**

Expiration Date: **04/30/2023**

License Classification: **BC; CE; HRA-E.1**

PLUMBING CONTRACTOR (Contractor's portion of the construction project is \$25,000 or more)

Company Name: **N/A**

License #:	
Expiration Date:	
License Classification:	
HVAC CONTRACTOR (Contractor's portion of the construction project is \$25,000 or more)	
Company Name: N/A	
License #:	
Expiration Date:	
License Classification:	
VERTICAL CLOSED LOOP GEOTHERMAL HEATING & COOLING PROJECT (\$25,000 or more)	
Company name: N/A	
Dept. of Environment & Conservation License #:	
Classification (G, L or G,L)	
Expiration Date:	
Prime contractor performing the masonry portion of the construction project which exceeds \$100,000, materials and labor, the electrical, plumbing, heating, ventilation or air conditioning or the geothermal heating and cooling must be so designated	
Only one (1) contractor in each of the classifications listed above shall be written on the bid envelope or provided within the electronic bid document	

Pursuant to Tennessee Code Annotated Title 62, Chapter 6, Part 1, if a bid is \$25,000 or above, bidder must be a licensed contractor as required by the Contractor's Licensing Act of 1976, Public Chapter No. 822 of the General Assembly of the State of Tennessee as amended. In accordance with T.C.A. §62-6-119, Bidder shall place their bid in an envelope showing: (1) the bidder's name, license number, expiration date thereof, and license classification of the contractor applying to bid for the prime contract; (2) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the masonry contract (if applicable) where the total cost of the materials and labor for the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000); (3) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the electrical, plumbing, heating, ventilation, or air conditioning contracts except when such contractor's portion of the construction project is less than twenty-five thousand dollars (\$25,000); (4) For each vertical closed loop geothermal heating and cooling project, the company name, department of environment and conservation license number, classification (G, L or G,L) and the expiration date, except when the geothermal portion of the construction project is in an amount less than twenty-five thousand dollars (\$25,000); (5) Prime contractor bidders who are to perform the masonry portion of the construction project which exceeds one hundred thousand dollars (\$100,000), materials and labor, the electrical, plumbing, heating, ventilation or air conditioning or the geothermal heating and cooling must be so designated; and (6) Only one (1) contractor in each of the classifications listed above shall be written on the bid envelope or provided within the electronic bid document. Bids not conforming with this provision shall not be opened. Failure of any bidder to comply therewith shall void such bid and such bid shall not be considered.

CITY OF MURFREESBORO
BOARD OF ELECTRICAL EXAMINERS
CLASS 1a LICENSE REGISTRATION NO. 161

Expiration Date: 1/31/2022

Name: James Stansell Jr.

Company: Stansell Electric Co. Inc.


Signature


Board Chairperson

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: _____


Robert P. Elliott

Date: 12/01/2021

Title: President

******SIGN AND SUBMIT WITH BID PACKAGE******

**BIDDER AFFIDAVIT ON COMPLIANCE
WITH DRUG-FREE WORKPLACE ACT AND
CERTIFICATE**

Bidder, after being first duly sworn, affirms that it has a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9, in effect at the time of submission of its bid, at least to the extent required of governmental entities. Bidder affirms that:

1. It has received a Certificate of Compliance with the applicable sections of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this Affidavit; or,
2. It operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005, 3006, and 3023 of the City of Murfreesboro Employee Handbook and shall, upon request, provide documentation of such program to the City.

Stansell Electric Company, Inc.

Name of Bidder

Robert P. Elliott | President

Printed Name and Title of Principal Officer



Signature by Principal Officer

******SIGN AND SUBMIT WITH BID PACKAGE******

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Tennessee)

County of Davidson)

Robert P. Elliott, being first duly sworn, deposes and says that;

- (1) The undersigned is the (owner, partner, officer, representative, or agent) of **Stansell Electric Company, Inc.**, the bidder submitting the attached bid.
- (2) Bidder is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
- (3) Such bid is genuine and is not a collusive or sham bid.
- (4) Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or, to fix any overhead, profit or cost element of the bid price or unlawful agreement any advantage against the City of Murfreesboro or any person interested in the proposed contract;
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agent, representatives, owners, employees, or parties in interest, including this affidavit.

(Signed) _____

Robert P. Elliott

(Title) _____

President

**This form does not require a notary signature; it only requires the officer of the company to sign affirming the affidavit*

REFERENCE LISTING FORM

List a minimum of 3 references (other than the City of Murfreesboro) for similar projects and contracts, preferably governmental, which you have completed within the past 5 years.

1 CUSTOMER NAME: Knox County
ADDRESS: 1000 N. Central Street, Suite 100 Knoxville, TN 37917

TELEPHONE: (865) 215 - 5777 EMAIL: john.sexton@knoxcounty.com
CONTACT NAME: John Sexton
DATE OF COMPLETION OF PROJECT: Various
CONTRACT AMOUNT:\$ Various

2 CUSTOMER NAME: **TDOT**
ADDRESS: **505 Deaderick Street, Nashville TN 37243**

TELEPHONE: (**615**) **741-5017** EMAIL: raymond.hallavant@tn.gov
CONTACT NAME: Ray Hallavant
DATE OF COMPLETION OF PROJECT: Various
CONTRACT AMOUNT:\$ Various

3 CUSTOMER NAME: **Nashville Department of Transportation**
ADDRESS: **750 S 5th Street, Nashville TN 37206**

TELEPHONE: (**615**) **862-6120** EMAIL: chip.knauf@nashville.gov
CONTACT NAME: Chip Knauf
DATE OF COMPLETION OF PROJECT: Various
CONTRACT AMOUNT:\$ Various

My company has been in this type of business for **81** years

State License Number: **3989**

Expires: **04/30/2023**

******SIGN AND SUBMIT WITH BID PACKAGE******

SIGNATURE SHEET

I, the undersigned, do hereby agree to all terms and conditions listed within this formal solicitation, and will supply all information as required in this solicitation.

COMPANY NAME: Stansell Electric Company, Inc.

ADDRESS: 860 Visco Drive, Nashville TN 37210

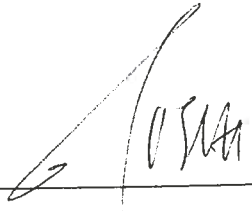
TELEPHONE: 615-329-4944

FAX: 615-320-5236

EMAIL: relliott@stansellelectric.com

ADDENDUM ACKNOWLEDGEMENT

The proposer shall acknowledge obtaining all addenda issued to this formal solicitation within your response in the City's eProcurement Portal. Failure to acknowledge all addenda may be cause for rejection of the response.

AUTHORIZED SIGNATURE:  _____

TITLE: President

(Print / type name as signed above): Robert P. Elliott

DATE: 12/01/2021

*****SIGN AND SUBMIT WITH BID PACKAGE*****

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Salem/Barfield Improvements / ELI Engineering Supplement #2

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Supplement #2 to ELI's scope of work to design the upsize of a portion of the Salem/Barfield Interceptor sewer to allow continued development in the basin.

Staff Recommendation

Approval of Supplement #2 to WA#5 with ELI, through the Master Services Agreement.

Background Information

At the Dec. 2020 meeting the Board approved of WA#5 to design the replacement and upsize of a portion of the Salem/Barfield Interceptor Sewer through the City's Master Services Agreement (MSA) with ELI, LLC approved February 2018. At the April 2020 meeting the Board approved of Supplemental Proposal #1 to design the replacement of a portion of the 36" Southwest Interceptor underneath Salem Hwy, just south of the original project.

At this time, staff would like to add to ELI's scope of services to design the upsizing and relocating of a portion of the Salem/Barfield Interceptor as presented to the Board last month. This would include approximately 6,500 linear feet of Interceptor and would allow the Salem/Barfield basin to continue to develop and allow approximately 3,724 new connections, over and above the committed and approved connections.

The original amount of WA#5 was not to exceed \$83,687 and Supplement #1 added \$14,270 and this Supplement #2 is \$444,500 for a total of \$542,947. The revised estimate for this construction is \$8.35M.

Council Priorities Served

Responsible budgeting

Staff intends to set up an Assessment District to recoup the construction costs associated with this Supplement #2 work.

Expand infrastructure

The upsizing will also allow the sewer infrastructure to be expanded into future annexations.

Maintain public safety

The upsizing of the Interceptor will prevent future overflows along Spence Creek as the Basin continues to develop.

Fiscal Impact

This expense, \$444,500, will be funded by Working Capital Reserves.

Attachments

1. ELI Proposal & Supplement #2
2. Exhibit



ENGINEERS • SURVEYORS • INFRASTRUCTURE • ENVIRONMENTAL

November 29, 2021

Valerie Smith, PE
MWRD Assistant Director - Engineering
220 NW Broad Street
Murfreesboro TN, 37133

Re: Master Services Agreement – Work Authorization #5
Salem/Barfield Sewer Improvements, Phase 3 (Basin 72-6)
Supplement #2

Dear Ms. Smith,

Energy Land & Infrastructure, LLC (ELI-LLC) is pleased to offer the following proposal for professional services as needed by the Murfreesboro Water Resources Department (MWRD) for the design of Supplement #2 in addition to the Salem/Barfield Sewer Improvements, Phase 3 (Basin 72-6) Project. ELI-LLC proposes to provide professional engineering services as outlined in the Master Services Agreement between Energy Land & Infrastructure and the City of Murfreesboro, TN.

ELI-LLC proposed to conduct these professional services for a Lump Sum amount of **\$444,500.00**. ELI is available to begin work on this project upon of the execution of this Agreement.

We appreciate the opportunity to provide professional services to the Murfreesboro Water Resource Department for this project. If you agree to its terms, please sign and return a copy of the Agreement.

Warmest regards,

ENERGY LAND & INFRASTRUCTURE, LLC

A handwritten signature in black ink that reads 'Jay W. Bradley'.

Jay W. Bradley, PE

Attachments

745 South Church St. Suite 805, Murfreesboro Tennessee 37130

www.eli-llc.com 615.410-5491

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ENERGY LAND & INFRASTRUCTURE

City of Murfreesboro Master Services Agreement

Murfreesboro Water Resources Department

Work Authorization #5 Supplement #2 – Salem/Barfield Sewer Improvements, Phase 3 (Basin 72-6)

Under terms and conditions of the Master Services Agreement (AGREEMENT) between ELI-LLC the City of Murfreesboro (OWNER), executed on February 15, 2018,

ELI-LLC will provide the following services for the City of Murfreesboro Water Resources Department under this Work Authorization:

Develop additional construction plans, specifications and the construction administration for the replacement of existing sanitary sewer lines and the addition of sanitary sewer lines along SR-99 (Salem Highway) in Murfreesboro, TN. The project includes:

- Replacement of approximately 1,300 linear feet of 8" sewer line with 12" sewer line
- Replacement of approximately 2,300 linear feet of 12" sewer line with 15" sewer line
- Replacement of approximately 900 linear feet of 15" sewer line with 18" sewer line
- Addition of 1,700 linear feet of 21" sewer line
- Replacement of approximately 300 linear feet of 20" sewer line with 21" sewer line

Legal exhibits and descriptions shall be additional services.

Compensation:

For services delineated in the scope of this Work Authorization, ELI-LLC will be compensated on a Lump Sum basis in the amount of \$444,500.00. Estimated construction cost for this supplement portion of the project is \$6,350,000.

Topographic survey of alignment	20%	\$ 88,900.00
Preliminary Design Phase	20%	\$ 88,900.00
Final Design Phase	30%	\$133,350.00
Bidding and Negotiations	5%	\$ 22,225.00
Construction Phase	25%	\$111,125.00

Schedule

Upon authorization to proceed, ELI-LLC will perform the tasks delineated in the Scope of Services outlined above.

Services not included but may be performed as Additional Services include:

- Traffic Study
- Tree survey or landscape design

- Irrigation design
- Flood study (FEMA)
- Property appraisals or acquisition
- Construction Engineering and Inspection
- Construction staking for contractor

ELI-LLC is pleased to present this Work Authorization for Execution by the City of Murfreesboro:

CLIENT EXECUTION

By: _____ Date: _____

Printed/Typed Name: _____ Title _____

Approved as to Form: _____ Title: _____

ENERGY LAND & INFRASTRUCTURE, LLC

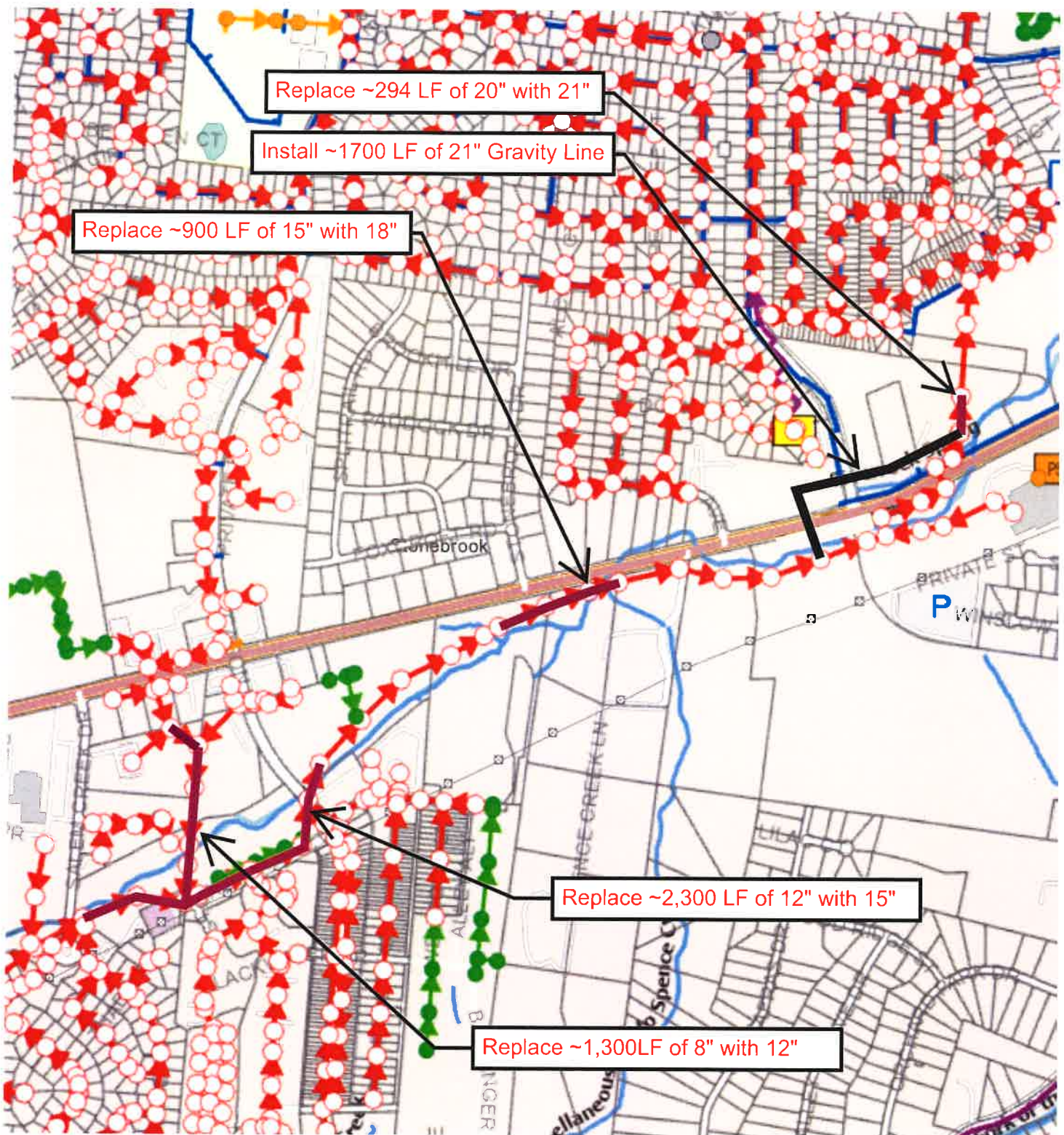
Nashville, TN/Cary, NC/Arlington, VA www.eli-llc.com

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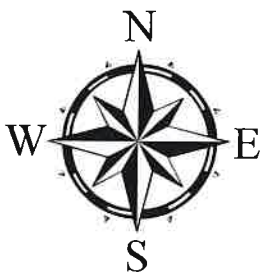
Project: Salem/Barfield Sewer Improvements, Phase 3 (Basin 72-6)
Opinion of Probably Cost
Supplement #2

11/22/2021

Item	Description	Unit	Quantity	Unit Price	Amount
	Mobilization	LS	1	\$100,000.00	\$ 100,000.00
	Construction Lines and Grades	LS	1	\$50,000.00	\$ 50,000.00
	Clearing and Grubbing	LS	1	\$50,000.00	\$ 50,000.00
	Removal and Disposal of Brush and Trees	LS	1	\$50,000.00	\$ 50,000.00
	Replace 8" with 12" Sanitary Sewer PVC	LF	1300	\$275.00	\$ 357,500.00
	Replace 12" with 15" Sanitary Sewer PVC	LF	2300	\$325.00	\$ 747,500.00
	Replace 15" with 18" Sanitary Sewer PVC	LF	900	\$400.00	\$ 360,000.00
	Install 21" Sanitary Sewer PVC	LF	1700	\$450.00	\$ 765,000.00
	Replace 20" with 21" Sanitary Sewer PVC	LF	300	\$600.00	\$ 180,000.00
	Video Inspection	LF	6500	\$10.00	\$ 65,000.00
	Manholes	EACH	10	\$10,000.00	\$ 100,000.00
	SR-99 Roadway Crossing	LF	200	\$1,500.00	\$ 300,000.00
	Creek Crossing (12" to 15")	LF	100	\$7,500.00	\$ 750,000.00
	Creek Crossing (15" to 18")	LF	150	\$7,500.00	\$ 1,125,000.00
					\$ -
	Placing and Spreading Topsoil	CY	2000	\$25.00	\$ 50,000.00
	Seeding with mulch	UNIT	2000	\$40.00	\$ 80,000.00
	Undercutting	CY	2000	\$100.00	\$ 200,000.00
	Machined Rip-Rap (Class A-1)	CY	2000	\$40.00	\$ 80,000.00
	Class B Concrete	CY	2000	\$40.00	\$ 80,000.00
					\$ -
					\$ -
					\$ -
	Total				\$ 5,490,000.00
	15% Contingency				\$ 823,500.00
	Total Preliminary Estimate				\$ 6,313,500.00



MURFREESBORO WATER AND SEWER DEPARTMENT



Upgrades Necessary

Scenario Number 4
(Reroute Flow with New Pipe)
Estimated Cost \$6.34M



COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: Northeast Regional Pump Station/SSR Task Order Amendment #2

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Amendment #2 to SSR Task Order 17-41-016.0, which is the design of the NERPS and all associated conveyances. Staff has requested changes to the scope of work.

Staff Recommendation

Approval of SSR Task Order Amendment #2 (17-41-016.02) in the amount of \$28,115 for a total revised Task Order amount of \$2,290,005; and the additional passthrough services in the amount of \$103,827.

Background Information

Since 2011, staff has proposed this regional pumping station near the Stones River Water Treatment Plant. At the July 17, 2017 meeting, the Board approved Engineering Design services for the NERPS and Conveyances. The Task Order total was broken down into three major categories:

- Plan/Report/Survey Phase Hourly with an Estimated Price of: \$ 247,055
- Design: Hourly with an Estimated Price of: \$1,397,340
- Bidding and Construction Phase: Hourly/ an Estimated Price of: \$ 586,855
- Total (Not to Exceed) Estimate: \$2,231,250

The original scope of work entailed the design of both gravity sewer and force main, along with abandonment of three large pump stations (PS #14, #26 & #27); pump station 14 (see attached exhibit).

Amendment #1 added the design of an additional gravity sewer extension to abandon an additional pump station along English Hill Drive (PS #32) and to survey a new route for a portion of the sewer forcemain to the Tommy Hord property instead of through the rear of the Oak Leigh Subdivision. Amendment #1 was \$30,640.

Amendment #2 being proposed is due to additional changes to the forcemain route, the request for additional borings at the pump station site and at the forcemain river crossing. This Amendment also includes the request for approval of the additional outside services, not included in SSR's Task Order, required to assist with the design from Civil & Environmental Consultants (CEC), TRC and TTL. Staff realized that these costs were not brought to the Board for approval previously to accompany the original SSR Task Order.

Council Priorities Served

Responsible budgeting

Staff established a sinking fund in 2015 within the Department's working capital reserves to help fund this capital project.

Expand infrastructure

The construction of this pump station will allow additional upstream sewer system improvements and also allow development of greater densities in Basins 10-3 & 10-4 (East Main Street & John Bragg Hwy area) which are currently limited to develop at 2.5 single family units per acre.

Fiscal Impact

These funds are currently designated to come from the Department's working capital reserves. Staff, however, will investigate funding these projects through State Revolving Fund (SRF) loans administered through the TN Department of Environment and Conservation (TDEC) or through the TN Municipal League (TML) bond fund.

Attachments

1. SSR Task Order Amendment Memo
2. Northeast Regional Forceman Exhibit
3. SSR Task Order Amendment Agreement



MEMORANDUM

To: Valerie Smith
From: Brent Fowler
Date: November 15, 2021
Re: Northeast Regional Force Main Route Revisions and Additional Services
Project Name: Northeast Regional Pumping Station and Force Main
Project Number: 1741016.0

Darren,

Per WWRF Staff request, this memorandum provides information regarding revisions for the proposed Northeast Regional Force Main route and additional engineering services to update the basin flow projections using a draft version of the Murfreesboro Future Land Use Study and sewer revisions around the DeJarnette Lane PS – PS 14.

Background

Original Task Order

The Board previously approved SSR Task Order 1741016.0 for the engineering report, design, and construction administration services for a new Northeast Regional Pumping Station and Force Main (NERPS/FM) conveying sewage to the Water Resource Recovery Facility Headworks. Decommissioning 3 existing pump stations, each to be served by gravity sewer and conveyed to the new NERPS, is also included in the project.

Amendment 1

Amendment 1 included a FM route revision of the force main beginning at River Road and terminating at the Water Resource Recovery Facility Headworks. Refer to Route Revision 1 shown on the attached sketch. Amendment 1 also included decommissioning English Hills PS No. 32 and serving the area by gravity sewer. Refer to Route Revision 2 on the attached sketch.

Proposed Amendment 2

During previous planning meetings with Staff, and in coordination with City Development Services Division, a decision was made to revise the proposed force main route to a corridor in the north travel lane along the existing portion of Cherry Lane – Phase 1. Refer to Route Revision 3 shown on the attached sketch. This proposed route will remove significant risks associated with environmental permitting and wetland mitigation along the previously agreed upon route south of the Siegel Soccer fields.

During previous planning meetings with Staff, MWRD requested that completed design for the sections of the force main and repurified water lines located in the proposed Cherry Lane corridor be turned over the CIA Engineers for inclusion in the Cherry Lane roadway construction documents.

During previous planning meetings with Staff, MWRD requested that SSR revise the existing sewer alignment at DeJarnette Lane PS 14 to provide a more direct sewer flow path. Refer to Route Revision 4 shown on the attached sketch. If the sewer route revision is possible, the new alignment will provide improved sewer flow to the proposed sewer feeding the NERPS.

During previous planning meetings with Staff, SSR advised that due to the karst topography and underground drainage systems with sinkholes and caves in the area near the proposed Northeast Regional Pumping Station site, an additional boring should be made in the footprint of the proposed pumping station.

MEMORANDUM

Page 2

Additionally, SSR recommend that 2 additional borings be made where the previously revised force main route crosses the West Fork Stones River. Originally, the route was proposed to cross at the existing repurified water line crossing of the West Fork, and therefore risks due to unknown and difficult subsurface conditions were expected to be minimal. Because the route was revised to an area of unknown subsurface conditions, the additional borings are recommended.

During previous planning meeting with Staff, SSR was asked to revise the NERPS flow projections by using the information contained in the City's Future Land Use Study. After waiting on this information for a considerable amount of time, Staff directed SSR to utilize the available draft version of the Study to revise flow projections. The flow projections were updated with the new planning information resulting in a reduction in the projected flows.

Recommendations

SSR recommends that MWRD proceed with the flow projections based on the draft Future Land Use Study.

SSR recommends that MWRD proceed with additional subsurface geotechnical investigations to include 2 borings at the West Fork Stones River crossing near the WRRF and 1 additional boring at the proposed NERSP site.

SSR recommends that MWRD proceed with the sewer force main and gravity route revisions as they will minimize environmental impacts and permitting requirements. The route revisions will require additional engineering services, including topographic, planimetric, underground utility, cultural and natural resources field surveys, subsurface geotechnical exploration, and design of the new gravity sewer for DeJarnette Lane PS 14. Topographic, planimetric, and utility surveys are included in engineering services offered in SSR Task Order 17410160. The geotechnical investigations, cultural and natural resources surveys are outside of the Task Order scope and paid as reimbursable expenses but are referenced herein for overall project cost valuation.

Project Costs

The original Board-approved Task Order 1741016.0 cost is \$2,231,250.00. The Task Order cost including previously approved Amendment 1 is \$2,261,890.00. The cost of the additional engineering services for these revisions described is tabulated below.

Additional Task Order 1741016.0 Engineering Services	
Force Main Route Revision, Flow Projection Revision, DeJarnette Lane PS 14 Sewer Revision	
Description	Fee Estimate ¹
DeJarnette Lane PS 14 Sewer Survey and Sewer Easement	\$2,355
Bear Branch Stream Crossing Permit	\$1,665
DeJarnette Lane PS 14 Gravity Sewer Design, Plans, and Specification	\$3,810
NERFM Route Revision Survey	\$7,310
Flow Projections Update and Revised Pump Selection	\$8,230
Project Management and Coordination of Field Surveys and Revisions	\$4,745

MEMORANDUM

Page 3

Additional Task Order 1741016.0 Engineering Services	
Force Main Route Revision, Flow Projection Revision, DeJarnette Lane PS 14 Sewer Revision	
Description	Fee Estimate ¹
Total Estimated SSR Add Services Fee	\$28,115
<u>Notes:</u> 1. Costs include design, bidding, and construction administration services.	

The total cost for engineering services, including this amendment, is **\$2,290,005.00**.

The additional cost to complete work for additional geotechnical subsurface investigations, cultural resources field surveys, and natural resources field surveys is \$8,000, \$4,696, and \$4,000, respectively, and are not included in the engineering fee for Task Order 1741016.0. Rather, these costs are reimbursable expenses outside of the task order fee and are provided for review and approval and for MWRD total project budgeting purposes. The original fee estimates and proposed revised fee estimates for each reimbursable cost are tabulated below. The total cost for these reimbursable expenses, include this amendment, is **\$103,827.00**.

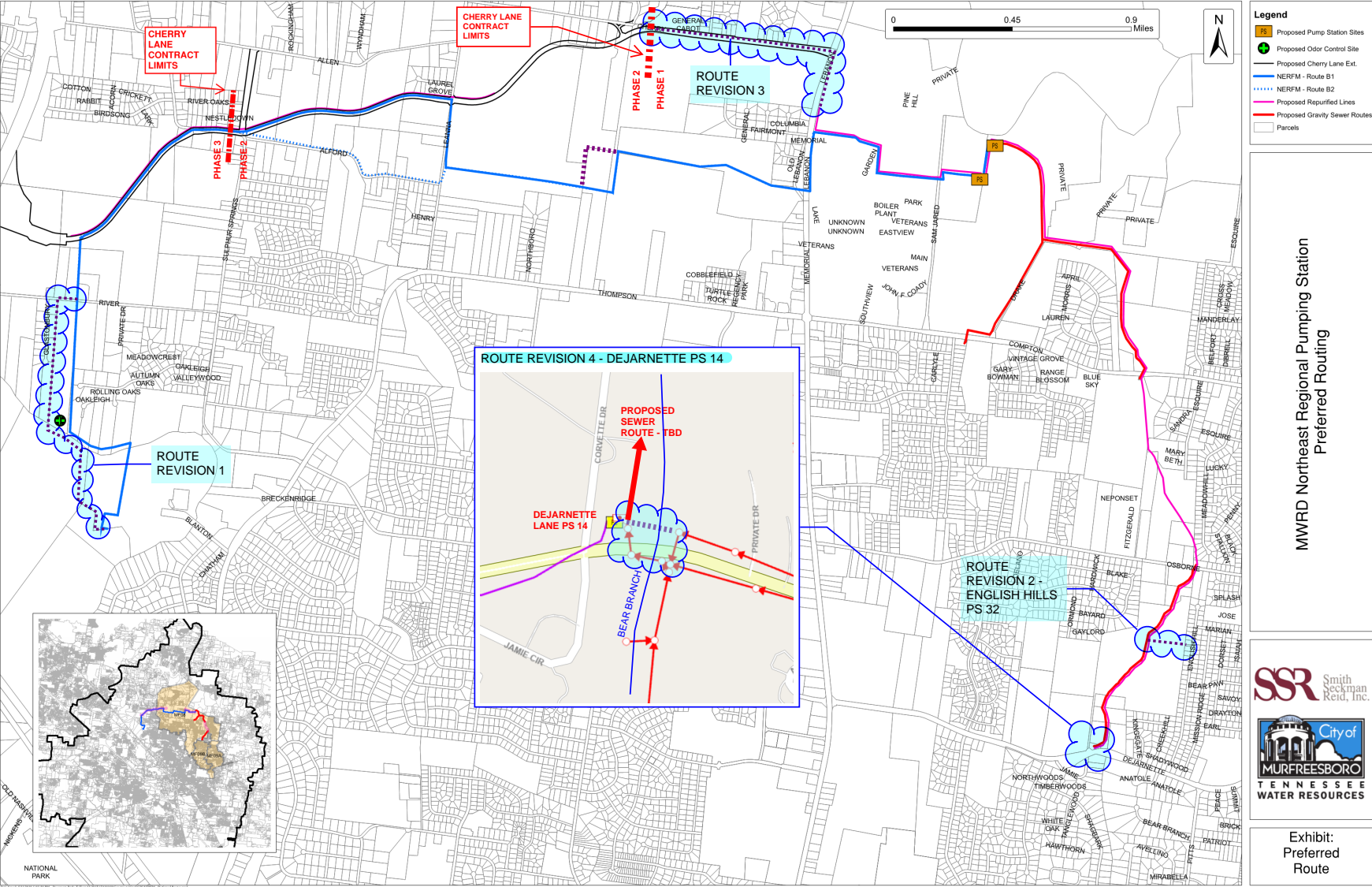
Additional Reimbursable Expenses (Outside of Task Order 1741016.0)		
Force Main Route Revision, Flow Projection Revision, DeJarnette Lane PS 14 Sewer Revision		
Description	Original Fee Estimate	Revised Fee Estimate
TRC (Cultural Resources Survey)	\$27,631	\$32,327
CEC (Natural Resources Survey)	\$33,000	\$37,000
TTL (Geotech)	\$26,500	\$34,500
Total Additional Expenses	\$87,131	\$103,827
<u>Notes:</u> 1. Costs include design, bidding, and construction administration services.		

If you need additional information, please contact me.

Attachments

1. Amendment No. 2 to SSR Task Order 1741016.0.
2. Route Revision Sketch.
3. Cost proposal from JTA Land Surveying.

Attachment A. Illustration of NERPS Location and Conveyance Routing



JTA Land Surveying, Inc.
2603 Elm Hill Pike, Suite K
Nashville, Tennessee 37214
Phone: 615-490-6920

LETTER OF AGREEMENT FOR PROFESSIONAL SERVICES

October 21, 2021

Smith Seckman Reid, Inc.
Attn: Don Norris
2995 Sidco Drive
Nashville, Tennessee 37204
Phone: (615) 383-1113

**PROJECT: MURFREESBORO WATER RESOURCES DEPARTMENT
NORTHEAST PUMP STATION
FORCE MAIN AND GRAVITY SEWER
MURFREESBORO, TENNESSEE
ADDITIONAL TOPOGRAPHIC SURVEYING SERVICES**

Dear Don,

JTA Land Surveying, Inc. (JTA) is please to offer the following professional service proposal agreement to **Smith Seckman Reid, LLC (Client)** to provide land surveying services for the above-referenced Project.

SCOPE OF SERVICES

Cherry Lane

JTA proposes to provide a field-run topographic survey of the right-of-way between Cherry Lane Phase 1 and to the East right-of-way of Highway 231 which is approximately 3,000 linear feet +/-.

DeJarnette Lane Pump Station

JTA proposes to provide a field-run topographic survey of Bear Branch Creek Crossing which is approximately 200 linear feet +/-.

The topographic survey to consist of a survey of all utilities located within the scope of services based on current maps prepared by others, utility maps provided by the appropriate utility company and field locations. All surveying work to be performed under the criteria of a Category I Survey as adopted by the Tennessee Board of Examiners for Land Surveyors.

SCHEDULE

Due to unknown factors beyond **JTA's** control such as weather, unusual evidence or lack thereof found in the field, or in the official records, parole evidence, etc., it is not practical to pinpoint a completion date; however, **JTA** anticipates being ready to start upon Notice To Proceed.

COMPENSATION

JTA will provide both scope of services on **3,200 Linear Feet @ \$2.15 per foot for \$6,880** with a **NOT-TO-EXCEED FEE OF \$8,000.00**. Direct expenses related to printing and overnight delivery fees related to the project are in addition to the above fee.

Yours truly,

Greg Terry

JTA Land Surveying, Inc.

CLIENT ACCEPTANCE and AUTHORIZATION TO PROCEED:

By _____ Date _____

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Engineering Task Order 17-41-016.0
Amendment No. 2.

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: August 3, 2017
- b. Owner: Murfreesboro Water Resources Department
- c. Engineer: Smith Seckman Reid, Inc.
- d. Project: Northeast Regional Pumping Station and Conveyance

2. *Description of Modifications:*

- a. In addition to the scope described in Task Order 17-41-016.0, this modification includes:

Understanding of Modifications

The OWNER desires to revise the Northeast Regional Force Main route beginning on Memorial Blvd. (Hwy 231) near the VA property and terminating on Cherry Lane near the intersection of Abigail Avenue. The OWNER desires to revise the existing sewer feeding the DeJarnette Lane PS 14 to improve flow path conditions to the proposed gravity sewer that will feed the NERPS. The OWNER desires to revise the flow projections using the City's Future Land Use Study data. The OWNER desires to include the sections of the proposed force main and proposed repurified water line located in the proposed Cherry Lane roadway corridor to be included in the roadway construction project, not in the Northeast Regional Pumping Station and Conveyance construction project.

ENGINEER's Scope of Services

ENGINEER's scope of service will include the following tasks:

- Survey and design of approximately 320 linear feet of gravity sewer route (size, length, and layout to be determined during design) from the existing DeJarnette Lane PS 14 and connecting to the proposed 24-inch sewer along Bear Branch.
- Easement preparation for proposed gravity sewer from DeJarnette Lane PS 14.
- Preparation and submittal of Bear Branch stream crossing permit for proposed gravity sewer from DeJarnette Lane PS 14.
- Survey of approximately 3,400 linear feet of 30-inch diameter force main revised route along Memorial Blvd to approximately the intersection of Cherry Lane and Abigail Avenue.
- Revise NERPS flow projections using the planning information contained in the City Future Land Use study (draft version).
- Turn over design deliverables for the section of the sewer force main and repurified water lines located in the proposed Cherry Lane roadway corridor to CIA Engineers for inclusion in the roadway project construction documents.

Deliverables

ENGINEER will deliver to the OWNER the following:

- Deliverables as indicated in the original task order to include modifications listed above.

Time of Completion

No change in the time of completion is anticipated as a result of this amendment.

Reimbursable Expenses

- Outside Plotting and Printing: Reimbursable at Cost
- Out of Town Travel: Reimbursable at Cost
- Geotechnical Exploratory Investigations: Reimbursable at Cost
- Cultural and Natural Resources Field Investigations: Reimbursable at Cost

Exclusions

- None

3. Agreement Summary (Reference only)

a. Original Agreement amount:	<u>\$2,231,250.00</u>
b. Net change for prior amendments:	<u>\$30,640.00</u>
c. This amendment amount:	<u>\$28,115.00</u>
d. Adjusted Agreement amount:	<u>\$2,290,005.00</u>

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

COUNCIL COMMUNICATION

Meeting Date: 12/16/2021

Item Title: New Administrative Building Architectural Design Services

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

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

Summary

Contract for architectural services with Kline Swinney Associates (KSA) design a new 12,500 square feet administrative building for MWRD.

Staff Recommendation

Award KSA's architectural and civil engineering design proposal for MWRD's Administrative Building replacement.

Background Information

Murfreesboro's old City Hall is currently partially occupied by MWRD Engineering, GIS and Stormwater personnel. This building is expected to be demolished in preparation for redevelopment of the City-owned area fronting Broad Street during the next two to four years. MWRD will required additional office space for the displaced MWRD personnel. The proposed new MWRD's Administrative Building will be a 2-story structure of approximately 12,500 square feet designed to enhance the downtown area and set a standard to development of the area.

Preliminary opinion of cost for a new administrative and engineering building is between \$3,750,000 and \$4,375,000. Staff has earmarked \$5,000,000 in the Department's working capital reserve for MWRD Engineering, GIS and Stormwater office space, 4,000,000 for improvements and \$1,000,000 for architectural services, leasing of temporary office space and furniture, fixtures and equipment (FF&E).

Council Priorities Served

Improve economic development

Civic buildings are commonly used to supplement and enhance redevelopment of areas in need of rehabilitation. The area along Broad Street between Vine Street and Church Street is being prepared for redevelopment. Satisfying the needs of MWRD while contributing to the community through redevelopment is important to economic development.

Fiscal Impact

Architectural and engineering design fee is \$234,875. The overall budget for building replacement and ancillary costs has been budgeted at \$5,000,000.

Attachments

KSA Fee Proposal for Architectural and Engineering Services for New Water
Department Building



November 17, 2021

Darren Gore, Director
Water Resources Department
300 NW Broad Street
Murfreesboro, Tennessee 37130

22 middleton street
nashville, tennessee 37210
tel: (615) 255-1854

American Institute of Architects
Tennessee Society of Architects
Construction Specifications Institute
American Correctional Association
National Council of Architectural
Registration Boards
United States Green Building Council

RE: Fee Proposal for
Architectural and Engineering Services
New Water Department Building
Murfreesboro, Tennessee

Dear Mr. Gore,

As discussed, following is our proposed scope of work, provided services, and fee proposal for the above project:

Project Scope:

Projects consists of the demolition of the existing water resources building, located at 300 NW Broad Street, Murfreesboro, Tennessee and the design and overseeing construction of a new water resources building to be located in the same vicinity. The new building will consist of office space for engineering and all other program elements identified by the Owner during the Programming Phase. We are anticipating that the building will be 2-story, 12,500 +/- sq. ft. with an elevator and multiple stairs for life safety requirements.

Services Provided:

1. Programming
2. Architectural Services, including working with the Owner to design the new facility and create Construction Documents for public bid.
3. Construction Administration Services consisting of monthly Owner Architect contract meetings, review of all shop drawings, assisting the Contractor with constructability and overseeing Bidding and Negotiation on the Owner's behalf for the construction of the Project.
4. Coordination with multiple municipalities
5. Interior Design
6. Mechanical, Plumbing and Electrical Engineering
7. Structural Engineering
8. Fire Protection Engineering
9. Civil Engineering and Landscape Architecture

Proposed Fee:

Our fee is based on the State of Tennessee Fee Schedule for New Construction, plus our Civil Engineer's fee. We have based our fee off of a construction cost of \$300.00 per sq. ft. Please note that while we are seeing construction cost for this building type ranging between \$300 - \$350.00 per sq. ft., we have based our fee off of the lower cost to be fair.

Construction Cost - Our fee is based on 12,500sq. ft. x \$300.00 = \$3,750,000.00

1. Architectural and Engineering Services Base Fee utilizing the State Fee Schedule
State Fee Schedule (35/(LOG P-1.15)) = 5.33% = \$199,875.00
2. Civil Engineering = \$35,000.00

Total Proposed Fee = \$234,875.00

Attached is a draft Contract that we are currently utilizing with the City of Murfreesboro. If you would like for us to proceed, we can revise the attached Contract to include your project specific requirements.

If you have any questions, please contact me. We look forward to working with you on this exciting project.

Sincerely,
KLINE SWINNEY ASSOCIATES



Bart Kline, AIA