MURFREESBORO CITY COUNCIL
Regular Session Agenda
Council Chambers – City Hall – 6:00 PM
August 18, 2022

PRAYER

Mr. Rick LaLance

PLEDGE OF ALLEGIANCE

Consent Agenda

1. Master Services Agreement for Pre-Qualified Building Contractors (Administration)
2. Vehicle Purchase for Code Enforcement Inspectors (Building Codes)
3. FY 2023 City Manager Approved Budget Amendments (Finance)
4. McKnight Parking Improvements (Parks)
5. Contract Extension with Nashville Communications, Inc. for Vehicle Communications Equipment Maintenance and Repair (Police)
6. Donation of Equipment to Dickson Police Department (Police)
7. Software as a Service (Saas) and Hardware Warranty Agreement with Utility Associates, Inc. (Police)
8. Amended and Restated Contract with Greg Peck and Associates for Bradyville Appraisal Services (Transportation)
9. Rutherford Boulevard Adaptive Signal Control Technology Project Addendum No. 1 Design Contract (Transportation)
10. Asphalt Purchases Report (Water Resources)
11. Bid for Meter Vaults (Water Resources)
12. GE iFix Annual Support Software (Water Resources)
13. GPS Rover Units Upgrades & New Purchase (Water Resources)
14. Lawn Care & Landscaping First Amendment (Water Resources)
15. Upgrade from MicroMain Classic system to MicroMain Global (Water Resources)

Minutes

16. Minutes of City Council Meeting July 13, and July 21, 2022 (Finance)

Old Business

<u>Ordinance</u>

17. Ordinance 22-O-19 Pension Plan Amendments (2nd and final reading) (Administration)

18. Ordinance 22-O-29 FY23 Budget Amendment Ordinance (2nd and final reading) (Administration)

Land Use Matters

19. Ordinance 22-O-20 Amending the Zoning Ordinance (2nd and final reading) (Planning)

New Business

Resolution

20. Resolution 22-R-21 FY23 Budget Amendment #1 (Schools)

Ordinance

21. Increasing Bid Threshold (Purchasing)
    a. First Reading: Ordinance 22-O-21
22. Amendment to Murfreesboro City Code Pertaining to Use of the Parking Garage (Administration)
    a. First Reading: Ordinance 22-O-34

Land Use Matters

23. Plan of Services, Annexation, and Zoning for property along Emery Road (Planning)
    a. Public Hearing: Plan of Services and Annexation
    b. Plan of Services: Resolution 22-R-PS-22
    c. Annexation: Resolution 22-R-A-22
    d. Public Hearing: Zone 16.3 acres
    e. First Reading: Ordinance 22-OZ-22
24. Plan of Services, Annexation, and Zoning for property along Lascassas Pike (Planning)
    a. Public Hearing: Plan of Services and Annexation
    b. Plan of Services: Resolution 22-R-PS-23
    c. Annexation: Resolution 22-R-A-23
    d. Public Hearing: Zone 11.4 acres
    e. First Reading: Ordinance 22-OZ-23
25. Canceling Public Hearings (Planning)
26. Planning Commission Recommendations for Public Hearings (Planning)

On Motion

27. Payment in Lieu of Taxes (PILOT) Project for McNeilus Truck and Manufacturing Economic Development Project (Administration)
28. MED Pension Plan Amendment (Administration)

29. Lump Distribution and Plan Termination Services (Administration)
30. Child Advocacy Center Funding (Community Services)
31. Strategic Partnerships (Community Services)
32. Contract for Sidewalk Repair Services for ADA compliance (Engineering)
33. FY22 CIP Funds Reallocated for Broad and Church Intersection Improvements (Engineering)
34. Professional Services Contract – Medical Center Parkway Widening (Engineering)
35. Professional Services Contract – Asbury Lane Realignment (Engineering)
36. Acquisition of ROW and Easements for the Asbury Lane Realignment (Engineering)
37. Purchase of Fleet Maintenance Software (Fleet)
38. Amendment to Gall's Contract for the Purchase of Body Armor (Police)
39. Purchase of New Police Vehicles (Police)
40. Engineering Task Order for WRRF Wet Weather Upgrades (Water Resources)
41. Equipment Storage Addition (Water Resources)
42. Road Development Agreement Chandler Place (MTI-19) in Farmhouse Downs (Administration)
43. Subrecipient Agreement with Murfreesboro City Schools (Administration)

Licensing

Board & Commission Appointments

Payment of Statements

Other Business

Adjournment

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Master Services Agreement for Pre-Qualified Building Contractors

Department: Administration

Presented by: Scott Elliott, Project Manager

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Staff issued an RFQ for qualified building construction contractors for small renovation and construction projects.

Staff Recommendation

Approval of the master services contracts with pre-qualified building construction contractors.

Background Information

The City Purchasing Department issued an RFQ for building construction contractors to pre-qualify vendors for small City construction projects. Small projects are those with a total project budget of $250,000 or less. The ability to award small construction projects or tasks to pre-qualified contractors saves significant time and money in completing the project.

The following qualified vendors have been selected: Beech Construction, FTM Contracting, GTZ Construction, New Creations Construction, Paramount Construction Group, Rice Construction, Romach Construction, and S&W Contracting Company. Vendors will be assigned projects based on quoted price, most qualified for the project, and availability after a project has been budgeted and approved.

Council Priorities Served

Responsible budgeting

Contracting with pre-qualified vendors to assist with small City facilities' renovations and construction projects ensures City buildings and facilities are maintained, renovated, or remodeled in an efficient and cost-effective manner.

Fiscal Impact

None. Cost of services are included in the project budget when a project is approved.

Attachments

Master Services Contract

EXHIBIT A

AIA® Document A121™ – 2018

Standard Form of Master Agreement Between Owner and Contractor where Work is provided under multiple Work Orders

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

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

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

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

The Owner and Contractor agree as follows.

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

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

This document does not contain a description of the Contractor's scope of Work or establish payment terms or the dates of commencement of the Work or Substantial Completion. This document is intended to be used in conjunction with AIA Document A221™–2018, Work Order for use with Master Agreement Between Owner and Contractor.

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ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 This Master Agreement shall be effective for one year after the date first written above ("Date of this Master Agreement").

§ 1.2 This Master Agreement shall apply to all Work Orders agreed to by the parties within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order.

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Work Orders under this Master Agreement are completed or terminated.

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§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement:

Scott Elliott, Project Development Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
gregmcknight@murfreesborotn.gov
(629) 219-6369

§ 1.4.1 In each Work Order, the Owner will identify a representative authorized to act on the Owner's behalf with respect to the Work Order.

§ 1.5 The Contractor identifies the following representative authorized to act on the Contractor's behalf with respect to this Master Agreement:

§ 1.5.1 In each Work Order, the Contractor will identify a representative authorized to act on behalf of the Contractor with respect to the Work Order.

§ 1.6 The Owner may retain a Design Professional or Engineer ("Design Professional") to perform certain services in connection with a specific Project, as enumerated in this Master Agreement and a particular Project's Work Order. If a Design Professional is not required by law, or otherwise not engaged on a Project, the Owner shall perform such duties and services identified in this Master Agreement as being the responsibility of the Design Professional.

ARTICLE 2 WORK ORDERS

§ 2.1 The Owner is not required to issue any Work Orders under this Master Agreement.

§ 2.2 The Contractor may decline to accept any Work Order issued by the Owner.

§ 2.3 The Contractor shall execute the Work set forth in each agreed upon Work Order, consisting of AIA Document A221-2018, Work Order, or such other document as the Owner and Contractor may mutually agree upon. Each Work Order shall state the name, location, and detailed description of the Project; identify the Design Professional; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

§ 2.4 The Owner shall make the Contract Documents available to the Contractor prior to execution of the Work Order, and thereafter, upon request. The Owner may charge the Contractor for the reasonable cost to reproduce the Contract Documents provided to the Contractor.

ARTICLE 3 PAYMENTS

§ 3.1 Contract Sum and Progress Payments

§ 3.1.1 Each Work Order shall include a Contract Sum. The Owner shall pay the Contractor the Contract Sum in current funds in accordance with each individual Contract. Where the Contract Sum is based on the Cost of the Work under Section 3.3 or 3.4 of the Work Order, the Cost of the Work is defined in Exhibit A, Determination of the Cost of the Work.

§ 3.1.2 Applications for Payment will be submitted individually for each Contract.

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

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§ 3.1.4 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as set forth in the Work Order.

§ 3.1.5 Provided that an Application for Payment is received by the Design Professional not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Design Professional after the date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Design Professional receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 3.1.6 For each progress payment made prior to final payment, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

Five percent (5%) until acceptance of a Certificate of Substantial Completion, and thereafter two percent (2%) until final payment.

§ 3.1.7 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

6 % per year

§ 3.2 Final Payment

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

.1 the Contractor has fully performed the Work except for the Contractor's responsibility to correct Work as provided in Section 16.2, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and

.3 a final Certificate for Payment has been issued by the Design Professional in accordance with Section 13.7.1.

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

ARTICLE 4 DISPUTE RESOLUTION

§ 4.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 19.5, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[X] Arbitration pursuant to Section 19.6 of this Master Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

ARTICLE 5 GENERAL PROVISIONS

§ 5.1 The Work

The term "Work" means the construction and services required by the Contract Documents enumerated in a Work Order, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Work Order and related Contract. The Work may constitute the whole or a part of the Project identified in a particular Work Order.

§ 5.1.1 Specifications may describe types and quantities of materials, equipment, and other items of the Work and methods of installation that cannot be easily shown on the Drawings. It is not intended that the Specifications will mention every item of Work that can be adequately shown on the Drawings nor is it intended that the Drawings will show all items of Work adequately described or required by the Specifications, even if it is the case that such Work could have been shown thereon.

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

§ 5.2 The Contract Documents

§ 5.2.1 The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); all Drawings, Specifications, and Addenda issued in connection with the Work Order; other documents listed in the Work Order; and Modifications issued after execution of the Work Order. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Professional.

§ 5.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 5.2.3 In the event there are conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

.1 Amendments to a Work Order or this Master Agreement, with those of later date having precedence over those of earlier date

.2 The Work Order

.3 This Master Agreement;

.4 Addenda, with those of later date having precedence over those of earlier date.

.5 Division 1 of the Specifications, if any

.6 Drawings and Specifications

.7 Other documents specifically enumerated in the Master Agreement or Work Order as part of the Contract Documents.

.8 In the case of any conflicts or discrepancies between Drawings and Specifications or within or among the Contract Documents and not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Design Professional's interpretation.

§ 5.3 The Contract

The Contract Documents for each Work Order form a separate Contract for construction of the Work ("The Contract"). The Contract represents the entire and integrated agreement between the parties hereto for construction of

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the Work and supersedes prior negotiations, representations or agreements, either written or oral. A Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 5.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Professional and the Design Professional's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

§ 5.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 5.5.1 The Instruments of Service, including Drawings and Specifications, prepared by the Design Professional and the Design Professional's consultants are for use solely with respect to the Project identified in a specific Work Order. The Contractor, subcontractors, sub-subcontractors, materialmen, and equipment suppliers are authorized to use and reproduce solely and exclusively for execution of th Work. The Design Professional's drawings, specifications, and other Instruments of Service may not be used for other projects.

§ 5.5.2 The Design Professional and the Design Professional's consultants shall be deemed the authors and owners of their respective Instruments of Service including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design Professional's or Design Professional's consultants' reserved rights.

§ 5.5.3 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 5.6 and 5.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner, Design Professional and the Design Professional's consultants.

§ 5.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 5.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 5.8 Severability

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

§ 5.9 Notice

§ 5.9.1 Except as otherwise provided in Section 5.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier,

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or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 5.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 5.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Master Agreement and covenants with the Owner to cooperate with the Design Professional and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 6 OWNER

§ 6.1 Information and Services Required of the Owner

§ 6.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 6.1.1, the Contract Time shall be extended appropriately.

§ 6.1.2 The Owner shall furnish all necessary surveys and a legal description of sites referenced in a Work Order.

§ 6.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 6.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 7.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. If the Contractor's bid includes fees that the Owner has paid, or is required to pay directly, or that the Owner may waive, the Contractor shall, at the Owner's option, either pay these fees as a part of their bid or deduct fees from Contract Sum as a deductive change order.

§ 6.1.5 The Owner will a digital copy in .pdf format or furnish six (6) copies of the Contract Documents to the Contractor. The Contractor may purchase additional copies of the Contract Documents at the cost of reproduction, postage, and handling.

§ 6.2 Owner's Right to Stop the Work

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

§ 6.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to

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prior approval of the Design Professional and the Design Professional may, pursuant to Section 13.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect, or failure. In addition, if payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner immediately upon the Owner's written demand. If the Contractor disagrees with the actions of the Owner or the Design Professional, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 19.

ARTICLE 7 CONTRACTOR

§ 7.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 7.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 6.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design Professional any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require. Such reports shall also be made simultaneously and directly to the Owner. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 7.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design Professional any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require.

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

.1 That the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 That the Contractor is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 That the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental authorities having jurisdiction over it, the Work, or the site of the Project; and

.4 That the execution of the Contract and its performance thereof are within the duly-authorized powers of the Contractor and the signatory on behalf of the Contractor.

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

§ 8.1.5 The Owner is entitled to reimbursement from the Contractor, which are in addition to any Liquidated Damages, for amounts paid to the Design Professional for evaluating and responding to (i) the Contractor's requests for information that are not prepared in accordance with the Contract Documents; (2) where the requested information is

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available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation; or (3) Owner incurs additional project management costs.

§ 7.2 Supervision and Construction Procedures

§ 7.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under a Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 7.2.2 The Contractor shall layout new construction lines and verify slab slope and conditions. If discrepancies between actual lines and elevations and those indicated on plans exist, notify Design Professional and obtain a decision before starting work.

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

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

§ 7.2.5 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work.

§ 7.3 Labor and Materials

§ 7.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

§ 7.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Design Professional and in accordance with a Modification.

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

§ 7.4.4 Substitutions:

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

. 2 The Design Professional will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications) ten (1 0) days prior to bid date. By making requests for substitutions, the Contractor:

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A. Represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

B. Represents that it will provide the same warranty for the substitution as it would for the product specified;

C. Certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution except for the Design Professional's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and

D. Shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects. .

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

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

§ 8.4.5 The use of undocumented workers is not permitted.

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

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

§ 7.4 Warranty

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

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

§ 7.4.3 Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferrable to the Owner, and shall commence in accordance with Section 13.6.3.

§ 7.5 Taxes

The Contractor shall pay all taxes, levies duties, and assessments of any nature that are applicable to any Work under an individual Contract. The Contract Sum and any agreed variations thereof shall include all taxes by law. The Contractor shall make any and all payroll deductions required by law. The Contractor herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

§ 7.6 Permits, Fees, Notices, and Compliance with Laws

§ 7.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses and inspections by government agencies necessary for proper execution

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and completion of the Work that are customarily secured after execution of a Contract and legally required at the time bids are received or negotiations concluded.

§ 7.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 7.7 Allowances

The Contractor shall include in the Contract Sum for each Work Order all allowances stated in the Contract Documents for that Work Order. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 7.8 Contractor's Construction Schedules

§ 7.8.1 The Contractor, promptly after executing a Work Order, shall submit for the Owner's and Design Professional's information a Contractor's construction schedule for the Work described in that Work Order. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 7.8.2 The Contractor must maintain an updated project schedule and shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Design Professional. If milestones are negatively impacted, the Contractor must, prior to submission of the next application for payment, provide Owner and Design Professional with a specific plan to return the Project to the project schedule.

§ 7.9 Submittals

§ 7.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Design Professional reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Design Professional that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals. Neither the Design Professional nor the Owner shall be responsible for correctness of dimensions shown on shop drawings or submittals. The Design Professional's review of Contractor's submittals will be limited to general conformance with the project scope, finish selection, and examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Design Professional for evaluation of additional submittals.

§ 7.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 7.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Design Professional will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Design Professional will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Design Professional's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept

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expressed in the Contract Documents. In performing such review, the Design Professional will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 7.10 Use of Site
The Contractor shall confine operations at the site(s) to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site(s) with materials or equipment.

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

§ 7.12 Cleaning Up
The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under a Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project. If the Contractor fails to clean-up as provided in the Contract Documents, the Owner may do so, and the cost thereof shall be charged to the Contractor and deducted from the remaining. No on-site burning of trash is allowed.

§ 7.13 Access to Work
The Contractor shall provide the Owner and Design Professional access to the Work in preparation and progress wherever located.

§ 7.14 Royalties, Patents and Copyrights
The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Design Professional harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Design Professional.

§ 7.15 Indemnification
§ 7.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Design Professional, Design Professional's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 7.15.1.

§ 7.15.2 In claims against any person or entity indemnified under this Section 7.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 7.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 7.15.3 The provisions of this Section 7.15 shall survive the completion of the Work or termination of the Agreement.

§ 7.15 Requests for Information
Contractor requests for information shall be prepared and submitted in accordance with Division 1 General Requirements sections on AlA Document G716-2004. The Architect will return without action requests for information that do not conform to requirements of the Contract Documents.

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ARTICLE 8 DESIGN PROFESSIONAL

§ 8.1 As set stated in Section 1.6, the Owner may retain a Design Professional to perform certain services in connection with a specific Project, as enumerated in this Article 8 and as described elsewhere in this Master Agreement. If a Design Professional is not required by law, or otherwise not engaged on a Project, the Owner shall perform such duties and services identified in this Master Agreement as being the responsibility of the Design Professional.

§ 8.2 The Design Professional listed on each Work Order will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Design Professional issues the final Certificate for Payment for the Contract. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 8.3 Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Design Professional. Consent shall not be unreasonably withheld.

§ 8.4 The Design Professional will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Design Professional for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 8.5 On the basis of the site visits, the Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 8.6 Based on the Design Professional's evaluations of the Work and of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 8.7 The Design Professional has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 8.8 The Design Professional will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 8.9 The Design Professional will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Professional will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 8.10 The Design Professional's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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ARTICLE 9 SUBCONTRACTORS

§ 9.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at a Project site.

§ 9.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after execution of a Work Order, shall notify the Owner and Design Professional of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Design Professional has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 9.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Design Professional, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

ARTICLE 10 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 10.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to a Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 10.2 The Contractor shall afford the Owner and the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 10.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a separate contractor.

ARTICLE 11 CHANGES IN THE WORK

§ 11.1 By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating this Master Agreement or a Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Design Professional, or by written Construction Change Directive signed by the Owner and Design Professional. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 11.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Design Professional, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Design Professional will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Design Professional will prepare a Change Order.

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§ 11.3 The Design Professional will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Design Professional within 15 days of being notified of the change in the Work and shall not proceed to implement the change in the Work until the need for a Change Order is determined by the Design Professional in consultation with the Owner.

§ 11.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Design Professional promptly and before conditions are disturbed.

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

.1 For the Contractor, for Work performed by the Contractor's own forces at the fee negotiated with the owner of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by that Subcontractor's or Sub-Subcontractor's own forces, ten percent (10%) of the cost.

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub- Subcontractors, five percent (5%) of the amount due the Sub-Subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 11.2.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over $500.00 be approved without such itemization.

ARTICLE 12 TIME

§ 12.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Work Order, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 12.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The date of commencement of the Work is the date stated in the notice to proceed.

§ 12.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 12.4 The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 13.6.3.

§ 12.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Design Professional determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Design Professional may determine, subject to the provisions of Article 19. Contractor will not be granted extensions of time for delays caused by inadequate construction force, the failure of the Contractor to place orders for equipment or materials sufficiently in advance to ensure delivery when needed., or the failure of Contractor to protect properly the site from inclement weather.

ARTICLE 13 PAYMENTS AND COMPLETION

§ 13.1 Schedule of Values

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§ 13.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall submit a schedule of values to the Design Professional before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Design Professional. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 13.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 13.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 13.2 Control Estimate

§ 13.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing the Work Order. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 13.2.2 The Control Estimate shall include:

.1 the Contract Documents enumerated in the Work order, including all Modifications thereto;

.2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;

.3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;

.4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and

.5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 13.2.3 When the Control Estimate is acceptable to the Owner and Design Professional, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 13.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Design Professional with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 13.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Design Professional of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 13.3 Applications for Payment

§ 13.3.1 Applications for Payment will be submitted individually for each Contract as set forth in this section 13.3. The form of Application for Payment duly notarized shall be a current authorized edition of AlA Document G702-1992 Application and Certificate for Payment, supported by a current authorized edition of AlA Document G703-1992, Continuation Sheet.

§ 13.3.2 At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Professional an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 13.1, for completed portions of the Work. The application shall be notarized; be supported by all data substantiating the Contractor's right to payment that the Owner or Design Professional require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 13.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the

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Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 13.3.3 With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 13.3.4 Applications for Payment shall indicate retainage withheld from the total completed and stored to date as provided in Section 3.1.6. The resulting amount shall be indicated as the total earned less retainage. Applications that reduce retainage shall be accompanied by Consent of Surety.

§ 13.3.5 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

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

§ 13.4 Certificates for Payment

§ 13.4.1 The Design Professional will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional determines is properly due, or notify the Contractor and Owner of the Design Professional's reasons for withholding certification in whole or in part as provided in Section 13.4.3.

§ 13.4.2 The issuance of a Certificate for Payment will constitute a recommendation only by the Design Professional and does not creat a legal, binding obligation on the part of the Owner. The Certificate for Payment constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluations of the Work and the data in the Application for Payment, that, to the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 13.4.3 The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Section 13.4.2 cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Section 13.4.1. If the Contractor and the Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 7.2.2, because of

.1 defective Work not remedied;

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.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a Separate Contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 repeated failure to carry out the Work in accordance with the Contract Documents;

.8 failure of the Contractor to comply with applicable codes, laws, or regulations;

.9 failure to update as-built drawings or provide construction photographs with the Application for Payment as required by the Contract Documents (If these documents/items are not provided for actual work performed for a period of work covered by an Application for Payment and cannot be accurately provided due to passage of time, the Owner may deduct a reasonable amount from the Agreement sum to reflect work not performed that cannot be recovered due to progress of work.);

.10 any other reasonable basis to withhold certification.

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

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

.1 satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgement which may be recovered thereon,

.2 make good any such nonpayment, damage, failure or default, and

.3 compensate the Owner for and indemnify it against any and all losses, liability, damages, costs and expenses, including reasonable attorneys' fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If such amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 13.4.5 The Design Professional may not withhold a Certificate for Payment in whole or in part, and the Owner shall not withhold payments to the Contractor, pertaining to one Contract to offset amounts in dispute under a separate Contract. If the Design Professional withholds certification for payment, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Professional, and the Design Professional will reflect such payment on the next Certificate for Payment.

§ 13.4.6 When either party disputes the Design Professional's decision regarding a Certificate for Payment under Section 13.4.3, in whole or in part, that party may submit a Claim in accordance with Article 19.

§ 13.5 Progress Payments

§ 13.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

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§ 13.5.2 Neither the Owner nor Design Professional shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

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

§ 13.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 13.6 Substantial Completion

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

.1 Excessive punch list work remains to be completed that would prevent or interfere with the occupancy and intended use of the facility in the Owner's reasonable judgment;

.2 Incomplete or defective work remains which would prevent or interfere with the occupancy and intended use of the facility;

.3 The building mechanical systems have not been tested, balanced, and accepted as being fully complete;

.4 The building electrical and life safety systems have not been tested and accepted as being fully complete;

.5 The building commissioning process is not complete;

.6 Final clean-up is not complete to support the occupancy and intended use of the facility other than clean-up associated with punch list items;

.7 Final Inspections, approvals, and temporary or final Certificates of Occupancy by regulatory officials are not received and complete;

.8 Successful compliant testing of all data cabling (copper, fiber or other) and labeling of all data ports is incomplete; or

.9 Any other basis for the Architect's or the Owner's reasonable determination that Substantial Completion has not been achieved.

§ 13.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional and the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 13.6.3 Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Design Professional determines that the Work or designated portion thereof is substantially complete, the Design Professional will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 13.6.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 13.7 Final Completion and Final Payment

§ 13.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional and the Owner will promptly make such inspection and, when the Design Professional and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that to the best of the Design Professional's knowledge, information and belief, and on the basis of the Design Professional's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Professional's final Certificate for Payment will constitute a further representation that conditions stated in Section 13.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 13.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens and claims arising out of the Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 13.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- **.1** liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment

§ 13.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment. Unless the project has phased Final Completion dates, the Design Professional will make only one such inspection to determine Final Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of $1,000.00 per person per day plus expenses. The costs of these re-inspections shall be added to the contract by change order.

ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY

§ 14.1 Safety Precautions and Programs

§ 14.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of a Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

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§ 14.1.2 The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations.

§ 14.1.3 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 14.1.2 and 14.1.3, except for damage or loss attributable to acts or omissions of the Owner or Design Professional or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 7.15.

§ 14.2 Hazardous Materials

§ 14.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Design Professional of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 14.2.2 Subject to the provisions of the Tennessee Governmental Tort Liability Act, and to the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Design Professional, Design Professional's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact: (i) the material or substance presents the risk of bodily injury or death as described in Section 14.2.1 and has not been rendered harmless; (ii) the City had actual or constructive knowledge of the hazardous material or substance;, and (iii) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 14.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, to the extent permitted by law, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

ARTICLE 15 INSURANCE AND BONDS

§ 15.1 Contractor's Insurance

The Contractor shall purchase and maintain insurance coverage required in this Article 15, Exhibit B to this Master Agreement, and as otherwise required for a specific project as set forth in a Work Order.

§ 15.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 15.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Master Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 16.4, unless a different duration is stated below:

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§ 15.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars ($ 1,000,000.00) each occurrence, Two Million Dollars ($ 2,000,000.00) general aggregate, and Two Million Dollars ($ $2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

.2 personal and advertising injury;

.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

.4 bodily injury or property damage arising out of completed operations; and

.5 the Contractor's indemnity obligations under Section 7.15.

Each general liability policy must b endorsed or written to: (a) include the per project aggregate endorsement; (b) name as additional insureds the following: "The City of Murfreesboro, Tennessee, and its elected officials, officers, employees, representatives, and agents (collectively, the "Additional Insureds"); (c) Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk-retention programs or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors; (d) include a severability of interest clause; and (e) Waive all rights of recovery against the Additional Insureds.

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

§ 15.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 15.1.2 and 15.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 15.1.5 Workers' Compensation at statutory limits.

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

§ 15.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, as set forth in the Work Order.

§ 15.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, as set forth in the Work Order.

§ 15.1.9 Coverage under Sections 15.1.7 and 15.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined limits as set forth in the Work Order.

§ 15.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 15.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 15.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

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§ 15.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.

§ 15.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 15.1 to include (1) the Owner, the Design Professional, and the Design Professional's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Design Professional and the Design Professional's Consultants, CG 20 32 07 04.

§ 15.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 15.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 15.1.14
(Paragraphs deleted)
Contractor shall also obtain such other insurance required by an individual Work Order.
(Table deleted)

§ 15.2 Owner's Insurance

§ 15.2.1 Owner's Liability Insurance
The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 15.2.2 Property Insurance
§ 15.2.2.1 For each Work Order, the Owner shall maintain property insurance to cover the value of the Owner's property.

§ 15.2.2.2 Waiver of Subrogation
(Paragraphs deleted)
§ 15.2.2.2.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Design Professional and Design Professional's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Master Agreement or other property insurance applicable to the Project where the loss occurred, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Design Professional, Design Professional's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 15.2.2.2 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 15.2.2.2.2 If during a Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 15.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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§ 15.2.2.2.3. A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Design Professional and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Design Professional and Contractor shall make payments to their consultants and Subcontractors in similar manner.

(Table deleted)

§ 15.3 Performance Bond and Payment Bond

The Contractor's performance bond and payment bond obligations shall be as required in this Section 15.3 and in the Work Order.

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

§ 15.3.2 The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within 30-days of Notice of Award, the Contractor Bid Bond may be forfeited, and the Contract may be awarded to an alternate contractor. In addition, upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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

ARTICLE 16 CORRECTION OF WORK

§ 16.1 The Contractor shall promptly correct Work rejected by the Design Professional or the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 16.2 In addition to the Contractor's obligations under Section 7.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 13.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. This provision does not relieve the Contractor from conforming to the requirements of the Contract Documents or correcting items not compliant with the Contract Documents per applicable laws, statutes, or any regulations, whether they are observable, concealed, or in any other condition or status, nor does this provision in any way limit any warranties, service contractors, or similar agreements with third party service, equipment, or materials providers.

§ 16.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 6.3.

§ 16.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that

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portion of the Work. Upon request of the Owner and prior to the expiration of one year from the date of Substantial Completion, the Design Professional will conduct and the Contractor shall attend a meeting with the Owner to review facility operations and performance.

§ 16.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 16.

ARTICLE 17 MISCELLANEOUS PROVISIONS

§ 17.1 Assignment of Contract

Neither party to a Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. In addition, the Contractor may not assign its responsibilities, duties, obligations, and rights under this Agreement, without the express written consent of the Owner. This does not prevent the Contractor from engaging subcontractors to perform various phases of the Project, but the Contractor shall be fully responsible to the Owner for the work, actions, and omissions of all such subcontractors. No person or entity shall be deemed to be a third party beneficiary of any provisions of the Contract, nor shall any provisions thereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

§ 17.2 Governing Law

The Work Order shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 19.6.

§ 17.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations require.

§ 17.4 Change of Owner's or Contractor's Representative

Neither the Owner's nor the Contractor's representatives, for this Master Agreement or for individual Work Orders, identified in accordance with sections 1.4 and 1.5, shall be changed without ten days' prior notice to the other party.

§ 17.4 Venue

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

§ 17.5 Attorneys' Fees

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

§ 17.6 No Mandatory Arbitration

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

§ 17.7 Subject to Applicable Law; Severability

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

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§ 17.8 No Waiver; Cumulative Duties and Remedies

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

§ 17.9 Theft-Deterrence Program

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

§ 17.10 No Construction Against Maker of Modifications

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

§ 17.11 Independent Contractors

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

§ 17.12 Binding on Successors and Assigns

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

§ 17.13 Execution

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

ARTICLE 18 TERMINATION

§ 18.1 Termination of a Contract

A Contract may be terminated in accordance with this Article 18. Termination of a Contract under this Article 18 shall not be deemed a termination of any other Contract created pursuant to this Master Agreement.

(Paragraphs deleted)

§ 18.2 Termination by the Contractor

If the Design Professional fails to certify payment as provided in Section 13.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 3.1.5 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 18.3 Termination by the Owner for Cause

§ 18.3..1 The Owner may terminate a Contract if the Contractor

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

§ 18.3.2. When any of the reasons described in Section 18.3.1 exists, the Owner, upon certification by the Design Professional that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate a Contract and take possession of the site and

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of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 18.3.3 When the Owner terminates a Contract for one of the reasons stated in Section 18.1.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 18.3.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

§18.4 Termination by the Owner for Convenience

§18.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. In such case, the Owner will provide the Contractor seven days written notice of intent to terminate. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense. The Contractor shall be entitled to receive payment for Work executed along with actual costs incurred by reason of such termination, including costs attributable to termination of Subcontracts.

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

ARTICLE 19 CLAIMS AND DISPUTES

(Paragraphs deleted)

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

(Paragraph deleted)

§ 19.1.2 Notice of Claims.

.1 Claims by either the Owner or the Contractor must be initiated by written notice to the other party. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

.2 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a contractor default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraphs deleted)

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

§ 19.1.4 Claims

.1 **For Additional Cost**. If the Contractor makes a Claim for an increase in the Contract Sum, written notice to the Owner shall be given before proceeding to execute the Work if practical or within 15 days of any Change Directive. Prior notice is not required for Claims relating to an emergency endangering life or property.

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.2 **For Additional Time.** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice to the Owner shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions that were clearly abnormal for the period of time such that they could not have been reasonably anticipated and clearly had an adverse effect on the scheduled construction.

A. Claims for increase in the Contract Time shall set forth, in detail the circumstances that form the basis for the Claim, the date upon which the cause of the delay began to affect the progress of the Work, the date upon which the cause of delay ceased to affect the progress of the Work, and the number of days increased in the Contract Time claimed as a consequence of each cause of delay.

B. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all of the activities affected by the circumstances forming the basis of the claim. The Contractor shall not be entitled to a separate increase of the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the work, or for concurrent delays due to the fault of the Contractor.

§ 19.1.5 Initial Decision on Claims Made by Contractor

.1 The Owner will make an initial decision on all claims submitted by the Contractor. An initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered.

.2 The Owner will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (i) request additional supporting data from the claimant or a response with supporting data from the other party, (ii) reject the Claim in whole or in part, (iii) approve the Claim, (iv) suggest a compromise, or (v) advise the Contractor that the Owner is unable to resolve the Claim because the Owner lacks sufficient information to evaluate the merits of the Claim.

.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist Owner in rendering a decision.

.4 The Owner will render an initial decision approving or rejecting the Claim or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (i) be in writing: (ii) state the reasons therefor: and (iii) notify the Contractor of any recommended Change Order.

§ 19.1.6 Mediation.

.1 Claims, disputes, or other matters in controversy arising out of or related to the contract not resolved by the Initial Decision Making process, nor waived under this Contract, shall be subject to mediation as a condition precedent to binding dispute resolution.

.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Contract. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

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

.4 Exceptions:

A. Neither the Owner nor Contractor are not be required to mediate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Contractor.

B. The Owner or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice

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the Party seeks to enforce is enforceable under Tennessee law), without the first requesting mediation.

C. This section 19.1.6 does not apply to, and may not be construed to require mediation of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building and Codes Department, Planning Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

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

§ 17.2 Liquidated Damages.

§ 17.2.1 In the event Substantial Completion is not achieved by the date specified above, except as result only from delays for which the Owner is chargeable under the Contract Documents or from Unavoidable Delay (as defined below), the Contractor agrees that the Owner shall have the right to deduct from any sums due to the Contractor hereunder the sum of dollars ($500.00) for each day that Substantial Completion is actually delayed, provided, however that (i) the Owner may make such deductions prior to the scheduled date of Substantial Completion in the event the Owner reasonably projects that the Project will not be completed on the scheduled date of Substantial Completion, and (ii) the Contractor shall pay to the Owner in cash any amounts which the Owner is entitled to deduct in the event the remaining amount of funds due the Contractor hereunder is less than the remaining amounts the Owner has the right to deduct.

§ 17.2.2 The Owner and the Contractor agree and acknowledge that the Owner's actual damages for the failure of Substantial Completion would be substantial but extremely difficult to ascertain and such sum represents a fair and reasonable estimate of the costs the Owner will incur as a result of such late achievement of Substantial Completion.

§ 17.2.3 "Unavoidable Delay" means delays due to any of the following, and only the following, (provided that such delay is beyond the Contractor's reasonable control): war, insurrection, civil commotion, strikes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental moratoriums, unusually severe or abnormal weather condition that could not reasonably be projected and provided for in the project schedule, failure of utilities, or a court order which causes a delay (unless resulting from a wrongful act). In no event shall the application to the Contractor or any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. The Contractor shall use reasonable good faith efforts to notify the Owner not later than five days after the Contractor knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for a period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

ARTICLE 20 SCOPE OF THIS MASTER AGREEMENT

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

§ 20.2 This Master Agreement is comprised of the following documents listed below:

.1 AIA Document A121™–2018, Standard Form Master Agreement Between Owner and Contractor;

.2 Exhibit A, Determination of the Cost of the Work, if applicable.

.3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

.4 Other documents:
(List other documents incorporated into this Master Agreement.)

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

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
(Printed name and title)	*(Printed name and title)*

Init.
/

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Additions and Deletions Report for

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PAGE 1

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

PAGE 2

8 ~~ARCHITECT~~DESIGN PROFESSIONAL

PAGE 3

Scott Elliott, Project Development Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
gregmcknight@murfreesborotn.gov
(629) 219-6369

...

§ 1.6 The Owner may retain a Design Professional or Engineer ("Design Professional") to perform certain services in connection with a specific Project, as enumerated in this Master Agreement and a particular Project's Work Order. If a Design Professional is not required by law, or otherwise not engaged on a Project, the Owner shall perform such duties and services identified in this Master Agreement as being the responsibility of the Design Professional.

...

§ 2.3 The Contractor shall execute the Work set forth in each agreed upon Work Order, consisting of AIA Document A221-2018, Work Order, or such other document as the Owner and Contractor may mutually agree upon. Each Work Order shall state the name, location, and detailed description of the Project; identify the ~~Architect;~~ Design Professional; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

...

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

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§ 3.1.5 Provided that an Application for Payment is received by the ~~Architect~~ Design Professional not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the ~~Architect~~ Design Professional after the date

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fixed above, payment shall be made by the Owner not later than sixty (60) days after the ~~Architect~~ Design Professional receives the Application for Payment.

...

§ 3.1.6 For each progress payment made prior to ~~Substantial Completion of the Work,~~ final payment, the Owner may withhold retainage from the payment otherwise due as follows:

...

Five percent (5%) until acceptance of a Certificate of Substantial Completion, and thereafter two percent (2%) until final payment.

...

6 % per year

...

.3 a final Certificate for Payment has been issued by the ~~Architect~~ Design Professional in accordance with Section 13.7.1.

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

...

[X] Arbitration pursuant to Section 19.6 of this Master Agreement

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§ 5.1.1 Specifications may describe types and quantities of materials, equipment, and other items of the Work and methods of installation that cannot be easily shown on the Drawings. It is not intended that the Specifications will mention every item of Work that can be adequately shown on the Drawings nor is it intended that the Drawings will show all items of Work adequately described or required by the Specifications, even if it is the case that such Work could have been shown thereon.

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

~~The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); all Drawings, Specifications, and Addenda issued in connection with the Work Order; other documents listed in the Work Order; and Modifications issued after execution of the Work Order. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.~~

§ 5.2.1 The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); all Drawings, Specifications, and Addenda issued in connection with the Work Order; other

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documents listed in the Work Order; and Modifications issued after execution of the Work Order. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Professional.

§ 5.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 5.2.3 In the event there are conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

.1 Amendments to a Work Order or this Master Agreement, with those of later date having precedence over those of earlier date

.2 The Work Order

.3 This Master Agreement;

.4 Addenda, with those of later date having precedence over those of earlier date.

.5 Division 1 of the Specifications, if any

.6 Drawings and Specifications

.7 Other documents specifically enumerated in the Master Agreement or Work Order as part of the Contract Documents.

.8 In the case of any conflicts or discrepancies between Drawings and Specifications or within or among the Contract Documents and not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Design Professional's interpretation.

PAGE 6

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Architect~~ Design Professional and the ~~Architect's~~ Design Professional's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

...

§ 5.5.1 The ~~Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~Instruments of Service, including Drawings and Specifications, prepared by the Design Professional and the Design Professional's consultants are for use solely with respect to the Project identified in a specific Work Order. The Contractor, subcontractors, sub-subcontractors, materialmen, and equipment suppliers are authorized to use and reproduce solely and exclusively for execution of th Work. The Design Professional's drawings, specifications, and other Instruments of Service may not be used for other projects.

§ 5.5.2 The ~~Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 5.6 and 5.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service.~~ Design Professional and the Design Professional's consultants shall be deemed the authors and owners of their respective Instruments of Service including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers ~~may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner, Architect and the Architect's consultants.~~shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design Professional's or Design Professional's consultants' reserved rights.

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§ 5.5.3 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 5.6 and 5.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner, Design Professional and the Design Professional's consultants.

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Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Master Agreement and covenants with the Owner to cooperate with the ~~Architect~~ Design Professional and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

...

§ 6.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 7.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. If the Contractor's bid includes fees that the Owner has paid, or is required to pay directly, or that the Owner may waive, the Contractor shall, at the Owner's option, either pay these fees as a part of their bid or deduct fees from Contract Sum as a deductive change order.

§ 6.1.5 The Owner will a digital copy in .pdf format or furnish six (6) copies of the Contract Documents to the Contractor. The Contractor may purchase additional copies of the Contract Documents at the cost of reproduction, postage, and handling.

...

If the Contractor fails to correct Work which is not in accordance with the ~~requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with~~ Contract Documents, or is in default of its material obligations under the Contract Documents, the Owner may ~~issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.~~direct the Contractor in writing to stop the Work until the correction is made or default is cured, for which there will be no Change Order extending the Contract Time or the Contract Sum.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect~~ Design Professional and the ~~Architect~~ Design Professional may, pursuant to Section 13.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the ~~Architect's~~ Design Professional's additional services made necessary by such default, neglect, or failure. In addition, if payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner immediately upon the Owner's written demand. If the Contractor disagrees with the actions of the Owner or the ~~Architect,~~ Design Professional, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 19.

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§ 7.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 6.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the ~~Architect~~ Design Professional any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect may require.~~ Design Professional may require. Such reports shall also be made simultaneously and directly to the Owner. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 7.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect~~ Design Professional any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect may require.~~Design Professional may require.

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

.1 That the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 That the Contractor is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 That the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental authorities having jurisdiction over it, the Work, or the site of the Project; and

.4 That the execution of the Contract and its performance thereof are within the duly-authorized powers of the Contractor and the signatory on behalf of the Contractor.

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

§ 8.1.5 The Owner is entitled to reimbursement from the Contractor, which are in addition to any Liquidated Damages, for amounts paid to the Design Professional for evaluating and responding to (i) the Contractor's requests for information that are not prepared in accordance with the Contract Documents; (2) where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation; or (3) Owner incurs additional project management costs.

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§ 7.2.2 The Contractor shall ~~be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work.~~layout new construction lines and verify slab slope and conditions. If discrepancies between actual lines and elevations and those indicated on plans exist, notify Design Professional and obtain a decision before starting work.

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

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

§ 7.2.5 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work.

...

§ 7.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the ~~Architect~~ Design Professional and in accordance with a Modification.

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

§ 7.4.4 Substitutions:

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

. 2 The Design Professional will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications) ten (1 0) days prior to bid date. By making requests for substitutions, the Contractor:

A. Represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

B. Represents that it will provide the same warranty for the substitution as it would for the product specified;

C. Certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution except for the Design Professional's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and

D. Shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects. .

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

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

§ 8.4.5 The use of undocumented workers is not permitted.

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

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

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~~The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 13.6.3.~~**§ 7.4.1** The Contractor warrants to the Owner and Design Professional that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the contract documents. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty, including, manufacturer or supplier warranties, or remedy required by law or by the Contract Documents, and notwithstanding anything to the contrary contained in the Contract Documents. This warranty commences upon Final Completion. The Contractor shall promptly repair and replace, at the Contractor's sole cost and expense, any materials, equipment, or Work covered by and violating the warranty. All warranty work shall be coordinated with the Owner in order to limit the disruption of operation and completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents.

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

§ 7.4.3 Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferrable to the Owner, and shall commence in accordance with Section 13.6.3.

...

The Contractor shall pay ~~sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded for an individual Contract, whether or not yet effective or merely scheduled to go into effect.~~all taxes, levies duties, and assessments of any nature that are applicable to any Work under an individual Contract. The Contract Sum and any agreed variations thereof shall include all taxes by law. The Contractor shall make any and all payroll deductions required by law. The Contractor herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

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§ 7.8.1 The Contractor, promptly after executing a Work Order, shall submit for the Owner's and ~~Architect's~~ Design Professional's information a Contractor's construction schedule for the Work described in that Work Order. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 7.8.2 The Contractor must maintain an updated project schedule and shall perform the Work in general accordance with the most recent schedule submitted ~~to the Owner and Architect.~~to the Owner and Design Professional. If milestones are negatively impacted, the Contractor must, prior to submission of the next application for payment, provide Owner and Design Professional with a specific plan to return the Project to the project schedule.

...

§ 7.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the ~~Architect~~ Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the ~~Architect~~ Design Professional reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and ~~Architect~~ Design Professional that the Contractor has (1)

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reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals. Neither the Design Professional nor the Owner shall be responsible for correctness of dimensions shown on shop drawings or submittals. The Design Professional's review of Contractor's submittals will be limited to general conformance with the project scope, finish selection, and examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Design Professional for evaluation of additional submittals.

...

§ 7.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the ~~Architect~~ Design Professional will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The ~~Architect~~ Design Professional will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The ~~Architect's~~ Design Professional's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the ~~Architect~~ Design Professional will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

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The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under a Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project. If the Contractor fails to clean-up as provided in the Contract Documents, the Owner may do so, and the cost thereof shall be charged to the Contractor and deducted from the remaining. No on-site burning of trash is allowed.

...

The Contractor shall provide the Owner and ~~Architect~~ Design Professional access to the Work in preparation and progress wherever located.

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and ~~Architect~~ Design Professional harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or ~~Architect.~~ Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect.~~ Design Professional.

...

§ 7.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's~~ Design Professional, Design Professional's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or

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indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 7.15.1.

...

~~**ARTICLE 8 ARCHITECT**~~

§ 7.15.3 The provisions of this Section 7.15 shall survive the completion of the Work or termination of the Agreement.

§ 7.15 Requests for Information

Contractor requests for information shall be prepared and submitted in accordance with Division 1 General Requirements sections on AIA Document G716-2004. The Architect will return without action requests for information that do not conform to requirements of the Contract Documents.

ARTICLE 8 DESIGN PROFESSIONAL

§ 8.1 ~~The Owner shall retain an Architect to perform the services~~ As set stated in Section 1.6, the Owner may retain a Design Professional to perform certain services in connection with a specific Project, as enumerated in this Article 8 and as described elsewhere in this Master Agreement. If ~~an Architect~~ a Design Professional is not required by law, or otherwise not engaged on ~~the~~ a Project, the Owner shall perform such ~~services.~~duties and services identified in this Master Agreement as being the responsibility of the Design Professional.

§ 8.2 The ~~Architect~~ Design Professional listed on each Work Order will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the ~~Architect~~ Design Professional issues the final Certificate for Payment for the Contract. The ~~Architect~~ Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 8.3 Duties, responsibilities, and limitations of authority of the ~~Architect~~ Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and ~~Architect.~~ Design Professional. Consent shall not be unreasonably withheld.

§ 8.4 The ~~Architect~~ Design Professional will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ~~Architect~~ Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Design Professional will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Design Professional for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 8.5 On the basis of the site visits, the ~~Architect~~ Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The ~~Architect~~ Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect~~ Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 8.6 Based on the ~~Architect's~~ Design Professional's evaluations of the Work and of the Contractor's Applications for Payment, the ~~Architect~~ Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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§ 8.7 The ~~Architect~~ Design Professional has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 8.8 The ~~Architect~~ Design Professional will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 8.9 The ~~Architect~~ Design Professional will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The ~~Architect~~ Design Professional will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 8.10 The ~~Architect's~~ Design Professional's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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§ 9.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after execution of a Work Order, shall notify the Owner and ~~Architect~~ Design Professional of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or ~~Architect~~ Design Professional has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 9.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and ~~Architect,~~ Design Professional, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

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§ 11.1 By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating ~~the~~ this Master Agreement or a Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and ~~Architect,~~ Design Professional, or by written Construction Change Directive signed by the Owner and ~~Architect.~~ Design Professional. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 11.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and ~~Architect,~~ Design Professional, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The ~~Architect~~ Design Professional will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the ~~Architect~~ Design Professional will prepare a Change Order.

§ 11.3 The ~~Architect~~ Design Professional will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The

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Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the ~~Architect~~ Design Professional within 15 days of being notified of the change in the Work and shall not proceed to implement the change ~~in the Work.~~ in the Work until the need for a Change Order is determined by the Design Professional in consultation with the Owner.

§ 11.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and ~~Architect~~ Design Professional promptly and before conditions are disturbed.

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

.1 For the Contractor, for Work performed by the Contractor's own forces at the fee negotiated with the owner of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by that Subcontractor's or Sub-Subcontractor's own forces, ten percent (10%) of the cost.

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub- Subcontractors, five percent (5%) of the amount due the Sub-Subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 11.2.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over $500.00 be approved without such itemization.

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§ 12.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The date of commencement of the Work is the date stated in the notice to proceed.

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§ 12.4 The date of Substantial Completion is the date certified by the ~~Architect~~ Design Professional in accordance with Section 13.6.3.

§ 12.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the ~~Architect~~ Design Professional determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect~~ Design Professional may determine, subject to the provisions of Article 19. Contractor will not be granted extensions of time for delays caused by inadequate construction force, the failure of the Contractor to place orders for equipment or materials sufficiently in advance to ensure delivery when needed., or the failure of Contractor to protect properly the site from inclement weather.

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§ 13.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall submit a schedule of values to the ~~Architect~~ Design Professional before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the ~~Architect.~~ Design Professional. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

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§ 13.2.3 When the Control Estimate is acceptable to the Owner and ~~Architect,~~ Design Professional, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 13.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and ~~Architect~~ Design Professional with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 13.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and ~~Architect~~ Design Professional of any inconsistencies between the Control Estimate and the revised Contract Documents.

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§ 13.3.1 Applications for Payment will be submitted individually for each Contract as set forth in this section 13.3. The form of Application for Payment duly notarized shall be a current authorized edition of AIA Document G702-1992 Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 13.3.2 At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect~~ Design Professional an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 13.1, for completed portions of the Work. The application shall be ~~notarized, if required;~~ notarized; be supported by all data substantiating the Contractor's right to payment that the Owner or ~~Architect~~ Design Professional require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 13.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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§ 13.3.4 ~~Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.~~Applications for Payment shall indicate retainage withheld from the total completed and stored to date as provided in Section 3.1.6. The resulting amount shall be indicated as the total earned less retainage. Applications that reduce retainage shall be accompanied by Consent of Surety.

§ 13.3.5 ~~The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.~~Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

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

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§ 13.4.1 The ~~Architect~~ Design Professional will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the ~~Architect~~ Design Professional determines is properly due, or notify the Contractor and Owner of the ~~Architect's~~ Design Professional's reasons for withholding certification in whole or in part as provided in Section 13.4.3.

§ 13.4.2 The issuance of a Certificate for Payment will constitute a ~~representation by the Architect~~ recommendation only by the Design Professional and does not creat a legal, binding obligation on the part of the Owner. The Certificate for Payment constitute a representation by the Design Professional to the Owner, based on the ~~Architect's~~ Design Professional's evaluations of the Work and the data in the Application for Payment, that, to the best of the ~~Architect's~~ Design Professional's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the ~~Architect.~~ Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect~~ Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 13.4.3 The ~~Architect~~ Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the ~~Architect's~~ Design Professional's opinion the representations to the Owner required by Section 13.4.2 cannot be made. If the ~~Architect~~ Design Professional is unable to certify payment in the amount of the Application, the ~~Architect~~ Design Professional will notify the Contractor and Owner as provided in Section 13.4.1. If the Contractor and the ~~Architect~~ Design Professional cannot agree on a revised amount, the ~~Architect~~ Design Professional will promptly issue a Certificate for Payment for the amount for which the ~~Architect~~ Design Professional is able to make such representations to the Owner. The ~~Architect~~ Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the ~~Architect's~~ Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 7.2.2, because of

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~

.7 repeated failure to carry out the Work in accordance with the Contract ~~Documents.~~Documents;

.8 failure of the Contractor to comply with applicable codes, laws, or regulations;

.9 failure to update as-built drawings or provide construction photographs with the Application for Payment as required by the Contract Documents (If these documents/items are not provided for actual work performed for a period of work covered by an Application for Payment and cannot be accurately provided due to passage of time, the Owner may deduct a reasonable amount from the Agreement sum to reflect work not performed that cannot be recovered due to progress of work.);

.10 any other reasonable basis to withhold certification.

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

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

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.1 satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgement which may be recovered thereon,

.2 make good any such nonpayment, damage, failure or default, and

.3 compensate the Owner for and indemnify it against any and all losses, liability, damages, costs and expenses, including reasonable attorneys' fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If such amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 13.4.5 The ~~Architect~~ Design Professional may not withhold a Certificate for Payment in whole or in part, and the Owner shall not withhold payments to the Contractor, pertaining to one Contract to offset amounts in dispute under a separate Contract. If the Design Professional withholds certification for payment, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Professional, and the Design Professional will reflect such payment on the next Certificate for Payment.

§ 13.4.6 When either party disputes the ~~Architect's~~ Design Professional's decision regarding a Certificate for Payment under Section 13.4.3, in whole or in part, that party may submit a Claim in accordance with Article 19.
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§ 13.5.2 Neither the Owner nor ~~Architect~~ Design Professional shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

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

.1 Excessive punch list work remains to be completed that would prevent or interfere with the occupancy and intended use of the facility in the Owner's reasonable judgment;

.2 Incomplete or defective work remains which would prevent or interfere with the occupancy and intended use of the facility;

.3 The building mechanical systems have not been tested, balanced, and accepted as being fully complete;

.4 The building electrical and life safety systems have not been tested and accepted as being fully complete;

.5 The building commissioning process is not complete;

.6 Final clean-up is not complete to support the occupancy and intended use of the facility other than clean-up associated with punch list items;

.7 Final Inspections, approvals, and temporary or final Certificates of Occupancy by regulatory officials are not received and complete;

.8 Successful compliant testing of all data cabling (copper, fiber or other) and labeling of all data ports is incomplete; or

.9 Any other basis for the Architect's or the Owner's reasonable determination that Substantial Completion has not been achieved.

§ 13.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the ~~Architect~~ Design Professional and

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the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 13.6.3 Upon receipt of the Contractor's list, the ~~Architect~~ Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the ~~Architect~~ Design Professional determines that the Work or designated portion thereof is substantially complete, the ~~Architect~~ Design Professional will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 13.6.4 ~~The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~Unless the project has phased Substantial Completion dates, the Design Professional will make only one such inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of $1,000.00 per person per day plus expenses. The costs of these re-inspections shall be added to the contract by change order.

§ 13.6.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
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§ 13.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect~~ Design Professional and the Owner will promptly make such inspection and, when the ~~Architect finds~~ Design Professional and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect~~ Design Professional will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect's~~ Design Professional's knowledge, information and belief, and on the basis of the ~~Architect's~~ Design Professional's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The ~~Architect's~~ Design Professional's final Certificate for Payment will constitute a further representation that conditions stated in Section 13.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 13.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens and claims arising out of the Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

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§ 13.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment. Unless the project has phased Final Completion dates, the Design Professional will make only one such inspection to determine Final Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of $1,000.00 per person per day plus expenses. The costs of these re-inspections shall be added to the contract by change order.

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~~The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of a Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to~~**§ 14.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of a Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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~~The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 14.1.2 and 14.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 7.15.~~**§ 14.1.2** The Contactor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations.

§ 14.1.3 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 14.1.2 and 14.1.3, except for damage or loss attributable to acts or omissions of the Owner or Design Professional or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 7.15.

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§ 14.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and ~~Architect~~ Design Professional of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 14.2.2 ~~To~~ Subject to the provisions of the Tennessee Governmental Tort Liability Act, and to the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, ~~Architect, Architect's~~ Design Professional, Design Professional's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in ~~fact,~~ fact: (i) the material or substance presents the risk of bodily injury or death as described in Section 14.2.1 and has not been rendered ~~harmless, provided that~~ harmless; (ii) the City had actual or constructive knowledge of the hazardous material or substance;, and (iii) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property

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(other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 14.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, ~~the Owner shall indemnify~~ to the extent permitted by law, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

...

The Contractor shall purchase and maintain insurance coverage required in this Article ~~15~~ 15, Exhibit B to this Master Agreement, and as otherwise required for a specific project as set forth in a Work Order.
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§ 15.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars ($ 1,000,000.00) each occurrence, Two Million Dollars ($ 2,000,000.00) general aggregate, and Two Million Dollars ($ $2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

...

.5 the Contractor's indemnity obligations under Section 7.15.
Each general liability policy must b endorsed or written to: (a) include the per project aggregate endorsement; (b) name as additional insureds the following: "The City of Murfreesboro, Tennessee, and its elected officials, officers, employees, representatives, and agents (collectively, the "Additional Insureds"); (c) Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk-retention programs or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors; (d) include a severability of interest clause; and (e) Waive all rights of recovery against the Additional Insureds.

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

...

§ 15.1.6 Employers' Liability with policy limits not less than One Million Dollars ($ 1,000,000.00) each accident, One Million Dollars ($ 1,000,000.00) each employee, and One Million Dollars ($ 1,000,000.00) policy limit.
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§ 15.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 15.1 to include (1) the Owner, the ~~Architect,~~ Design Professional, and the ~~Architect's~~ Design Professional's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the ~~Architect~~ Design Professional and the ~~Architect's~~ Design Professional's Consultants, CG 20 32 07 04.

...

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§ 15.1.14 ~~Other Insurance Provided by the Contractor~~

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

Contractor shall also obtain such other insurance required by an individual Work Order.

~~Coverage~~	~~Limits~~

...

§ 15.2.2.1 For each Work Order, the Owner shall ~~purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 15.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Master Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.~~maintain property insurance to cover the value of the Owner's property.

§ 15.2.2.2 ~~Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 15.2.2.1 or, if necessary, replace the insurance policy required under Section 15.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 16.4.~~

Waiver of Subrogation

~~§ 15.2.2.3~~ ~~If the insurance required by this Section 15.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.~~

~~§ 15.2.2.4~~ ~~For each Work Order, if the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 16.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

~~§ 15.2.2.5~~ ~~Prior to commencement of the Work in each Work Order, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 15.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 15.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

~~§ 15.2.2.6~~ ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 15.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work on the Project(s) to which the lapsed insurance applies until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

~~§ 15.2.2.7 Waiver of Subrogation~~

~~§ 15.2.2.7.1~~ ~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Master Agreement or other property insurance applicable to the Project where the loss occurred, except such rights as~~

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~~they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 15.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

~~**§ 15.2.2.7.2** If during a Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 15.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~**§ 15.2.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~**§ 15.2.3 Other Insurance Provided by the Owner**~~

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

§ 15.2.2.2.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Design Professional and Design Professional's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Master Agreement or other property insurance applicable to the Project where the loss occurred, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Design Professional, Design Professional's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 15.2.2.2 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 15.2.2.2.2 If during a Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 15.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 15.2.2.2.3. A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Design Professional and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Design Professional and Contractor shall make payments to their consultants and Subcontractors in similar manner.

~~**Coverage** **Limits**~~

The Contractor's performance bond and payment bond obligations shall be as required in this Section 15.3 and in the Work Order.

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§ 15.3.1 ~~The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.~~Unless waived by the Owner where a Contract Sum is less than $100,000, the Contractor shall secure performance and payment bonds for 100% of the Contract Sum on a form acceptable to the Owner covering the faithful performance and completion of the Agreement and the payment of all obligations arising thereunder. Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.

§ 15.3.2 ~~Upon~~ The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within 30-days of Notice of Award, the Contractor Bid Bond may be forfeited, and the Contract may be awarded to an alternate contractor. In addition, upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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

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§ 16.1 The Contractor shall promptly correct Work rejected by the ~~Architect~~ Design Professional or the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the ~~Architect's~~ Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 16.2 In addition to the Contractor's obligations under Section 7.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 13.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. This provision does not relieve the Contractor from conforming to the requirements of the Contract Documents or correcting items not compliant with the Contract Documents per applicable laws, statutes, or any regulations, whether they are observable, concealed, or in any other condition or status, nor does this provision in any way limit any warranties, service contractors, or similar agreements with third party service, equipment, or materials providers.

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§ 16.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. Upon request of the Owner and prior to the expiration of one year from the date of Substantial Completion, the Design Professional will conduct and the Contractor shall attend a meeting with the Owner to review facility operations and performance.

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Neither party to a Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. In addition, the Contractor may not assign its responsibilities, duties, obligations, and rights under this Agreement, without the express written consent of the Owner. This does not prevent the Contractor from engaging subcontractors to perform various phases of the Project, but the Contractor shall be fully responsible to the Owner for the work, actions, and omissions of all such

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subcontractors. No person or entity shall be deemed to be a third party beneficiary of any provisions of the Contract, nor shall any provisions thereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

...

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the ~~Architect~~ Design Professional timely notice of when and where tests and inspections are to be made so that the ~~Architect~~ Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations require.

§ 17.4 Change of Owner's or Contractor's Representative

Neither the Owner's nor the Contractor's representatives, for this Master Agreement or for individual Work Orders, identified in accordance with sections 1.4 and 1.5, shall be changed without ten days' prior notice to the other party.

§ 17.4 Venue

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

§ 17.5 Attorneys' Fees

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

§ 17.6 No Mandatory Arbitration

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

§ 17.7 Subject to Applicable Law; Severability

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

§ 17.8 No Waiver; Cumulative Duties and Remedies

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

§ 17.9 Theft-Deterrence Program

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

§ 17.10 No Construction Against Maker of Modifications

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

§ 17.11 Independent Contractors

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

§ 17.12 Binding on Successors and Assigns

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

§ 17.13 Execution

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

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~~**§ 18.1.1 Termination by the Contractor**~~

~~If the Architect fails to certify payment as provided in Section 13.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 3.1.5 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~

~~**§ 18.1.2 Termination by the Owner for Cause**~~

~~**§ 18.1.2.1** The Owner may terminate a Contract if the Contractor~~

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

~~**§ 18.1.2.2** When any of the reasons described in Section 18.1.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate a Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

~~**§ 18.1.2.3** When the Owner terminates a Contract for one of the reasons stated in Section 18.1.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.~~

~~**§ 18.1.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.~~

~~**§18.1.3 Termination by the Owner for Convenience**~~

~~The Owner may, at any time, terminate a Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:~~

~~*(Insert the amount of, or method for determining, the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)*~~

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§ 18.2 Termination by the Contractor

If the Design Professional fails to certify payment as provided in Section 13.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 3.1.5 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 18.3 Termination by the Owner for Cause

§ 18.3..1 The Owner may terminate a Contract if the Contractor

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

§ 18.3.2. When any of the reasons described in Section 18.3.1 exists, the Owner, upon certification by the Design Professional that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate a Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 18.3.3 When the Owner terminates a Contract for one of the reasons stated in Section 18.1.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 18.3.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

§18.4 Termination by the Owner for Convenience

§18.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. In such case, the Owner will provide the Contractor seven days written notice of intent to terminate. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense. The Contractor shall be entitled to receive payment for Work executed along with actual costs incurred by reason of such termination, including costs attributable to termination of Subcontracts.

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

~~**§ 19.1** Claims, disputes, and other matters in question arising out of or relating to a Contract executed pursuant to this Master Agreement, including those alleging an error or omission by the Architect but excluding those arising under Section 14.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 19.11 and Sections 13.7.3 and 13.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.~~

~~**§ 19.2 Notice of Claims**~~

~~**§ 19.2.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 16.2, shall be initiated by notice to the~~

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~~Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

~~**§ 19.2.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 16.2, shall be initiated by notice to the other party.~~

~~**§ 19.3 Time Limits on Claims**~~

~~The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Master Agreement, whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.3.~~

~~**§ 19.4** If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

~~**§ 19.5** The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Master Agreement. A request for mediation shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~**§ 19.6** If the parties have selected arbitration as the method for binding dispute resolution in this Master Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Master Agreement. Demand for arbitration shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 19.7** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Master Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 19.8** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.~~

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

~~**§ 19.9** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Master Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 19.1.2 Notice of Claims.

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.1 Claims by either the Owner or the Contractor must be initiated by written notice to the other party. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

.2 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a contractor default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~**§ 19.10 Continuing Contract Performance**~~

~~Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.~~

~~**§ 19.11 Waiver of Claims for Consequential Damages**~~

~~The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to any Contracts formed pursuant to this Master Agreement. This mutual waiver includes~~

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 18. Nothing contained in this Section 19.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

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

§ 19.1.4 Claims

.1 **For Additional Cost**. If the Contractor makes a Claim for an increase in the Contract Sum, written notice to the Owner shall be given before proceeding to execute the Work if practical or within 15 days of any Change Directive. Prior notice is not required for Claims relating to an emergency endangering life or property.

.2 **For Additional Time.** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice to the Owner shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions that were clearly abnormal for the period of time such that they could not have been reasonably anticipated and clearly had an adverse effect on the scheduled construction.

A. Claims for increase in the Contract Time shall set forth, in detail the circumstances that form the basis for the Claim, the date upon which the cause of the delay began to affect the progress of the Work, the date upon which the cause of delay ceased to affect the progress of the Work, and the number of days increased in the Contract Time claimed as a consequence of each cause of delay.

B. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all of the activities affected by the circumstances forming the basis of the claim. The Contractor shall not be entitled to a separate increase of the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the work, or for concurrent delays due to the fault of the Contractor.

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§ 19.1.5 Initial Decision on Claims Made by Contractor

.1 The Owner will make an initial decision on all claims submitted by the Contractor. An initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered.

.2 The Owner will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (i) request additional supporting data from the claimant or a response with supporting data from the other party, (ii) reject the Claim in whole or in part, (iii) approve the Claim, (iv) suggest a compromise, or (v) advise the Contractor that the Owner is unable to resolve the Claim because the Owner lacks sufficient information to evaluate the merits of the Claim.

.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist Owner in rendering a decision.

.4 The Owner will render an initial decision approving or rejecting the Claim or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (i) be in writing: (ii) state the reasons therefor: and (iii) notify the Contractor of any recommended Change Order.

§ 19.1.6 Mediation.

.1 Claims, disputes, or other matters in controversy arising out of or related to the contract not resolved by the Initial Decision Making process, nor waived under this Contract, shall be subject to mediation as a condition precedent to binding dispute resolution.

.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Contract. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

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

.4 Exceptions:

A. Neither the Owner nor Contractor are not be required to mediate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Contractor.

B. The Owner or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the first requesting mediation.

C. This section 19.1.6 does not apply to, and may not be construed to require mediation of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building and Codes Department, Planning Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

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

§ 17.2 Liquidated Damages.

§ 17.2.1 In the event Substantial Completion is not achieved by the date specified above, except as result only from delays for which the Owner is chargeable under the Contract Documents or from Unavoidable Delay (as defined below), the Contractor agrees that the Owner shall have the right to deduct from any sums due to the Contractor hereunder the sum of dollars ($500.00) for each day that Substantial Completion is actually delayed, provided, however that (i) the Owner may make such deductions prior to the scheduled date of Substantial Completion in the event the Owner reasonably projects that the Project will not be completed on the scheduled date of Substantial Completion, and (ii) the Contractor shall pay to the Owner in cash any amounts which the Owner is entitled to deduct

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in the event the remaining amount of funds due the Contractor hereunder is less than the remaining amounts the Owner has the right to deduct.

§ 17.2.2 The Owner and the Contractor agree and acknowledge that the Owner's actual damages for the failure of Substantial Completion would be substantial but extremely difficult to ascertain and such sum represents a fair and reasonable estimate of the costs the Owner will incur as a result of such late achievement of Substantial Completion.

§ 17.2.3 "Unavoidable Delay" means delays due to any of the following, and only the following, (provided that such delay is beyond the Contractor's reasonable control): war, insurrection, civil commotion, strikes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental moratoriums, unusually severe or abnormal weather condition that could not reasonably be projected and provided for in the project schedule, failure of utilities, or a court order which causes a delay (unless resulting from a wrongful act). In no event shall the application to the Contractor or any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. The Contractor shall use reasonable good faith efforts to notify the Owner not later than five days after the Contractor knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for a period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

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Certification of Document's Authenticity

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I, Adam F. Tucker, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:35:54 ET on 06/16/2022 under Order No. 3104236655 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A121™ – 2018, Standard Form of Master Agreement Between Owner and Contractor where Work is provided under multiple Work Orders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Vehicle Purchase for Code Enforcement Inspectors

Department: Building and Codes

Presented by: Kevin Jones, Assistant Director of Building Codes

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Purchase three Ford F-150's for the Building & Codes Department.

Staff Recommendation

Approval to purchase three Ford F-150's through Ford of Murfreesboro under State contract.

Background Information

The Department is transitioning from some inspectors to city owned vehicles. Currently, four are in operation. This purchase will total of seven vehicles.

Council Priorities Served

Maintain public safety

Use of City vehicles for City work is more cost-effective and provides greater enforcement visibility on job sites and in neighborhoods.

Fiscal Impact

The expense, $85,404, is funded in the FY22 CIP budget.

Attachments

1. Ford of Murfreesboro Quote
2. Contract

Ford of Murfreesboro

1550 NW Broad St. Murfreesboro, TN 37129

SWC QUOTE

SWC 209

TO:
City of Murfreesboro

DATE 8/3/2022
TERMS
DELIVERY TBD
NUMBER MUR019

We are pleased to quote you the following:

QUANTITY	CODE	DESCRIPTION	UNIT PRICE	TOTAL
3	F1C	F-150 Regular Cab, 4x2	$24,539.00	$73,617.00
3	OPT	Optional Equipment	$3,929.00	$11,787.00
		Window Sticker and Build Sheet include detailed optional and upfit equipment information. Any options that are not highlighted are included at no additional cost.		
		Total Price	**$28,468.00**	**$85,404.00**

We will be happy to supply any further information you may need and trust that you call on us to fill your order, which will receive our prompt and careful attention.

QUOTE SIGNED

August 3, 2022
DATE

Prepared by: Jason McCullough
07/12/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 F-150 4x2 Regular Cab 6.5' box 122" WB XL (F1C)

Price Level: 255

As Configured Vehicle

Code	Description	MSRP
Base Vehicle		
F1C	Base Vehicle Price (F1C)	$30,870.00
Packages		
101A	Equipment Group 101A High	$2,080.00
	- Option Discount	-$750.00
	Includes: *- Transmission: Electronic 10-Speed Automatic* *Includes selectable drive modes: normal, ECO, sport, tow/haul, slippery and trail.* *- Tires: 245/70R17 BSW A/S* *- Radio: AM/FM Stereo w/4 Speakers* *Includes auxiliary audio input jack.* *- SYNC 4* *Includes 8" LCD capacitive touchscreen with swipe capability, wireless phone connection, cloud connected, AppLink with App catalog, 911 Assist, Apple CarPlay and Android Auto compatibility and digital owners manual.* *- XL Power Equipment Group* *- Power Glass Sideview Mirrors w/Black Skull Caps* *Includes heat and manual-folding.* *- Illuminated Entry* *- MyKey* *- Perimeter Alarm* *- Power Door Locks* *Includes flip key and integrated key transmitter keyless-entry (includes Autolock).* *- Power Tailgate Lock* *- Power Front Windows* *- Cruise Control* *- Reverse Sensing System*	
Powertrain		
995	Engine: 5.0L V8 *Includes auto start-stop technology and flex-fuel capability.* *Includes:* *- 3.15 Axle Ratio* *- GVWR: 6,200 lbs Payload Package*	$2,335.00
44G	Transmission: Electronic 10-Speed Automatic *Includes selectable drive modes: normal, ECO, sport, tow/haul, slippery and trail.*	Included
X15	3.15 Axle Ratio	Included
NONGV1	GVWR: 6,200 lbs Payload Package	Included
Wheels & Tires		
STDTR	Tires: 245/70R17 BSW A/S	Included

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

2022 F-150 4x2 Regular Cab 6.5' box 122" WB XL (F1C)

Price Level: 255

As Configured Vehicle (cont'd)

Code	Description	MSRP
64F	Wheels: 17" Silver Painted Aluminum	Included
Seats & Seat Trim		
A	Vinyl 40/20/40 Front Seat	N/C
Other Options		
122WB	122" Wheelbase	STD
PAINT	Monotone Paint Application	STD
STDRD	Radio: AM/FM Stereo w/4 Speakers *Includes auxiliary audio input jack.* *Includes:* *- SYNC 4* *Includes 8" LCD capacitive touchscreen with swipe capability, wireless phone connection, cloud connected, AppLink with App catalog, 911 Assist, Apple CarPlay and Android Auto compatibility and digital owners manual.*	Included
86A_	XL Chrome Appearance Package - Option Discount *Includes:* *- Wheels: 17" Silver Painted Aluminum* *- Chrome Front & Rear Bumpers*	$895.00 -$500.00
85A	XL Power Equipment Group *Includes:* *- Power Glass Sideview Mirrors w/Black Skull Caps* *Includes heat and manual-folding.* *- Illuminated Entry* *- MyKey* *- Perimeter Alarm* *- Power Door Locks* *Includes flip key and integrated key transmitter keyless-entry (includes Autolock).* *- Power Tailgate Lock* *- Power Front Windows*	Included
53B	Class IV Trailer Hitch Receiver Ordering the Trailer Tow Package does not include Integrated Brake Controller (67T). Integrated Brake Controller (67T) is a standalone option and must be ordered separately. *Includes towing capability up to TBD lbs. on 3.3L V6 PFDI engine (99B) and 2.7L EcoBoost engine (99P) or up to TBD lbs. on 3.5L EcoBoost engine (998) and 5.0L V8 engine (995), 7/4-pin connector, class IV trailer hitch receiver, smart trailer tow connector (Includes BLIS w/trailer tow coverage where BLIS is available).*	$315.00
76R	Reverse Sensing System	Included
Fleet Options		

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2022 F-150 4x2 Regular Cab 6.5' box 122" WB XL (F1C)

Price Level: 255

As Configured Vehicle (cont'd)

Code	Description	MSRP
17C	Chrome Front & Rear Bumpers	Included
50S	Cruise Control	Included
WARANT	Fleet Customer Powertrain Limited Warranty	N/C
	Requires valid FIN code.	
	Ford is increasing the 5-year 60,000-mile limited powertrain warranty to 5-years, 100,000 miles. Only Fleet purchasers with a valid Fleet Identification Number (FIN code) will receive the extended warranty. When the sale is entered into the sales reporting system with a sales type fleet along with a valid FIN code, the warranty extension will automatically be added to the vehicle. The extension will stay with the vehicle even if it is subsequently sold to a non-fleet customer before the expiration. This extension applies to both gas and diesel powertrains. Dealers can check for the warranty extension on eligible fleet vehicles in OASIS. Please refer to the Warranty and Policy Manual section 3.13.00 Gas Engine Commercial Warranty. This change will also be reflected in the printed Warranty Guided distributed with the purchase of every new vehicle.	
Interior Color		
AS_02	Black w/Medium Dark Slate w/Vinyl 40/20/40 Front Seat	N/C
Exterior Color		
YZ_01	Oxford White	N/C
Upfit Options		
ACC	Crossbox Toolbox	$699.00

SUBTOTAL	$35,944.00
Destination Charge	$1,795.00
TOTAL	$37,739.00

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

2022 F-150 4x2 Regular Cab 6.5' box 122" WB XL (F1C)

Price Level: 255

Major Equipment

(Based on selected options, shown at right)

5.0L V-8 DOHC w/port/direct injection 400hp
10 speed automatic w/OD

Exterior: Oxford White
Interior: Black w/Medium Dark Slate w/Vinyl 40/20/40 Front Seat

* Auto stop-start feature
* 4-wheel ABS
* Electric parking brake
* P 245/70R17 BSW AS S-rated tires
* Advance Trac w/Roll Stability Control
* Tinted glass
* Bluetooth streaming audio
* Dual power remote heated mirrors
* 17 x 7.5 aluminum wheels
* Driver and front passenger seat mounted side airbags
* SecuriLock immobilizer
* Reclining front split-bench seats
* Class IV hitch
* Rear axle capacity: 4800 lbs.
* Rear spring rating: 3800 lbs.
* Frame Yield Strength 34800 psi
* Driver selectable mode
* Brake assistance
* Traction control
* Battery with run down protection
* Air conditioning
* AM/FM stereo with seek-scan, auxiliary audio input, external memory control
* Daytime running
* Variable intermittent wipers
* Dual front airbags
* Airbag occupancy sensor
* Tachometer
* Audio control on steering wheel
* Front axle capacity: 3750 lbs.
* Front spring rating: 2850 lbs.
* Frame section modulus: 4.7 cu.in.

Fuel Economy

As Configured Vehicle

	MSRP
STANDARD VEHICLE PRICE	$30,870.00
Transmission: Electronic 10-Speed Automatic	Included
Tires: 245/70R17 BSW A/S	Included
122" Wheelbase	STD
Monotone Paint Application	STD
Radio: AM/FM Stereo w/4 Speakers	Included
Fleet Customer Powertrain Limited Warranty	N/C
Equipment Group 101A High	$2,080.00
- Option Discount	-$750.00
SYNC 4	Included
XL Power Equipment Group	Included
Power Glass Sideview Mirrors w/Black Skull Caps	Included
Illuminated Entry	Included
MyKey	Included
Perimeter Alarm	Included
Power Door Locks	Included
Power Tailgate Lock	Included
Power Front Windows	Included
Cruise Control	Included

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

Prepared by: Jason McCullough
07/12/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 F-150 4x2 Regular Cab 6.5' box 122" WB XL (F1C)

Price Level: 255

Major Equipment

City
17 mpg

Hwy
24 mpg

As Configured Vehicle

	MSRP
Reverse Sensing System	Included
Engine: 5.0L V8	$2,335.00
3.15 Axle Ratio	Included
GVWR: 6,200 lbs Payload Package	Included
XL Chrome Appearance Package	$895.00
- Option Discount	-$500.00
Wheels: 17" Silver Painted Aluminum	Included
Chrome Front & Rear Bumpers	Included
Class IV Trailer Hitch Receiver	$315.00
Oxford White	N/C
Black w/Medium Dark Slate w/Vinyl 40/20/40 Front Seat	N/C
Vinyl 40/20/40 Front Seat	N/C
SUBTOTAL	$35,245.00
Destination Charge	$1,795.00
TOTAL	**$37,040.00**

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

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CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
TT OF F MURFREESBORO, INC.
FOR PURCHASE OF VEHICLES

This Contract is entered into and effective as of_____ ("Effective Date"), by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **TT OF F MURFREESBORO, LLC (d/b/a Ford of Murfreesboro),** a corporation of the State of Tennessee ("Contractor").

This Contract consists of the following documents:

- ***This Contract***
- ***Contractor's State of Tennessee Contract No. 209/72320 with TT of F Murfreesboro ("State Contract")***
- ***Sales Quotation MUR019 dated August 3, 2022, from Ford of Murfreesboro for Three (3) 2022 Ford F-150 Regular Cab, 4x2 Trucks with Options as Listed ("Contractor's Quote")***
- ***Any properly executed amendments to this Agreement***

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

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

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase the vehicles and optional equipment as set forth in the State Contract, and Contractor's Quote, for the purchase of Three (3) 2022 Ford F-150 Regular Cab, 4x2 Trucks with Options as listed. Furthermore, the City may utilize this Contract to procure additional vehicles and equipment from Contractor per the State Contract through the term of the contract. Such future procurements shall be executed through an Amendment and Purchase Order after purchases exceeding $25,000 have been approved by Council.

2. **Term.** The term of this Contract shall be from the Effective Date to the expiration of the State Contract on December 31, 2023, or as amended by the State of Tennessee. 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.

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d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

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

a. The goods and other items to be provided under this Contract is set forth in the Contractor's Quote, for Three (3) Ford F-150 Regular Cab, 4x2 Trucks with Options as listed for the price of $28,468.00 each, reflecting a **Total Purchase Price of $85,404.00** as set forth in the above referenced Contractor's Quote. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.

b. Deliveries of all items for the Building Codes Department shall be made within 180 days of issuance of Purchase Order to Attn: Kevin Jones – Building and Codes Department – 111 West Vine Street, Murfreesboro, TN 37130. Contact Person Kevin Jones (tel. 615-893-3750; email: kevinjones@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. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.

d. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

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

5. **Indemnification.**

a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

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b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.

c. Copyright, Trademark, Service Mark, or Patent Infringement.

i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (1) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (2) no cost or expense whatsoever accrues to the City at any time; and (3) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

1. Procure for the City the right to continue using the products or services.
2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.

iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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

If to the City of Murfreesboro:	If to the Contractor:
City of Murfreesboro Attn: City Manager Post Office Box 1139 111 West Vine Street Murfreesboro, TN 37133-1139	TT of F Murfreesboro Jason McCullough, Fleet Manager 1550 NW Broad Street Murfreesboro, TN 37130 jmccullough@fordofmurfreesboro.com

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

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

9. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.

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

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

12. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

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

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

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post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

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

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

17. **Integration**. This Contract, Sales Quotations, and State contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.

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

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

20. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

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

22. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

[signatures appear on the following page]

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

CITY OF MURFREESBORO

By: _____
Shane McFarland, Mayor

TT of F MURFREESBORO INC

DocuSigned by:
By: Jason McCullough
Jason McCullough, Fleet Manager

APPROVED AS TO FORM:

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

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: FY 2023 City Manager Approved Budget Amendments

Department: Finance

Presented by: Jennifer Brown

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☐
Direction	☐
Information	☒

Summary

Notification to Council of City Manager approved budget amendments.

Background Information

Ordinance 15-O-48 requires notification to Council of City Manager approved budget amendments. The following budget amendments have been approved:

Solid Waste

To purchase a used roll off truck for to help haul containers at the W. Main Street Convenience Center. Move $2,000 from Solid Waste Fleet – Repair & Maintenance and move $30,000 from Solid Waste Machinery & Equipment Rental to Solid Waste Transportation Equipment.

To cover the general fund portion of the automated side-loader purchase. Move $109,229 from Solid Waste Fleet – Repair & Maintenance to Solid Waste Transportation Equipment.

Police

To correct an error that was made during budget for the Strategic Partnerships that partner with Police. Move $12,500 from Police Printing Services to Police Strategic Partnerships.

Council Priorities Served

Responsible budgeting

Inter-Fund budget amendments reallocate resources in an efficient manner.

Fiscal Impact

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

Attachments

Detailed Inter-Fund Budget Requests

City of MURFREESBORO TENNESSEE

. . . creating a better quality of life

Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:		Move funds to:	
Org	10314008	Org	10314009
Object	526101	Object	594100
Acct Name	Fleet - Repair & Maintenance	Acct Name	Transportation Equipment
Amount	$2,000.00		

Explanation: This move would allow for the needed purchase of a used roll off truck to help haul the containers at the W Main Street Convenience center.

Move funds from:		Move funds to:	
Org	10314008	Org	10314009
Object	553300	Object	594100
Acct Name	Machinery & Equipment Rental	Acct Name	Transportation Equipment
Amount	$30,000.00		

Explanation: This move would allow for the needed purchase of a used roll off truck to help haul the containers at the W Main Street Convenience center.

Russell Gossett — Department Head Signature — 7/18/2022 — Date

Amanda DeRosia — Reviewed by Finance — 07/18/2022 — Date

Approved ☑ Declined ☐

City Manager — 7.18.22 — Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.

City of MURFREESBORO TENNESSEE

. . . creating a better quality of life

Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:		Move funds to:	
Org	10314008	Org	10314009
Object	526101	Object	594100
Acct Name	Fleet - Repair & Maintenance	Acct Name	Transportation Equipment
Amount	$109,229.00		

Explanation: For the general fund portion of the automated side loader purchase.

Russell Barnett — Department Head Signature — 8/10/2022 — Date

Amanda DeRosia — Reviewed by Finance — 08/11/2022 — Date

Approved ☑

Declined ☐

CAT — City Manager — 8.11.22 — Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.

City of MURFREESBORO TENNESSEE

. . . creating a better quality of life

Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2023

Move funds from:		Move funds to:	
Org	10210008	Org	10210998
Object	522000	Object	572060
Acct Name	Printing Services	Acct Name	Strategic Partnerships
Amount	$12,500.00		

Explanation: To correct an error that was made during budget for the Strategic Partnerships that partner with Police.

Department Head Signature — Date: 8.3.22

Reviewed by Finance: Amanda DeRosia — Date: 08/03/2022

Approved ☑

Declined ☐

City Manager — Date: 8-3-22

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: McKnight Parking Improvements

Department: Parks and Recreation

Presented by: Thomas Laird, Assistant Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Parking Improvements at McKnight Park Ball Fields.

Staff Recommendation

Approve proposal from Hawkins Paving and Asphalt for parking lot improvements at McKnight Park Ball Fields.

Background Information

The three ball field parking lots specified in this proposal at McKnight Park are showing signs of deterioration and need repairs and improvements.

Work to be completed in this proposal include cleaning, repairing areas as needed, sealing, and striping. When completed, this work will extend the life of the asphalt and enhance the overall appearance of McKnight Park.

The proposal is derived from the Annual City Asphalt Contract with Hawkins Paving, and the total cost is $32,175. An additional $5,000 is requested to fill cracks as needed at a price of $1.25 per linear foot.

Council Priorities Served

Establish strong City brand

The Parks and Recreation Department prides itself on providing clean, safe, and fun facilities. These proposed improvements will enhance the experience for park patrons and help them safely navigate throughout the park.

Fiscal Impact

Total project cost, not to exceed $37,125, is funded by FY22 CIP Budget.

Attachment

Hawkins Paving and Asphalt Proposal

PROPOSAL

P.O. Box 292 · 6013 Highway 64 E
Wartrace, TN 37183
(931) 389-9671

Organization: _____ Proposal Submitted: Eric Toombs Phone: 615-642-3214 Date: 6/30/22

Street: _____ Job Name: SportsCom Sealing

City, State and Zip Code: _____ Job Location: Murfreesboro

Estimator: Nolen Spencer Date of Plans: **No Plans** TDOT BBMI $

We agree to furnish all Labor, Equipment and Materials to complete the following work:

ASPHALT SEALING

Sealing: (Lot 1)

- Clean existing asphalt
- Seal existing asphalt using a commercial grade sealer meeting Federal Specifications #RP -355E with 2lbs. of slag sand added per gallon and 2% latex additive.
- Stripe to match existing
  - Cost ---------- **$13,247.00**

Sealing: (Lot 2)

- Clean existing asphalt
- Seal existing asphalt using a commercial grade sealer meeting Federal Specifications #RP -355E with 2lbs. of slag sand added per gallon and 2% latex additive.
- Stripe to match existing
  - Cost ---------- **$9,405.05**

Sealing: (Lot 3)

- Clean existing asphalt
- Seal existing asphalt using a commercial grade sealer meeting Federal Specifications #RP -355E with 2lbs. of slag sand added per gallon and 2% latex additive.
- Stripe to match existing
  - Cost ---------- **$9,523.15**

NOTE:

- Crack Fill is not included in quote. Crack Fill can be installed at a rate of $1.25 per linear ft. in addition to the original price.
- If there is an overrun of materials due to circumstances beyond Hawkins Asphalt Paving, LLC control unit prices will be added for any amount of overrun used (Improper grades, additional areas, build areas up, etc.)
- No landscaping, seeding, or sodding included in quote(s)
- No clean up from another contractor's work is included in quote(s)

- Hawkins Asphalt is not liable for damages due to construction traffic
- No pipe bollard(s) included in this quote
- No signs included in quote(s)
- Due to the flat grades on this project, small water pockets may be visible
- Hawkins Asphalt Paving, LLC is not responsible for cracks that occur in driveway/parking area which may result from the shifting/settling of the existing asphalt or sub grade due to the natural movement of the Earth's surface and/or mass rock formations
- Sealing and striping to be completed with temperatures being 55°F and rising
- Hawkins Asphalt Paving, LLC will make every effort to perform work in a timely manner, but is not responsible for loss of business
- Areas where asphalt must be worked by hand versus mechanical equipment may have a different textured surface
- Hawkins Asphalt Paving, LLC suggests backfilling driveway/parking area edges with topsoil (this item not included in quote)
- Hawkins Asphalt Paving, LLC is not responsible for any form of the following: asphalt cracking, water pockets, erosion control, or drainage problems
- Quote does not include any work that is not specifically stated in this proposal

If accepted, please sign and return the original copy for scheduling

Payment is due upon job completion. Failure to pay **promptly** will result in interest charges accrued at the rate of 1.5% for each thirty days or portion thereof that bill remains unpaid beginning no later than ten days following completion of job.

All material is guaranteed to be as specified for a period of one (1) year from the original date of completion. All work to be completed in a work-man like manner according to standard practices. Any alteration or deviation from above specifications involving extra cost (mass rock excavation, consequential damages resulting from underground utilities, excavation of unsuitable sub-grade material, underground aquifers, etc) will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by the Workmen's Compensation Insurance.

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payment will be made as outlined above. In the event that default is made in payment of the amount due to Hawkins Asphalt Paving, LLC pursuant to this agreement, I agree to pay all costs of collections, including attorney's fees reasonably incurred, which in no event shall be less than 35% of the amount due. Any action, suit, or proceeding at law or in equity shall not be had or maintained under this contract unless same be commenced within one year from date of substantial completion of this job.

Date of Acceptance: _____ Signature: _____

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title:	Contract Extension with Nashville Communications, Inc. for Vehicle Communications Equipment Maintenance and Repair
Department:	Police
Presented by:	Chief Michael Bowen

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

One-year extension of the communication systems and electronic maintenance and repair services contract with Nashville Communications, Inc.

Staff Recommendation

Approve the Second Amendment to the Contract with Nashville Communications, Inc.

Background Information

On March 19, 2020, Council approved the initial contract with Nashville Communications, Inc. This contract provides for the repair and maintenance of communication systems and electronic installation services for the Police Department vehicles. The current contract expired on June 30, 2022.

Council Priorities Served

Responsible Budgeting

By utilizing the current contract pricing, the department benefits from the competitive proposal pricing and avoids potential price increases.

Fiscal Impact

The cost of services, up to $50,000, will be funded from the FY23 operating budget.

Attachments

1. Second Amendment to the Contract Between the City of Murfreesboro and Nashville Communications, Inc.
2. Contract Between the City of Murfreesboro and Nashville Communications Inc. for Communication Systems and Electronic Installation.

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SECOND AMENDMENT
TO THE
CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
NASHVILLE COMMUNICATIONS INC.
FOR
COMMUNICATION SYSTEMS & ELECTRONIC INSTALLATION

This Second Amendment ("Second Amendment") to the Contract entered March 19, 2020, ("Contract") by and between City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Nashville Communications Inc., a corporation of the State of Tennessee, ("Contractor") is effective as of this _____.

RECITALS

WHEREAS, on March 19, 2020, the City entered into a contract with Nashville Communications Inc. for communication systems and electronic equipment installation, monitoring, maintenance and repair services as set forth in RFCSP-21-2020 for Category #2 and Category #3; and,

WHEREAS, on July 29, 2021, the City and Contractor entered into the First Amendment to the contract for communication systems and electronic equipment installation, monitoring, maintenance and repair services as set forth in RFCSP-21-2020 for Category #2 and Category #3; and,

WHEREAS, the term of the contract between the City and Contractor is currently from July 1, 2021, to June 30, 2022; and,

WHEREAS, the City and Contractor wish to extend the Contract term pursuant to clause B.2. of the current Contract and clause 1.3 of the RFCSP for an additional year;

NOW THEREFORE, the City and Contractor mutually agree to extend the term of the current Contract, from July 1, 2022, until June 30, 2023. All other terms of the Contract shall remain the same.

IN WITNESS WHEREOF, the parties enter into this amendment as of _____, 2021.

CITY OF MURFREESBORO

By:_____
Shane McFarland, Mayor

NASHVILLE COMMUNICATIONS INC.

DocuSigned by:
By: Juan Padilla
Juan Padilla, Vice President

Approved as to form:

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

DocuSign Envelope ID: B45719FB-DFCF-47F2-BB57-ADC498E38889

CONTRACT
BETWEEN
THE CITY OF MURFREESBORO
AND
NASHVILLE COMMUNICATIONS INC.
FOR
COMMUNICATION SYSTEMS & ELECTRONIC INSTALLATION

This Agreement is entered into and effective as of the 19th day of March 2020, by and between the City of Murfreesboro, a municipal corporation of the State of Tennessee (the "City"), and Nashville Communications Inc., a corporation ("Contractor") of the State of Tennessee.

This Agreement consists of the following documents:

- This document
- The Solicitation: RFCSP-21-2020 – Communication Systems & Electronic Equipment CSP
- Contractor's Proposal dated: 03/06/2020
- 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 - RFCSP-21-2020 – Communication Systems & Electronic Equipment CSP; and
- Lastly, Contractor's Proposal.

A. SCOPE OF SERVICES:

SCOPE OF SYSTEMS:

The City of Murfreesboro requires communication systems and electronic equipment installation, monitoring, maintenance and repair services as set forth in the RFCSP-21-2020 for Category # 2 and Category #3 and all attachments thereto.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing from the date of contract execution and ending on June 30, 2021. The City shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The City reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one (1) year and a total contract term of no more than five (5) years. The City shall notify the Contractor in writing of its intention to extend this Contract prior to June 1 of each year (2022, 2023 and 2024). An extension of the term of this Contract will be affected through an amendment approved by the City Council. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the City's maximum liability will also be affected through an amendment to the Contract and shall be based upon

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rates provided for in the original contract. Rate increases shall not take effect until July 1 of the year that the rate increase takes effect.

C. COST, PAYMENT TERMS, AND CONDITIONS:

C.1. Maximum Liability. The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the City. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the City requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The City is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Service Rates under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Service Rates. The Contractor shall be compensated pursuant to the rates set forth in the contractor's proposal. Submit invoices, in form and substance acceptable to the City with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service for the amount stipulated.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Payment of Invoice. The payment of the invoice by the City shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the City, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

C.7. Deductions. The City reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the City of Murfreesboro any amounts which are or shall become due and payable to the City of Murfreesboro by the Contractor.

C.8. Work Orders. Some Departments within the City may require written requests for services, instead of verbal requests, be presented before any work is to be performed. The Contractor shall ensure the respective written request (work order, purchase order, etc.) is completed in the manner as required by the respective City Departments before commencing any services.

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D. STANDARD TERMS AND CONDITIONS:

D.1 Required Approvals. The City is not bound by this Contract until it is approved by the appropriate City officials in accordance with applicable City of Murfreesboro Code and Charter.

D.2 Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate City officials in accordance with applicable City of Murfreesboro Code and Charter.

D.3. Termination for Convenience. The City may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the City. The City shall give the Contractor at least thirty (30) days written notice before the effective termination date.

D.3.a. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the City be liable to the Contractor for compensation for any service which has not been rendered.

D.3.b. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the City shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the City Manager. If such subcontracts are approved by the City, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.).

Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

. D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the City of Murfreesboro whose duty it is to vote for, let out, overlook, or in any manner to superintend this contract or any work relative to this contract as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Non-Discrimination; Affirmative Action. It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, disability, or veteran status 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 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 shall specifically acknowledge and agree as follows:

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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.**

D.8. Records. The Contractor must maintain documentation for all charges against the City under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the City, the Comptroller of the Treasury, or their duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.

D.9. Monitoring. The Contractor's activities conducted, and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the City, the Comptroller of the Treasury, or their duly appointed representatives.

D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee 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.

The Contractor, being an independent contractor and not an employee of the City, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.12. City Liability. The City shall have no liability except as specifically provided in this Contract.

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D.13. 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. In the event of any such suit or claim, the Contractor shall give the City immediate notice thereof and shall provide all assistance required by the City in the City's defense. The City shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the City of Murfreesboro in any legal matter.

c. 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.

d. 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

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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.

D.14. 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, epidemics, pandemics, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

D.15. City and Federal Compliance. The Contractor shall comply with all applicable City, State and Federal laws and regulations in the performance of this Contract.

D.16. Governing Law. 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.

D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. 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.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first-class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The City:
Office of the City Manager
City Hall
City of Murfreesboro
Attention: Craig Tindall, City Manager

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111 West Vine Street
Murfreesboro, Tennessee 37130
Phone: (615) 849-2629

The Contractor:
Juan Padilla
Nashville Communications Inc.
330 Plus Park Blvd
Nashville, TN 37217

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile or electronic mail transmission is received by the telefax machine or computer at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile or electronic mail transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of City and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the City. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

I. The Contract document and its attachments
II. All Clarifications and addenda made to the Contractor's Proposal
III. The Request for Competitive Sealed Proposals and its associated amendments
IV. Technical Specifications provided to the Contractor
V. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

[signatures appear on the following page]

IN WITNESS WHEREOF, the parties enter into this agreement as of March 19**, 2020 (the "Effective Date")**

CITY OF MURFREESBORO

DocuSigned by:

By: _____

Shane McFarland, Mayor

Approved as to form:

DocuSigned by:

_____

Adam Tucker, City Attorney

NASHVILLE COMMUNICATIONS:

By: Juan Padilla

Juan Padilla, Vice President

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Donation of Equipment to Dickson Police Department

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Donation of equipment to Dickson Police Department.

Staff Recommendation

Approve the donation of used equipment to the Dickson Police Department.

Background Information

The MPD has 65 sets of Level III Body Armor that have expired and are no longer in use. MPD tries to assist other law enforcement agencies when possible and Dickson PD can benefit from the donation of this equipment.

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 Form
2. Hold Harmless Agreement for Donation of Level III Body Armor Sets

City of Murfreesboro
Surplus Property Disposal Form
City Department Police Department

Short description of surplus property Level III Body Armor - 65 Sets

Check the proposed method of disposal.

Sell	___	Estimated value		
		Reserve value (Do not sell below this amt)	$	
Trade-In	___	Trade-in value	$	
Transfer	___	To whom?		
Donate	X	To whom? Dickson Police Department	Estimated value	7800
Throw away	___			
Recycle	___			

Describe the Surplus Property:

Approximate age 5 Years Estimated original cost 399 each
Seized Property? _____ Depr value (to be completed by FA Mgr if applicable) $ -
Law Enforcement Restricted YES

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:

Expired body armor as of 4/2022.
Carrier resale cost $120

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	___	Equipment dealer	___
Appraisal	___	Completed online auctions	___
Kelley Blue Book	___	Depreciated value	___
		Other (Describe)	

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

Signed (Department Head) 7.28.22 Date

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

Signed (Fixed Assets Manager) 8/2/22 Date

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

Signed (City Manager or Assist. City Manager) 8.4.22 Date

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

Kit #	Serial Number 1	Serial Number 2	Vendor	Purchase Date
8	160000580323	160000580324	Galls	4/19/17
11	160000565934	150000288975	Galls	4/19/17
18	160000580370	160000580368	Galls	4/19/17
20	160000580386	160000580385	Galls	4/19/17
27	160000580339	160000580340	Galls	4/19/17
28	160000580354	160000580317	Galls	4/19/17
31	160000598241	160000598243	Galls	4/19/17
33	160000598346	160000598245	Galls	4/19/17
34	160000598349	160000598347	Galls	4/19/17
37	160000580335	160000580336	Galls	4/19/17
38	160000580337	160000580338	Galls	4/19/17
39	160000580312	160000580314	Galls	4/19/17
52	160000598159	160000598158	Galls	4/19/17
58	160000598096	160000598090	Galls	4/19/17
59	160000598030	160000598067	Galls	4/19/17
70	160000598350	160000598351	Galls	4/19/17
75	160000598057	160000598070	Galls	4/19/17
78	160000598231	160000598237	Galls	4/19/17
79	160000598165	160000598176	Galls	4/19/17
82	160000597766	160000597783	Galls	4/19/17
84	160000598311	160000598292	Galls	4/19/17
85	160000598113	160000598112	Galls	4/19/17
90	160000598037	160000598039	Galls	4/19/17
94	160000598066	160000598059	Galls	4/19/17
95	160000598125	160000598119	Galls	4/19/17
98	160000598175	160000598174	Galls	4/19/17
100	160000598318	160000598321	Galls	4/19/17
103	160000598163	160000598166	Galls	4/19/17
112	160000598340	160000598204	Galls	4/19/17
115	160000598182	160000308565	Galls	4/19/17
116	160000598212	160000598213	Galls	4/19/17
117	160000598249	160000598189	Galls	4/19/17
119	160000598183	160000598181	Galls	4/19/17
120	160000598208	160000598209	Galls	4/19/17
126	160000598126	160000598227	Galls	4/19/17
61	160000598218	160000598230	Galls	4/19/17
130	160000598226	160000598228	Galls	4/19/17
134	160000598007	160000598033	Galls	4/19/17
136	160000598083	160000308553	Galls	4/19/17
150	160000598041	160000598043	Galls	4/19/17
41	160000580322	160000580301	Galls	4/19/17
62	160000598310	160000598317	Galls	4/19/17
166	170000056080	160000670604	Galls	4/19/17
172	170000079787	170000079581	Galls	4/19/17
175	170000056077	170000056114	Galls	4/19/17
168	170000056540	17000056538	Galls	4/19/17
186	160000715660	160000715666	Galls	4/19/17
187	160000670872	160000670822	Galls	4/19/17
189	170000056525	170000056533	Galls	4/19/17
190	170000056305	170000056308	Galls	4/19/17
192	170000056550	170000056944	Galls	4/19/17
193	160000715694	160000715697	Galls	4/19/17
198	170000056053	170000056111	Galls	4/19/17
200	160000670848	160000670855	Galls	4/19/17
203	170000056530	170000056549	Galls	4/19/17
214	170000056110	170000056137	Galls	4/19/17
221	170000056513	170000056516	Galls	4/19/17
222	170000079572	170000079577	Galls	4/19/17
223	170000079584	170000079583	Galls	4/19/17
230	170000056520	170000056532	Galls	4/19/17
234	170000056506	170000056509	Galls	4/19/17
240	170000056539	170000056508	Galls	4/19/17
253	160000716923	160000716291	Galls	4/19/17
227	170000056565	170000056571	Galls	4/19/17
246	170000079613	170000079594	Galls	4/19/17

CITY OF MURFREESBORO
DONATION OF LEVEL III BODY ARMOR SETS

MUTUAL RELEASE OF LIABILITY AND HOLD HARMLESS AGREEMENT

For and in consideration of the mutual promises and agreements between the parties and for the donation of field force helmets by the City of Murfreesboro ("City") to the DICKSON POLICE DEPARTMENT,

THE CITY AND DICKSON POLICE DEPARTMENT 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 field force helmets by the City to the DICKSON POLICE DEPARTMENT and the use of the filed force helmets by the DICKSON POLICE DEPARTMENT for whatever purposes the DICKSON POLICE DEPARTMENT may use them.

The DICKSON POLICE DEPARTMENT agrees to hold the City harmless in the event any claim is made against it arising from the DICKSON POLICE DEPARTMENT's ownership or use or failure to use the filed force helmets.

In executing this Release and Hold Harmless Agreement the DICKSON POLICE DEPARTMENT acknowledges: (1) that the City has owned, maintained, and/or used the helmets for multiple years; (2) that the helmets may be outside the manufacturer's warranty period; (3) that the City is making no representation as to the fitness, suitability or usability of the helmets for their stated purpose and function; (3) the City does not know nor does it guarantee the current condition of the helmets; and (4) the City is providing the helmets on an "as is" basis to the DICKSON POLICE DEPARTMENT.

The DICKSON POLICE DEPARTMENT shall be solely responsible for determining whether to use said helmets for law enforcement or any other purpose.

IN WITNESS WHEREOF:

CITY OF MURFREESBORO

By: _____
Craig Tindall, City Manager

DICKSON POLICE DEPARTMENT

By: _____

Printed: _____

Title: _____

Approved as to form:

_____
Adam F. Tucker, Murfreesboro City Attorney

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Software as a Service and Hardware Warranty Agreement with Utility Associates, Inc.

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Software as a Service and Hardware Warranty Agreement with Utility Associates, Inc.

Staff Recommendation

Approve the SasS and Hardware Warranty Agreement with Utility Associates.

Background Information

Utility Associates has provided software services and hardware warranties for the communication devices that are installed in Police vehicles since 2018. These devices provide connectivity, vehicle location and wireless services for officers. This agreement will extend services for an additional four years.

Council Priorities Served

Maintain Public Safety

Consistent, high-quality communication devices are a critical part of effective public safety.

Fiscal Impact

The expense, $80,537 annually, is funded by the Department's Operating Budget.

Attachments

Software as a Service and Hardware Warranty Agreement

DocuSign Envelope ID: B205843C-650F-4ACE-8027-EAB9E250693E

Software as a Service and Hardware Warranty Agreement

This Agreement is entered into and effective as of the ____ day of July 2022 ("Effective Date"), by and between the **City of Murfreesboro,** a municipal corporation of the State of Tennessee (the "City"), and **Utility Associates, Inc.**, a Delaware corporation ("Contractor").

This Agreement consists of the following documents:

- This document
- Utility Associates, Inc. Client Service Agreement ("SaaS Agreement"), attached hereto as Exhibit A;
- Utility Associates, Inc. Sales Quote # 131743-R dated January 13, 2022, attached hereto as Exhibit B; 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 document; and
- Third, the Client Service Agreement ("Exhibit A") as applicable in a particular instance; and
- Lastly, Third, Exhibit B and any additional invoices issued by Contractor and approved by City Council.

1. Duties and Responsibilities of Contractor.

1.1 Contractor is engaged to provide City with the equipment, software and services set forth in Sales Quote # 131743-R dated January 13, 2022, Exhibit B, in accordance with terms and conditions set forth in Exhibit A, except as such terms and conditions are superseded or modified by this document.

1.2 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 response to 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.

2.1 The term of this Agreement commences on the Effective Date and expires on June 30, 2023, unless:

a. extended annually by mutual agreement of the parties for up to four (4) additional one-year terms; or

b. earlier terminated as set forth herein.

2.2. Termination. Contractor's services may be terminated in whole or in part:

a. Upon 30-day prior notice, for the convenience of the City.

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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. The initial price for the equipment, software and services price to be provided under this Agreement is set forth in the Sales Quote which reflects a total price of eighty thousand five hundred thirty-seven and 37/100 dollars ($80,537.63). Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice for the software subscription and/or services which each payment represents. Invoices must bear the purchase order number.

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. Indemnification.

6.1 Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees

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and/or agents, including it subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

6.2 As provided in Tennessee Attorney General Opinion 93-01 and notwithstanding an provision in Exhibit A or any invoice issued pursuant hereto to the contrary, 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.

6.3 Copyright, Trademark, Service Mark, or Patent Infringement.

a. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City 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.

b. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

(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.

c. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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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:

Utility Associates, Inc.
ATTN: Michael Nark, President
250 E. Ponce De Leon Ave., Ste. 700
Decatur, Georgia 300030

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; Affirmative Action.** 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.

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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.**

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.

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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.

31. **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.

18. **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.

19. **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.

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.

[*signatures appear on the following page*]

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

CITY OF MURFREESBORO, TENNESSEE

By: _____
Shane McFarland, Mayor

Approved as to form:

DocuSigned by:
Adam Tucker
A4B8EF1F940...
Adam F. Tucker, City Attorney

UTILITY ASSOCIATES, INC.

DocuSigned by:
Michael Mark
7A1B8B3...
By: _____
Michael Mark, President

UTILITY

TRANSFORMATIVE TRANSPARENCY

Client Service Agreement

INTRODUCTION

This service agreement describes the levels of service that the City of Murfreesboro ("Client" or "Client) will receive from Utility Associates, Inc. ("UA" or "Supplier").

Purpose

The Client depends on IT equipment, software and services (the IT system) that are provided, maintained and supported by the Supplier. Some of these items are of critical importance to the Client's business.

This service agreement sets out what levels of availability and support the Client is guaranteed to receive for specific parts of the IT system.

This Service Agreement forms an important part of the contract between the Client and the Supplier. It aims to enable the two parties to work together effectively.

SCOPE

Parties

This agreement is between:

The Client:	**The Supplier:**
City of Murfreesboro	Utility Associates Inc.
111 West Vine Street Murfreesboro, TN 37130	250 E. Ponce De Leon Avenue Suite 700 Decatur, GA 30030
William (Bill) Terry Phone 629-201-5575 wterry@murfreesborotn.gov	Amanda A. Havice 800-597-4707 contracts@utility.com

Dates and Reviews

This agreement begins on the Effective Date of the agreement, which is the date of signature by the Client of this service agreement and will run for the term of the agreement plus any extensions of such agreement.

It may be revised at any point by mutual written agreement, including if there are any changes to the Client's system.

Equipment, Software and Services Covered

This agreement covers only the equipment, software and services in the table below. This list may be updated at any time, with agreement from both the Client and Supplier.

Item Type	Number of Items	Item Priority
BodyWorn Camera	Qty 1 Supplied by Utility	1
Bluetooth Controller	Qty 1 Supplied by Utility	2
Holster Sensor	Qty 1 Supplied by Utility	2
BodyWorn Ready Uniforms	3 Standard Retrofits of Existing, Department Provided Uniforms, including one Soft Shell Jacket	3
Renewal of Services	As specified in Exhibit A	3

Exclusions

This agreement is written in a spirit of partnership. The Supplier will always do everything possible to rectify every issue in a timely manner.

However, there are a few exclusions. This agreement does not apply to:

- Any equipment, software, services or other parts of the IT system not listed above
- Software, equipment or services not purchased via and managed by the Supplier

Additionally, this agreement does not apply when:

- The problem has been caused by using equipment, software or services in a way that is **not recommended (defined as intentional neglect, misuse, or destruction of the equipment)**
- The Client has made **unauthorized changes** to the configuration or set up of affected equipment, software or services. Unauthorized changes are defined as changes made by any party other than the Supplier to the software, hardware, or firmware that alter the system's ability to record, upload, or view data.
- The Client has prevented the Supplier from **performing required maintenance and update** tasks.
- The issue has been caused by **unsupported** equipment, software or other services of the Client.

This agreement does not apply in circumstances that could reasonably be said to be beyond the Supplier's control. For instance: floods, war, acts of god and so on.

Regardless of the circumstances, the Supplier aims to be helpful and accommodating at all times and will do its absolute best to assist the Client wherever possible.

RESPONSIBILITIES

Supplier Responsibilities

The Supplier will provide and maintain the IT system used by the Client. This Agreement between the Supplier and the Client includes full details of these responsibilities.

Additionally, the Supplier will do the following:

- SaaS will be maintained at 99% uptime/availability or greater 24/7/365
- Ensure relevant software, services and equipment are available to the Client including an appropriate level of spares

- Respond to support requests within the timescales listed below
- Take steps to escalate and resolve issues in an appropriate, timely manner
- Maintain good communication with the Client at all times

Client Responsibilities

The Client will use the Supplier-provided IT system as intended.

The Client is responsible for maintaining power and internet connectivity at all video offload locations on the network. For offload via a Client approved third party or Supplier provided access point, the Client has the option of either (a) organizing an independent internet connection via its local provider with a minimum upload speed of 50 Mbps, or, (b) connecting the access point to its own network having a minimum internet upload speed of 50 Mbps. Upon execution of this Agreement, as part of the deployment process, a network assessment will be conducted of the Client's upload speed for the transmission of data to the CJIS Compliant Cloud. In most cases, the Client should budget for an increase to their upload speed with their local carrier.

Additionally, the Client will:

- Notify the Supplier of issues or problems in a timely manner
- Provide the Supplier with access to equipment, software and services for the purposes of maintenance, updates and fault prevention
- Maintain good communication with the Supplier at all times

GUARANTEED RESPONSE TIMES

When a Client raises a support issue with the Supplier, the Supplier promises to respond in a timely fashion.

Response Times

UA provides a 99% uptime/availability commitment. All systems have health monitoring that assures that issues are typically addressed 24/7/365 by UA personnel before they become an impact to the performance of the service. For support provided to the Client directly, UA has a tiered response to support that will escalate the level of support depending on the situation. Tier 1 would be on-site support by the department staff after they have been trained by UA, which will alleviate most day-to-day issues that may pop up. Problems beyond Tier 1 scope will be escalated to Tier 2, which is phone-based support, and from there to Tier 3, which is on-site technical support from a UA field engineer. The cost of the response time is included in this Agreement.

While most support calls are handled immediately, Tier 2 issues have guaranteed response times as shown below:

Item Priority	Fatal	Severe	Medium	Minor
1	1 Hour	1 Hour	2 Hours	3 Hours
2	2 Hours	2 Hours	4 Hours	6 Hours
3	4 Hours	4 Hours	8 Hours	16 Hours

Severity Levels

The severity levels shown in the tables above are defined as follows:

- **Fatal:** Complete degradation – **all users and critical functions affected.** Item or service completely unavailable.
- **Severe:** Significant degradation – **large number of users or critical functions affected.**
- **Medium:** Limited degradation – **limited number of users or functions affected.** Business processes can continue.
- **Minor:** Small degradation – **few users or one user affected.** Business processes can continue.

RESOLUTION TIMES

The Supplier will always endeavor to resolve problems as swiftly as possible. It recognizes that the Client's systems are key to daily functions and must be functional in the field.

However, UA is unable to provide guaranteed resolution times. This is because the nature and causes of problems can vary.

In all cases, the Supplier will make its best efforts to resolve problems as quickly as possible. It will also provide frequent progress reports to the Client.

SCOPE OF SERVICES

1.1.1 Access to Software. UA is the developer and owner of, or has rights to, certain enterprise mobile device tracking and messaging software known as "AVaiL™", "AVaiL Web", "Vehicle Diagnostics", and "RFID Tracking" and related content to be provided to Client; such software, its related content and any related documentation provided by UA, and the means used to provide the software to Client and the services described herein are collectively referred to as the "Service". Subject to Client's payment of the applicable fees and Client's compliance with the terms of this Agreement, Client, its affiliates and its and their employees ("Licensed Users") shall have the right to access and use the Service solely for Client's and its affiliates' internal business purposes. UA will issue to one Licensed User ("Client Administrator") an individual login identifier and password ("Administrator Login") for purposes of administering the Service. Using the Administrator's Login, the Client Administrator shall assign each Licensed User a unique login identifier and password ("User Login") and provide such information to the Licensed Users and UA via the Service. Client shall not provide a User Login to any individual or entity that is not a Licensed User to use the Service. Client shall be responsible to ensure, by agreement or otherwise, that each Licensed User will: (a) be responsible for the security and/or use of his or her User Login; (b) not disclose such login identifier or password to any person or entity; (c) not permit any other person or entity to use his or her User Login; (d) use the Service only in accordance with the terms and conditions of this Agreement and on the workstation software from which the Service is accessed. UA shall have the right to deactivate, change and/or delete User Logins of Licensed Users who have violated this Agreement and to deny or revoke access to the Service, in whole or in part, if UA reasonably believes Client and/or its Licensed Users are in material breach of this Agreement. Client shall be solely responsible for ensuring that the access to the Service by a Licensed User who ceases to be an employee of Client or one of its affiliates is terminated. UA shall have no responsibility for managing, monitoring, and/or overseeing Client's and its Licensed Users' use of the Service. Client acknowledges that the Service may contain devices to monitor Client's compliance with the terms and restrictions contained herein and Client's obligations hereunder.

1.1.2 Operating Environment. Client is solely responsible for acquiring, installing, operating and maintaining the hardware and software environment necessary to access and use the Service remotely via the Internet.

1.1.3 Changes to Service. UA may upgrade, modify, change or enhance ("Change") the Service and convert Client to a new version thereof at any time in its sole discretion so long as such Change does not materially diminish the scope of the Service, in which event Client shall have the right to terminate this Agreement upon thirty (30) days written notice to UA. During the term of this agreement, if UA upgrades the version of the Service Client is using under this Agreement, Client will not be charged an upgrade fee. Should UA offer additional optional software modules in the future that complement the Software, Client may elect to purchase the optional software modules for an additional fee; however, Client has no obligation to do so.

1.1.4 Help Desk. UA shall provide 24/7 Client support in the form of a Help Desk. Clients reporting issues through email will receive confirmation of the issue within a reasonable time and will receive a callback the same business day if practical. The Help Desk is always subject to availability of our technical staff and clause 1.1.5 below.

1.1.5 Uptime Commitment.

a. Availability. The Service will be made available to Client and its Licensed Users twenty-four hours a day, seven days a week less the period during which the Service are not available due to one or more of the following events (collectively, the "Excusable Downtime"):

(i) Scheduled network, hardware or service maintenance;
(ii) The acts or omissions of Client or Client's employees, agents, contractors, vendors, or anyone gaining access to the Service by means of a User Login;
(iii) A failure of the Internet and/or the public switched telephone network;
(iv) The occurrence of any event that is beyond UA's reasonable control, or
(v) At Client's direction, UA restricting Client's and its Licensed Users access to the Service.

b. Commitment. Client is responsible for promptly notifying UA in the event of a suspected Service failure. For the purposes of establishing uptime herein, downtime begins upon such notification and ends upon restoration of Service. Subject to Client satisfying its obligations herein, UA guarantees that the Service will be available to Client and its Licensed Users at least 99% of the time during each calendar month, excluding Excusable Downtime ("Uptime Commitment"). If UA fails to satisfy the Uptime Commitment during a month, then UA will credit to Client a pro- rated portion of the Fees in the first month of the next succeeding calendar quarter following the failure. For purposes of this Section, "pro-rated portion of the Fees" means the product obtained by multiplying the applicable Fees during the month of the failure by a fraction, the numerator of which will be the number of hours that the Service did not satisfy the Uptime Commitment, and the denominator of which will be the total number of hours during the month that such failure occurred less Excusable Downtime.

1.1.6 Uniforms. UA's BodyWorn Solution is the only body camera system available to law enforcement that features direct integration of camera hardware into the officer's/deputy's uniform. As part of the multi-year service agreement, UA will furnish the following allotments and services during initial project launch.

a. Retrofits of existing uniforms. A quantity of five (5) standard uniform garments, per BodyWorn camera purchased, will be modified to BodyWorn ready status, for the purposes of product integration with our camera hardware solution. UA will provide The Client with both uniform retrofit vouchers and packing slip templates. Note, both uniform vouchers and accurately completed packing slips are required for all retrofit requests being sent to UA for processing. Failure to provide accurate uniform information may result in delays of processing The Client's request.

b. Retrofits of Standard garment types. Acceptable garment installation types offered at no-additional charge, as part of the initial project launch with a multiyear service agreement, include the following:
(i) Duty shirts (long or short sleeve)
(ii) Soft outer carrier vest
(ii) Standard soft-shell jacket

c. Retrofits of Non-standard garment types. Excluded from the initial project launch retrofitting service, that may still be modified to BodyWorn ready status at an additional charge, include the following: (please see table 1.2.1, for pricing details)
(i) Polo shirts
(ii) Commando style sweaters
(ii) Tactical vest or outer plate carriers
(iv) Leather jackets

d. Certification of local uniform resellers. Following the recommendation of the Client, a local uniform reseller may be eligible to participate in UA's uniform certification program. This program is designed to

maximize the speed in which new recruits and/or existing Officers/Deputies receive BodyWorn standard uniform garment retrofits, post project deployment. Additionally, this program is designed to foster the support of local small businesses in your respective area.

(i) Resellers may participate in the certification program, for the purposes of retrofitting standard duty shirts and soft outer carrier vests only. All other non-standard garment retrofits should be forwarded to UA, at the expense of The Client.

(ii) As part of the certification offered, UA will supply one (1) grommet installation machine and training of up to 5 reseller personnel, per session. Sessions run for a dedicated 16-hour period, over the course of two days. The reseller will be responsible for furnishing uniforms for the purposes of training and certification.

(iii) Certification fees. Certification of each local uniform reseller will be charged to The Client, at $2,500 per session.

(iv) Annual Warranty and Support Fee of $300, per year, will be assessed of the certified uniform reseller. Failure to pay within 30 days of invoice will void any warranty claims against grommeting machine hardware provided for the purposes of BodyWorn ready uniform retrofitting

1.2.1 Uniform Retrofit Pricing Schedule. Prices effective May 2021.

a. BodyWorn - **standard** garment retrofit service table

Example Model	Description	Price (ea).
Blauer 8670, 8675, 8446	Duty Shirt, BodyWorn Ready	$13
Blauer 8780, 8370, 8375, 8470 (XP Series)	Carrier Vest Mount, BodyWorn Ready	$23
Blauer 343, 343R	Traffic Safety Vest, BodyWorn Ready	$23
Blauer 8780, 8370, 8375, 8470	Carrier Vest Zipper Mount, BodyWorn Ready	$23
Spiewak	Carrier Vest Mount, BodyWorn Ready	$33
Duty Jacket (Charge per Layer)	All Jackets (Except Leather – Estimate Only)	$23
All Standard Uniform Types	Grommet Swap Out	$10

b. BodyWorn **non-standard** garment retrofit service table. Due to the complicated nature of retrofitting non-standard garments, all prices provided below are considered estimates. Final pricing will be assessed at the time of services rendered. For additional questions, comments or concerns please email UA at: uniforms@utility.com.

Description	Price (ea).
Carrier Vest – Horizontal Mounting (Ex. Blauer 8340, 8375)	$33
Tactical Vest or Load Bearing Vest (LBV) – All Styles	$53
Polo Shirt	$43
Polo Carrier – Horizontal Zipper	$43
Leather Jacket / Coat.	Estimate Only
Patches	
Single	$5
Pair	$6
Name Tape - Includes Embroidery and Velcro	$10

Motor unit jackets must be quoted via design consult, please contact uniforms@utility.com to schedule.

USE OF THE SERVICE

2.1 Scope of Use. Subject to the terms and conditions of this Agreement, including, without limitation, Section 2.2 and 2.3 hereof and Client's payment of all applicable Fees, UA hereby grants to Client a limited, a non-exclusive, non- assignable, non-transferable license (the "License"), without the right to sublicense, to access and use the Service, during the Term, over the Internet for Client's and its affiliates' internal business purposes, on a computer or a computer network operated by Client, only by Licensed Users and only using the User Logins provided to UA for such Licensed Users for such use.

2.2 End User License Agreements. The Licensed software may incorporate software under license from a third party. If the third party requires Client's notification of such use through an End User License Agreement (EULA), UA will provide such notification to the Client. In order to use the Service, the Client agrees to be bound by all EULA(s) provided at the time of delivery whether by hardcopy or displayed upon Installation or use of the Service. Client's use of the Service subsequent to such notice(s) shall constitute Client's acceptance of the EULA(s).

2.3 Restrictions. Client and its Licensed Users shall not: (a) copy the Service or any portion thereof other than as required to use the Service remotely as intended by this Agreement; (b) translate, decompile or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Service; (c) modify, adapt, translate or create a derivative work from the Service; (d) use the Service to track more than the number of tracked asset units for which Fees have been paid pursuant Article 3 below; (e) sell, lease, loan, license, assign, sublicense, rent, transfer, publish, disclose, divulge, display,

make available to third parties on a time-sharing or service bureau basis or otherwise make available for the benefit of third parties all or any part of the Service, including, without limitation, by transmitting or providing the Service, or any portion thereof, over the Internet, or otherwise, to any third party; (f) interfere or attempt to interfere with the operation of the Service in any way; (g) remove, obscure or alter any label, logo, mark, copyright notice, trademark or other proprietary rights notices affixed to or contained within the Service; (h) create any frames or other references at any other web sites pertaining to or using any of the information provided through the Service or links to the Service; or (i) engage in any action that constitutes a material breach of the terms and conditions of this Agreement. All rights not expressly granted hereunder are reserved to UA.

FEES AND PAYMENT TERMS

3.1 Fees. As a condition to the License granted pursuant to Section 2.1 above, Client shall pay annual Service usage fees ("Fees"). Client shall, in addition to the Fees required hereunder, pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transaction(s) contemplated hereby, excluding, however, income taxes on income which may be levied against UA ("Taxes"). Client shall reimburse UA for the amount of any such Taxes. If Client fails to pay any undisputed Fees within thirty (30) calendar days of the date they are due, UA may bill Client a 1.5% fee per month and the Service shall be suspended until all outstanding Fees have been paid. All Fees shall be non-refundable except as otherwise set forth herein. Should Client have a billing dispute, Client must provide notice to UA in writing within thirty (30) days of the invoice date with an explanation of the disputed invoiced amount or else Client will waive the right to dispute the amount set forth on the invoice. Clients are still obligated to pay undisputed amounts.

3.2 Time-and-Materials Service. If Client requests and UA agrees to provide services that are outside the scope of the Service, such services shall be provided at UA's then-current hourly service rates or as established within a separate agreement addressing these specific requests.

REPRESENTATIONS AND WARRANTIES

4.1 Expressed Warranty. Products manufactured by UA are warranted to be free from defects in material and workmanship under normal use and service. This warranty is applicable to any of UA's products that Client returns to UA during the period of the initial term of the agreement. All equipment issued, including BodyWorn™ devices and peripherals, and Rocket IoT™ in-vehicle systems and peripherals, are warranted for the duration of the initial agreement and will be repaired or replaced at UA's cost with an appropriate Request to Merchant (RMA) Authorization. Failure to return warranty replacement items in the time specified by UA may result in additional fees or surcharges assessed at UA's sole discretion. UA's obligations, with respect to such applicable warranty returns, are limited to repair, replacement, or refund of the purchase price actually paid for the product, at UA's sole option. UA shall bear round-trip shipment costs of defective Items found to be covered by this warranty. Defective products or parts thereof may be replaced with either new, factory refurbished, or remanufactured parts. Defective parts, which have been replaced, shall become the UA's property. This warranty does not extend to any product sold by UA which has been subjected to malicious intent, neglect, accident, improper installation by a non-authorized 3rd party, or a use for purposes not included or not in accordance with operational maintenance procedures and instructions furnished by UA, or which has been repaired or altered by UA or persons other than UA or which has been damaged by secondary causes, including but not limited to, improper voltages, adverse environment conditions, improper handling, or products which have had their serial number or any part thereof altered, defaced, or removed. UA liability does not cover normal wear and tear or deterioration. Uniforms or modified uniforms provided with the service have a 1-year warranty and are limited to defects in material workmanship that prevent the user from capturing video and/or using the Service. The Expressed Warranty does not include changes to the color or appearance of the uniform that result from normal wear and tear.

4.2 UA and Client Responsibilities. Each party (the "Representing Party") represents and warrants to the other that: (a) it has the authority to enter this Agreement and to perform its obligations under this Agreement; (b) the execution and performance of this Agreement does not and will not violate any agreement to which the Representing Party is a party or by which it is otherwise bound; and (c) when

executed and delivered, this Agreement will constitute a legal, valid and binding obligation of the Representing Party, enforceable in accordance with its terms. In addition to the foregoing: UA warrants that the software provided as part of the Service will materially conform to the applicable then-current documentation relating to the Service when used in an operating environment that complies with the then-current documentation relating to the Service. If provide Client, as Client's sole and exclusive remedy, with a pro rata refund (for the unexpired portion of the applicable Term) of the Fees paid to UA hereunder. Client represents and warrants to UA that Client and its Licensed Users (i) will use the Service only for lawful purposes; (ii) will not interfere with or disrupt the operation of the Service or the servers or networks involved with the operation of the Service; (iii) attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through any other means; or (iv) interfere with another user's use and enjoyment of the Service.

4.3 Export Restrictions. Client represents and warrants that it and all Licensed Users will comply with all applicable laws, rules and regulations in the jurisdiction from which they access the Service, including those laws, rules and regulations which apply to the access, import, use and export of controlled technology or other goods. Client also agrees that it and all Licensed Users will comply with the applicable laws, rules and regulations of the jurisdictions from which UA operates the Service (currently, the United States of America). In particular, Client represents, warrants and covenants that it shall not, without obtaining prior written authorization from UA and, if required, of the Bureau of Export Administration of the United States Department of Commerce or other relevant agency of the United States Government, access, use, export or re-export, directly or indirectly, the Service, or any portion thereof or any Confidential Information of UA (including without limitation information regarding the use, access, deployment, or functionality of the Service) from the United States to (a) any country destination to which access, use, export or re-export is restricted by the Export Administration Regulations of the United States Department of Commerce; (b) any country subject to sanctions administered by the Office of Foreign Assets Control, United States Department of the Treasury; or (c) such other countries to which access, use, export or re-export is restricted by any other United States government agency. Client further agrees that it is solely responsible for compliance with any import laws and regulations of the country of destination of permitted access, use, export or re-export, and any other import requirement related to a permitted access, use, export or re-export.

4.4 Warranty Disclaimer. Client ACKNOWLEDGES THAT, EXCEPT AS PROVIDED HEREIN, THE SERVICE IS PROVIDED HEREUNDER WITH NO WARRANTY WHATSOEVER. Client ACKNOWLEDGES THAT ITS USE OF THE SERVICE IS AT ITS OWN RISK. EXCEPT AS EXPRESSLY PROVIDED HEREIN, (a) THE SERVICE IS PROVIDED SOLELY ON AN "AS-IS" BASIS, AND (b) UA MAKES, AND Client RECEIVES, NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE. UA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON INFRINGEMENT AND ALL DUTIES AND OBLIGATIONS IMPLIED IN LAW. UA DOES NOT WARRANT THAT THE SERVICE SHALL BE OPERABLE, SHALL PROPERLY STORE DATA, SHALL OPERATE UNINTERRUPTED OR ERROR FREE, SHALL BE SECURE, SHALL KEEP DATA CONFIDENTIAL, SHALL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR SHALL MEET Client'S NEEDS.

4.5 Retention of Utility Generated System Media. The standard retention period for unclassified videos is twelve (12) months. The responsibility of video classification remains with the Client, for the duration of the agreement term. Exceptions to this retention period will incur a separate rate charge to the overall agreement, regardless of when said requests for adjustment are made.

CONFIDENTIAL INFORMATION

5.1 Confidential Information. As used herein, the term "Confidential Information means all technical, business and other information relating to the Service, which (i) is possessed or hereafter acquired by UA and disclosed to Client or Licensed Users, (ii) derives economic value from not being generally known to persons other than UA and its Clients, and (iii) is the subject of efforts by UA that are reasonable under the circumstances to maintain its secrecy or confidentiality. Confidential Information shall include, but shall not be limited to, oral or written (including, without limitation, storage in electronic or machine-readable media)

information with respect to UA's trade secrets, know-how, proprietary processes, operations, employees, contractors, prospects, business plans, product or service concepts, business methods, hardware, software, codes, designs, drawings, products, business models and marketing strategies, in each case relating to the Service. Confidential Information shall not include any information which Client can demonstrate (a) has become generally available to and known by the public (other than as a result of a disclosure directly or indirectly by Client, any of its affiliates or any of its or their respective employees, contractors or agents), (b) has been made available to Client on a non-confidential basis from a source other than UA, provided that such source is not and was not bound by a confidentiality agreement with UA or any other legal obligation of non-disclosure, or (c) has been independently acquired or developed by Client without violating any of its obligations under this Agreement.

5.2 Non-Disclosure of Confidential Information. Client shall hold confidential all Confidential Information (as defined in Section 5.1) of UA and shall not disclose or use (except as expressly provided in this Agreement) such Confidential Information without the express written consent of UA. Confidential Information of UA shall be protected by the Client with the same degree of care as Client uses for protection of its own confidential information, but no less than reasonable care. Client may disclose Confidential Information only to those of its employees who have a need to know the Confidential Information for purposes of performing or exercising rights granted under this Agreement and only to the extent necessary to do so. At any time upon the request of UA, the Client shall promptly, at the option of UA, either return or destroy all (or, if UA so requests, any part) of the Confidential Information previously disclosed and all copies thereof, and the Client shall certify in writing as to its compliance with the foregoing. Client agrees to secure and protect the Confidential Information in a manner consistent with the maintenance of UA's rights therein and to take appropriate action by instruction or agreement with its Licensed Users to satisfy its obligations hereunder. Client shall use its reasonable commercial efforts to assist UA in identifying and preventing any unauthorized access, use, copying or disclosure of the Confidential Information, or any component thereof. Without limitation of the foregoing, Client shall advise UA immediately in the event Client learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of UA. In the event Client is required to disclose any Confidential Information by law or court order, it may do so, provided that UA is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that the Client apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. In such event, Client shall not be liable for such disclosure unless such disclosure was caused by, or resulted from, in whole or in part, a previous disclosure by Client, any of its affiliates or any of its or their respective employees, contractors or agents, not permitted by this Agreement. UA Confidential Information shall not include information which can be demonstrated by Client: (i) to have become part of the public domain except by an act or omission or breach of this Agreement on the part of Client, its employees, or agents; (ii) to have been supplied to Client after the time of disclosure without restriction by a third party who is under no obligation to UA to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that UA is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that Client apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. Notwithstanding the foregoing, UA may publish the fact of the existence of this Agreement and/or the business relationship created hereby, and may include reference to it in its marketing collateral.

5.3 Non-Disclosure of Client Confidential Information. Notwithstanding any provision of this Agreement to the contrary, UA shall hold confidential all information disclosed to UA (a) concerning the business affairs or proprietary and trade secret information of Client, (b) any information that derives economic value from not being generally known to persons other than Client and its employees, and (c) any information that is the subject of efforts by Client that are reasonable under the circumstances to maintain its secrecy or confidentiality, whether disclosed to UA by Client in oral, graphic, written, electronic or machine readable form ("Client Confidential Information") and shall not disclose or use such Client Confidential Information without the express written consent of Client. Client Confidential Information shall be protected by UA with the same degree of care as UA uses for its own confidential information, but no less than reasonable care. UA may disclose Client Confidential Information only to those of its employees who have a need to know the Client Confidential Information for purposes of performing or exercising rights granted under this Agreement and only to the extent necessary to do so. At any time upon the request of Client, UA shall promptly, at the option of Client, either return or destroy all (or, if Client so requests, any part) of the Client

Confidential Information previously disclosed and all copies thereof, and UA shall certify in writing as to its compliance with the foregoing. UA agrees to secure and protect the Client Confidential Information in a manner consistent with the maintenance of Client's rights therein and to take appropriate action by instruction or agreement with its employees to satisfy its obligations hereunder. UA shall use reasonable commercial efforts to assist Client in identifying and preventing any unauthorized access, use, copying or disclosure of the Client Confidential Information, or any component thereof. Without limitation of the foregoing, UA shall advise Client immediately in the event UA learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of Client, and UA will, at UA's expense, cooperate with Client in seeking injunctive or other equitable relief in the name of UA or Client against any such person. Client Confidential Information shall not include information which can be demonstrated by UA: (i) to have become part of the public domain except by an act or omission or breach of this Agreement on the part of UA, its employees, or agents; (ii) to have been supplied to UA after the time of disclosure without restriction by a third party who is under no obligation to Client to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that Client is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that UA apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information.

5.4 Passwords. Any and all login identifiers and passwords provided hereunder are deemed Confidential Information of UA. Client and Licensed Users are responsible for maintaining the confidentiality of such login identifiers and passwords. Client agrees to (a) notify UA of any unauthorized use of such login identifiers or passwords or any other breach of security pertaining to the Service when it became known to the Client, and (b) ensure that Licensed Users exit from their accounts at the end of each session. UA cannot and will not be liable for any loss or damage arising from Client's or any Licensed User's failure to comply with this Section 5.4.

5.5 Term. With regard to Confidential Information that constitutes trade secrets, the obligations in this Section shall continue for so long as such information constitutes a trade secret under applicable law. With regard to all other Confidential Information, the obligations in this Section shall continue for the term of this Agreement and for a period of five years thereafter.

INDEMNIFICATION AND LIABILITY

6.1 UA shall indemnify, defend and hold the Client and its officials, agents and employees harmless from and against any and all claims, damages, losses, injuries and expenses (including reasonable attorneys' fees), relating to or arising out of: (i) any act or omission of UA, its officers, employees, subcontractors, or agents in connection with the performance of the Services; (ii) any breach of a covenant, representation or warranty made by UA under this Contract; and (iii) use by UA of any intellectual property in connection with the Services (whether such intellectual property is owned by UA or a third party) or the incorporation by UA of intellectual property into the Services.

6.2 EXCEPT FOR BREACHES OF SECTIONS 2 OR 5, IN NO EVENT WILL: (I) EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL ANNUAL AMOUNT PAID BY CLIENT TO UA UNDER THIS AGREEMENT. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION. THIS SECTION WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS DEEMED TO HAVE FAILED IN ITS ESSENTIAL PURPOSE.

PROPRIETARY RIGHTS

7.1 Proprietary Rights. No right (except for the License right granted in Article 2), title or interest in any intellectual property or other proprietary rights are granted or transferred to Client hereunder. UA and its third-party licensors and service providers retain all right, title and interest, including, without limitation, all patent, copyright, trade secret and all other intellectual property and proprietary rights, inherent in and appurtenant to the Service and all derivative works connected therewith.

TERM AND TERMINATION

8.1 Term; Termination. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue for an initial term of Five (5) years thereafter, unless terminated earlier or renewed as set forth herein, and shall automatically renew for additional Five (5) years (the “Renewal Term”) unless either party provides written notice of termination ninety (90) days prior to the expiration of the initial Term or then current Renewal Term. Either party may immediately terminate this Agreement in the event that:

(a) the other party breaches any material obligation, warranty, representation or covenant under this Agreement and does not remedy such failure within thirty (30) days after its receipt of written notice of such breach or,

(b) the other party becomes insolvent or is unable to pay its debts as due, enters into or files (or has filed or commenced against it) a petition, arrangement, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or similar laws of any other jurisdiction or transfers all of its assets to another person or entity.

If timely payment of Fees is not received by its due date, UA reserves the right to either suspend or terminate Client’s or Licensed User’s access to the Service. Upon termination or expiration of this Agreement for any reason, the License and the Service shall terminate, Client will be obligated to pay any and all Fees due hereunder up through the annual anniversary of the Effective Date of this Agreement or expiration and UA shall have no further obligations to Client. Sections 2.2, 2.3, and 4.3 and Articles 5, 6, 7, 8, and 9 hereof shall survive the expiration or termination of this Agreement for any reason.

MISCELLANEOUS

9.1 Notices. Any written notice required or permitted to be delivered pursuant to this Agreement will be in writing and will be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via telecopier/facsimile, with a confirmation copy sent via overnight mail; (d) one (1) business day after deposit with a national overnight courier;

9.2 Governing Law and Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Georgia. Any suit or proceeding relating to this Agreement shall be brought in the courts, state and federal, located in Dekalb County, Georgia.

9.3 UCITA Disclaimer. THE PARTIES AGREE THAT THE UNIFORM COMPUTER TRANSACTIONS ACT OR ANY VERSION THEREOF, ADOPTED BY ANY STATE, IN ANY FORM ("UCITA"), SHALL NOT APPLY TO THIS AGREEMENT. TO THE EXTENT THAT UCITA IS APPLICABLE, THE PARTIES AGREE TO OPT OUT OF THE APPLICABILITY OF UCITA PURSUANT TO THE OPT-OUT PROVISION(S) CONTAINED THEREIN.

9.4 Assignment. Client will not assign, sublicense or otherwise transfer this Agreement, in whole or in part, nor delegate or subcontract any of its rights or obligations hereunder, without UA's prior written consent, except in the event of an assignment to an affiliate

9.5 Force Majeure. Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism, or power, communications, satellite or network failures; provided, however, this Section 9.5 shall not apply to Client’s obligation to pay any of the Fees in accordance with Article 3 hereof.

9.6 Modifications. All amendments or modifications of this Agreement shall be in writing signed by an authorized representative of each party hereto. The parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any amendments to this Agreement that are not executed by an authorized representative of UA and Client; (b) any oral modifications to this Agreement; and (c) any other amendments based on course of dealing, waiver, reliance, estoppel or similar legal theory. The parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section.

9.7 Waiver. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement will not be deemed to be a waiver or modification by such party of any of its rights under this Agreement.

9.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such holding shall not affect the validity or enforceability of the other provisions of this Agreement.

9.9 Headings. The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

9.10 Entire Agreement. This Agreement (including the Schedules and any addenda hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

IN WITNESS WHEREOF, UA and Client have executed this Agreement as of the date set forth below. All signed copies of this Agreement shall be deemed originals.

Signed on behalf of The Client:

Signed: _____

Name: _____

Title: _____

Date: _____

Signed on behalf of The Supplier:

Signed: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

_____
Adam F. Tucker, City Attorney
City of Murfreesboro, Tennessee

EXHIBIT B

Sales Quote

Utility Associates Inc
250 East Ponce De Leon Avenue
Suite 700
Decatur GA 30030
(800) 597-4707
www.utility.com

Customer	Murfreesboro TN Police
Date	1/13/2022
Sales Quote#	131743-R
Expires	6/30/2022
Sales Rep	Blake, Dahlia
PO#	
Terms	Net 30

Bill To

Chief Michael Bowen
Murfreesboro TN Police
1004 N Highland Avenue
Murfreesboro, TN 37130

Ship To

Murfreesboro TN Police
1004 N Highland Avenue
Murfreesboro, TN 37130

Item	Description	Quantity	Price Each	Amount
SS-G-101	**Remote Configuration Management (RCM), AVaiLWeb and Hardware Warranty, Limited Software Support - From 7/1/2022 through 6/30/2023**	139	$366.17	$50,897.63
IOTCOM-S-4001-R	**AVaiL Web SaaS for Rocket IoT Communications - Renewal - From 7/1/2022 through 6/30/2023**	76	$390.00	$29,640.00
BW-S-4001	**AVaiL Web SaaS and Warranty and 24/7 Technical Support for BodyWorn - 1 Year**	1	$990.00	$990.00
BW-H-4001-X1	**Bodyworn Hardware Bundle(Includes Smart Holster Sensor)**	1	$1,370.00	$1,370.00
DISCOUNT	**Discount For Extended Test as Part of a Renewal**	1	($2,360.00)	($2,360.00)
Signature Line	**Signature:**_____			
	Name:_____			
	Date:_____			
	PO:_____			

Subtotal	$80,537.63
Sales Tax (%)	$0.00
Total	$80,537.63

This transaction is subject to the terms and conditions laid forth in UA's Customer Service Agreement. See *https://www.bodyworn.com/service-agreement* for additional details.

Please forward all inquiries to *insidesales@utility.com*

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Approve Amended and Restated Contract with Greg Peck and Associates for Bradyville Appraisal Services

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Amended and Restated Contract with Greg Peck and Associates for appraisal services for the Bradyville Pike reconstruction project.

Staff Recommendation

Approve Amended and Restated Contract.

Background Information

on November 29, 2018, the City contract with Volkert, Inc., Greg Peck and Associates, and BG Jones Company for negotiation, appraisal, and review appraisal services for the Bradyville Pike reconstruction project. Subsequently, it was discovered that contract with Greg Peck and Associates failed to compensate for the Property Data Brochure that was being prepared and only covered the first 26 appraisals. Substantially more than 26 appraisals were necessary and have been completed. Payment has been made and the proposed Amended and Restated Contract retroactively makes the necessary correction for federal reporting purposes.

Council Priorities Served

Responsible budgeting

The proposed Amended and Restated Contract accurately reflects the scope of work consistent with federal project requirements.

Expand infrastructure

The reconstruction of Bradyville Pike and related utility upgrades will greatly improve the existing infrastructure.

Fiscal Impact

The City is managing the Bradyville Pike reconstruction under a Local Programs project with TDOT. The City's local participation in this phase of the project is capped

at $150,000 which has already been expended. The remaining appraisal costs will be paid by the City then reimbursed by TDOT.

Attachments

Proposed Amended and Restated Contract.

AMENDED AND RESTATED
CONTRACT
BETWEEN THE CITY OF MURFREESBORO,
AND
Gregory Peck and Associates
BRADYVILLE PIKE

WHEREAS the following facts exist:

A. In mid-2018 the parties began negotiations toward an engagement for Consultant to provide appraisal services for the Bradyville Pike reconstruction project.

B. On August 30, 2018, Consultant submitted a proposal for the first 26 properties identified as requiring appraisals.

C. On November 29, 2018, City Council approved the retention of consultants, including the Consultant, for the Bradyville project and a letter agreement substantially in the form of the August 30 proposal was accepted by the City.

D. It has come to light that the letter agreement accepted by the City on November 29, 2018, is substantively incomplete and did not accurately cover the required scope of services in the following respects:

i. It did not provide for the Property Data Brochure that was in process of preparation at the time.

ii. It did not provide for revisions due to design or other changes or updates for condemnation or other purposes.

iii. The maximum fee provision was inappropriate as the parties contemplated at the time that the project would require many more than the 26 appraisals provided for in that letter agreement.

iv. The assumption that an appraisal of a property first identified as an "NPP" – i.e., a ROW / easement take requiring less than $10,000 payment to the landowner – would require less time and effort than any other appraisal was inaccurate.

v. The letter agreement failed to account for the fact that certain specific properties (such as the C-store on TR 91 and the apartments on TRs 10, 30, and 38 would require significantly greater time and effort than the other properties.

NOW THEREFORE, for good and valuable mutual considerations, the receipt and sufficiency of all of which is hereby irrevocably acknowledged and confirmed, the City of Murfreesboro, a Tennessee municipal corporation ("City"), and **Gregory Peck and Associates** ("Consultant"), enter into this Amended and Restated Contract ("Contract") for the provision of real property Appraisal and Related Service concerned with and necessary for the acquisition of right-of-way for highway projects and the possible disposition of excess land. This Contract shall be deemed to be effective as of November 29, 2018, and shall in all things supersede and replace the letter agreement of the same date.

"Appraisal and Related Service" may include all or parts of the following: real estate appraisal, real estate consultation, pre-trial conference, deposition, and court testimony, as further defined in the "SCOPE OF SERVICES."

Consultant Federal Employer Identification #: 83-3209289
Consultant Place of Incorporation or Organization: 1784 West Northfield Boulevard #266, Murfreesboro, TN 37129.

Project Name: Bradyville Pike Road Widening from US-41 (SE Broad St) to South Rutherford Blvd.
Federal Project No: STP-M-99(35)
State Project No: 75LPLM-F2-030.

A. SCOPE OF SERVICES:

A.1. The Consultant shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines specified by this Contract.

A. 2. For each project to be covered hereunder, the Consultant shall provide such of the following services as required by this Contract and/or the Work Order issued by the City for the subject project. As called for, the Consultant shall:

a. Complete all appraisal services and work product to the standards set forth herein by the due date stated in each respective Work Order. The City may grant "due date" extensions where appropriate. Failure on the part of the Consultant to complete each assignment according to said standards by the agreed upon due date shall be considered a material breach of this Contract and shall be subject to, but not limited to, the remedies available in Section D.4 of this Contract.

b. Complete all appraisal services in accordance with the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs Act [Uniform Act (Part 24 of title 49 CFR)], the Uniform Standards of Professional Appraisal Practice [USPAP (Appraisal Foundation)], [Guidelines For Appraisers (www.tdot.state.tn.us; click TDOT Services Index; Right-of-Way; Appraisal Office; Guidelines For Appraisers)], and federal, state and local laws, rules, and regulations.

c. Furnish an electronic copy of the Market Data Brochure and each Appraisal Report. Unless specifically directed otherwise in writing, all appraisal services products are to be delivered to the City of Murfreesboro.

d. Consider the effect(s) of events under the control of the City, such as plan revisions or assignment revisions, etc. on the existing appraisal services assignment. Should the Consultant determine the revision will cause a delay in delivering the scheduled appraisal services product(s) or call for additional compensation, the Consultant must communicate this to the individual listed in Section E.2 of this Contract within seven (7) days.

e. In addition to the standard photos of the subject property and exterior photos of the acquired improvements, the Consultant shall provide a typical interior photo of acquired/affected structures having substantial contributory value (i.e. residences, commercial structures, large barns, etc.) Legible digital images are acceptable.

f. Communicate, in writing, to the individual identified in Section E.2 of this Contract any other request(s) for Work Order due date extension(s). All requests for extensions must be made prior to the original Work Order due date.

g. Update to "date of possession" appraisal report(s) on any tract(s) involved in condemnation covered under Work Orders issued hereunder when requested to do so by the City. Appraisal updates shall be completed within one hundred twenty (120) days after the request is made in writing by the City. All such updates shall be in compliance with standards set forth in A.2.b. above except that the standards in force as of the date of employment to conduct the updated appraisal service shall apply. The "update" appraisal request may require the Consultant to consider and include minor plan revisions and changes in market conditions.

h. Upon request by the City, testify, in support of the opinion of value of any and all of the property included in his/her appraisal report, in any judicial or arbitration proceeding involving the determination of the value of the property. Further, Consultant agrees to

attend, as requested by the City, any pre-trial conferences, meetings, depositions, etc. related to such proceedings. The Consultant shall be compensated for these litigation-related services in accordance with the Expert Valuation Witness Rates in effect at the time the service is rendered. The Expert Valuation Witness Rate Schedule may be adjusted periodically.

i. Execute disclaimers of any past, present or contemplated future personal interest in any of the properties included in the proposed agreement, as required by the City, the State of Tennessee or if applicable, Federal Highway Administration (FHWA).

j. Maintain throughout the term of this Contract Errors and Omissions insurance in the amount of not less than one million dollars ($1,000,000.00), and proof of which shall be made available to the City upon demand.

k. Attend and participate in Project progress conferences with the Mayor or his/her designee upon reasonable notice. The Consultant shall be compensated for these conferences in accordance with the Expert Valuation Witness Rates in effect at the time the service is rendered. The Expert Valuation Witness Rate Schedule may be adjusted periodically.

A.3. At the time of execution of a Work Order, The City shall:

a. Provide a title report on each tract involved.

b. Provide Final Right-of-Way plans --to include cross-sections.

c. Provide individual tract maps showing existing and proposed right-of-way to include easements.

d. Stake the right-of-way where appropriate and necessary to a clear visualization of the part acquired and impact on the remainder.

e. Provide reasonable engineering assistance. (Extraordinary engineering assistance will be considered by the City on a case-by-case basis as requested by the Consultant).

f. Provide environmental reports (when available) that could impact valuation.

NOTE: The acquisition table will always take precedent if there is a discrepancy between records.

B. CONTRACT TERM:

This Contract shall be effective when executed on behalf of the City and shall continue until services of the Consultant with respect to the Bradyville project are no longer required.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Appraisal Fee: The fee for each complete appraisal with an Appraisal Report as defined by USPAP under Standards Rule 2-2(a) will be $4,000, provided, however, that the fee for TRs 10, 30, 38, and 91 may be up to $6,000.

In addition, it is understood that by October 2021 the Property Data Brochure dated October 15, 2019, had become of limited value, requiring additional research for comparable sales for each appraisal that was not previously necessary. Accordingly, beginning in November 2021, the basic fee for appraisals shall be raised from $4,000 to up to $5,000.

C.2. Damages: If a proposed acquisition appears to result in damages to the remainder, requiring a "Formal" appraisal of the entire property including improvements in order to assess damages, the fee for the appraisal will be $7,500.

C.3. Revisions: The fee for revisions due to minor plan changes, market changes, and updates including updates to date of possession for condemnation purposes will be up to 50% of the original fee for the tract involved. The fee for revisions due to major plan revisions or other such changes that require essentially a new appraisal will up to the rate for a new appraisal.

The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Consultant.

The City is under no obligation to request work from the Consultant in any specific dollar amounts or to request any work at all from the Consultant during any period of this Contract.

C.4. Additional Services. The Consultant shall be compensated for additional services as follows:

a. For submission and acceptance of a Market Data Brochure: $25,000.00.

b. For expert valuation testimony, including attendance at pre-trial conference, deposition, and trial court: $300.00 per hour, $2,400 / day maximum. This is the current, standard TDOT rate, and is subject to adjustment by an amendment to this Contract.

C.5. Travel Compensation. The Consultant shall not be compensated or reimbursed for travel, meals, or lodging.

C.6. Invoice Requirements. The Consultant shall invoice the City only for completed increments of service and for the amount stipulated in Section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation to:

David Ives
Deputy City Attorney
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
Email address: dives@murfreesborotn.gov
Telephone #: (615) 849-2616
Fax #: (615) 849-2662

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

(1) Invoice Number (assigned by the Consultant)
(2) Invoice Date
(3) Contract Number (assigned by the City)
(4) Customer Account Name: City of Murfreesboro, Tennessee
(5) Customer Account Number (assigned by the Consultant to the above-referenced Customer)
(6) Consultant Name
(7) Consultant Federal Employer Identification Referenced in Preamble of this Contract
(8) Consultant Contact for Invoice Questions (name, phone, and/or fax)
(9) Consultant Remittance Address
(10) Description of Delivered Service
(11) Complete Itemization of Charges, which shall detail the following:

i. Service or Milestone Description (including name and title as applicable) of each service invoiced
ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
iv. Amount Due by Service
v. Total Amount Due for the invoice period

b. The Consultant understands and agrees that an invoice under this Contract shall:

(1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) only be submitted for completed service and shall not include any charge for future work;
(3) not include sales tax or shipping charges; and
(4) initiate the timeframe for payment (and any discounts) only when the City is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.7. Payment of Invoice. A payment by the City shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. A payment by the City shall not be construed as acceptance of any part of the work or service provided or as an approval of any of the amounts invoiced.

C.8. Invoice Reductions. The Consultant's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the City, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.9. Deductions. The City reserves the right to deduct from amounts which are or shall become due and payable to the Consultant under this or any contract between the Consultant and the City any amounts which are or shall become due and payable to the City by the Consultant.

C.10. Prerequisite Documentation. The Consultant shall not invoice the City under this Contract until the City has received a completed and signed "Substitute W-9 Form" provided by the City. The taxpayer identification number detailed by said form must agree with the Consultant's Federal Employer Identification Number of Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The City is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with the City's charter.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by the appropriate City officials in accordance with the City's charter.

D.3. Termination for Convenience. The City may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the City. The City shall give the Consultant at least ninety (90) days written notice before the effective termination date. The Consultant shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the City be liable to the Consultant for compensation for any service which has not been rendered. Upon such termination, the Consultant shall have no

right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Consultant fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Consultant violates any terms of this Contract, the City shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the Consultant.

D.5. Subcontracting. The Consultant shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the City. If such subcontracts are approved by the City, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved sub-Consultants, the Consultant shall be the prime Consultant and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Consultant warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the City as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, sub-Consultant, or consultant to the Consultant in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Consultant hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Consultant on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal or Tennessee State constitutional, or statutory law. The Consultant shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Records. The Consultant shall maintain documentation for all charges under this Contract. The books, records, and documents of the Consultant, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the City, State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.9. Monitoring. The Consultant's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the City, State, the Comptroller of the Treasury, or their duly appointed representatives.

D.10. Progress Reports. The Consultant shall submit brief, periodic, progress reports to the City as requested.

D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12. Independent Consultant. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee 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.

The Consultant, being an independent Consultant and not an employee of the City, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Consultant's employees, and to pay all applicable taxes incident to this Contract.

D.13. City Liability. The City shall have no liability except as specifically provided in this Contract.

D.14. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.15. City, State and Federal Compliance. The Consultant shall comply with all applicable City, State and Federal laws and regulations in the performance of this Contract.

D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Consultant agrees that venue for any actions that may arise under this Contract will be in the Circuit or Chancery Courts of Rutherford County, Tennessee.

D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The City of Murfreesboro:

David Ives
Deputy City Attorney
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
Email address: dives@murfreesborotn.gov
Telephone #: (615) 849-2616

Fax #: (615) 849-2662

The Consultant:

Gregory O. Peck and Melissa Rich
Gregory Peck & Associates
1784 West Northfield Blvd. #266
Murfreesboro, TN 37129
Email address: info@GregoryPeckandAssociates.com
Cell #: (615) 962-4119

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of City, State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate the Contract upon written notice to the Consultant. Said termination shall not be deemed a breach of Contract by the City. Upon receipt of the written notice, the Consultant shall cease all work associated with the Contract. Should such an event occur, the Consultant shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Consultant shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Consultant by the City or acquired by the Consultant on behalf of the City shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Consultant to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Consultant's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Consultant of this Contract; previously possessed by the Consultant without written obligations to the City to protect it; acquired by the Consultant without written restrictions against disclosure from a third party which, to the Consultant's knowledge, is free to disclose the information; independently developed by the Consultant without the use of the City's information; or, disclosed by the City to others without restrictions against disclosure. Nothing in this paragraph shall permit Consultant to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Consultant due to intentional or negligent actions or inactions of agents of the City or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.5. City Ownership of Work Products. The City shall have ownership, right, title, and interest, including ownership of copyright, in all work products delivered under this Contract subject to full and final payment for each "Work Product." The City shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

E.6. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Consultant's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence below.

a. The Contract document and its attachments

b. Any Work Order issued hereunder.

E.7. Prohibited Advertising. The Consultant shall not refer to this Contract or the Consultant's relationship with the City hereunder in commercial advertising in such a manner as to state or imply that the Consultant or the Consultant's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.8. Lobbying. The Consultant certifies, to the best of its knowledge and belief, that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying,'' in accordance with its instructions.

c. The Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.9. Debarment and Suspension. The Consultant certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future sub-Consultants and their principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant 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;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Consultant shall provide immediate written notice to the City if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its sub-Consultants are excluded or disqualified.

E.10. Hold Harmless. The Consultant agrees to indemnify and hold harmless the City of Murfreesboro as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Consultant, its employees, or any person acting for or on its or their behalf relating to this Contract. The Consultant further agrees it shall be liable for the reasonable cost of attorneys for the City in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Consultant to the City.

In the event of any such suit or claim, the Consultant shall give the City immediate notice thereof and shall provide all assistance required by the City in the City's defense. The City shall give the Consultant written notice of any such claim or suit, and the Consultant shall have full right and obligation to conduct the Consultant's own defense thereof. Nothing contained herein shall be deemed to accord to the Consultant, through its attorney(s), the right to represent the City of Murfreesboro in any legal matter.

E.11. Communication With Others (Communication With The Landowner Or Anyone Other Than The City). The City is the client. Under no circumstances can any conclusions, observations, opinions, or any type of confidential information be conveyed to anyone other than the City. In discussions with landowners on the project, conversations are restricted to soliciting information from the landowners about the subject tract and any information they might possess about the area; the appraisal process; and explanations of the right-of-way plans. Disclosure of confidential information will be considered a material breach of this Contract.

E.12. Approval of Market Data Brochure & Appraisal Reports. Unpaid fees due the Consultant for the Market Data Brochure and/or individual appraisal reports are contingent upon the City's review and approval, and are to be paid in full upon said approval. The City shall issue approval or denial of each Brochure and/or appraisal report within thirty (30) days of its submission. If a denial is not issued within the aforementioned 30-day time frame, approval for payment to the Consultant for the appraisal service rendered shall be automatic. In such case, said approval for payment shall not be construed as approval of the report. In case of denial on the basis of appraisal product deficiency, whether delivered by the City to the Consultant verbally or in writing, Consultant shall respond accordingly within 15 calendar days.

E.13. Interests In Property And Real Property Transactions. The Consultant warrants that he/she has no present or prospective interest or bias in the property(ies) being appraised and no personal interest or bias with respect to the parties involved. Furthermore, the Consultant agrees not to engage in any real property transactions involving the assigned tracts for a period beginning at the time the Consultant is requested to submit a proposal for appraisal services and ending at the time the City's acquisition is complete. For violation of this agreement, the City shall have the right to terminate this Agreement immediately without liability.

E.14. Documentation Requests. All replies to documentation requests (TDOT Form 39), written or verbal, must be completed and returned within the agreed-upon time period.

E.15. Qualification of Consultant. The Consultant represents that he/she is authorized and qualified to make said appraisal(s) in conformance with the standards required for determining values recognized in Tennessee Eminent Domain proceedings.

IN WITNESS WHEREOF,

Gregory Peck and Associates

Melissa M. Rich — **August 6, 2022**

Melissa M. Rich, MAI — **DATE**

Gregory O. Peck — **August 6, 2022**

Gregory O. Peck, CCIM, SRPA, SRA (Retired) — **DATE**

City of Murfreesboro, Tennessee

Shane McFarland, Mayor — **DATE**

ATTEST:

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

Adam Tucker, City Attorney

Approved by Murfreesboro City Council: _____,

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Rutherford Boulevard Adaptive Signal Control Technology Project Addendum No. 1 Design Contract

Department: Transportation

Presented by: Jim Kerr, Transportation Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

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

Staff Recommendation

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

Background Information

On November 30, 2017, the City entered into a professional services agreement for the NEPA-PE and design services for the Rutherford Blvd Adaptive Signal Control Technology (ASCT). During the TDOT Final Design Phase, various circumstances arose requiring work to address plan development needs not anticipated. Service beyond original scope of work include additional survey, design, revised make-ready plans and an updated NEPA Document.

The original professional service ceiling is set at $411,420 the addendum request would raise the ceiling to $441,200. Since this is a TDOT Congestion Mitigation and Air Quality (CMAQ) funded project, all design cost are 100% reimbursable with federal dollars.

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

Advanced Signal Technology enhances the safety and operations of the City's roadway network.

Operational Issues

Once the project has been completed for five years, the City will be responsible for an annual maintenance cost for the software.

Fiscal Impact

CMAQ funds provides 100% federal funding for the design phase.

Attachments

1. Attachment Addendum Number 1 to Contract with Neel Schaffer Inc.
2. Rutherford Blvd. Adaptive Signal Project Executed Contract.

July 18, 2022
NSI Project Number: NS.14279.000

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

RE: Professional Engineering Services - Addendum #1
Rutherford Blvd ASCT Project
PIN 125505.00; 75LPLM-F1-060; CM-9311(22)

Dear Jim:

Per recent discussion, please accept this correspondence as documentation and request for addendum of additional services under the referenced contract. During the TDOT Final Design Phase, various circumstances arose necessitating work to address plan development needs not anticipated. Services provided beyond original scope of work include the following tasks:

- Additional field survey by subconsultant (Wiser Consultants) at intersection of Rutherford Blvd and Greenland Dr
- Design services for additional traffic signal modifications at Rutherford Blvd and Greenland Dr
- Revisions to utility make-ready plans related to MTE purchase and ownership of MED facilities
- NEPA Re-evaluation tasks by subconsultant (Griggs & Maloney)

Based on the quotes of services from our subconsultant partners and additional tasks performed by Neel-Schaffer, we request a fee addendum of $30,000 for the identified tasks. With the original professional services ceiling set at $411,420.00, the addendum request would establish the revised fee ceiling as $441,420.00. Neel-Schaffer will invoice labor and expenses as costs are incurred up to contract ceiling. All other terms and conditions will remain the same and follow the originally executed professional services agreement.

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

Sincerely,

NEEL-SCHAFFER, INC.

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

Attachments

P: 615.217.0500 | F: 615.383.9984
201 East Main Street, Suite 325
Murfreesboro, TN 37130
www.neel-schaffer.com

engineers | planners | surveyors | environmental scientists | landscape architects

Signature Page

ISSUED AND AUTHORIZED BY:

CITY OF MURFREESBORO
Mayor

_____

Date Signed: _____

ACCEPTED AND AGREED TO BY:

NEEL-SCHAFFER, INC.

_____

Title: Engineer Manager-Vice President

Date Signed: July 18, 2022

APPROVED AS TO FORM:

CITY OF MURFREESBORO
City Attorney

_____

Date Signed: _____

Wiser Consultants, LLC
1427 Kensington Square Ct.
Murfreesboro, TN 37130

Invoice No.
11071

June 3, 2019

Neel-Schaffer, Inc.
Attn: Greg Judy
201 East Main Street, Suite 325
Murfreesboro, TN 37130

Project: 19-04-0608 Survey Master Service
Greenland/Rutherford Survey

Professional Services from 4/18/19 to 5/31/19

Fee

Original Work Order Amount:	N/A		
Additional Services / Supplement:	$8,097.50		
Work Order Ceiling	N/A	Remaining Ceiling:	N/A
Total Invoiced	$8,097.50		
Amount Previously Invoiced	$0.00		

AMOUNT DUE THIS INVOICE $8,097.50

Outstanding

Invoice Number	Invoice Date	Amount	Days Outstanding 31-60	61-90	91-120	Over 120

GRIGGS & MALONEY
INCORPORATED
Engineering & Environmental Consulting

P.O. Box 2968
Murfreesboro, TN 37133-2968
(615) 895-8221
Fax: (615) 895-0632

February 10, 2021

Mr. Gregory D. Judy, P.E., PTOE
Vice President/Engineer Manager
201 East Main Street, Suite 325
Murfreesboro, Tennessee 37130

RE: RE-EVALUATION : CITY OF MURFREESBORO ASCT RUTHERFORD BOULEVARD PROJECT
RUTHERFORD COUNTY, TENNESSEE

Dear Greg:

It is our understanding that the project timing of Murfreesboro's ASCT Rutherford Boulevard project is expected to exceed the three-year period since the initial project's approval, and as such, will require a formal re-evaluation.

Griggs & Maloney, Inc. can provide the Re-evaluation to re-validate the findings of the previous environmental document. The fee is to be based on a Cost Plus basis, using standard overhead rate markup, net fee and direct costs, not to exceed of $5,000. You stated that the work order would be handled by an addendum to the original subcontract agreement.

If you have any questions or need additional information, please advise.

Thanks for considering us,
GRIGGS & MALONEY, INC.

Steve Maloney

AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), made and entered into by and between NEEL-SCHAFFER, INC., a Mississippi Corporation, with its main office located at 125 South Congress Street, Jackson, Mississippi 39201, hereinafter referred to as "ENGINEER", and CITY OF MURFREESBORO, TENNESSEE, 111 West Vine Street, Murfreesboro, Tennessee 37130, hereinafter referred to as "CITY", who mutually agree as follows:

DECLARATIONS. CITY desires to retain ENGINEER to provide engineering, related technical, and other services in connection with City's project hereinafter referenced as Project. The Project is described as follows: Rutherford Boulevard Adaptive Signal Control Technology (ASCT) project.

1. SCOPE OF SERVICES. Engineer shall provide PE-NEPA, Preliminary Engineering, ROW and Final Engineering Design Services, including bidding and Construction Engineering & Inspection (CE&I), for the Project. THE SCOPE OF SERVICES as found in Attachment A shall be considered as an integral part hereof.

2. ENGINEER shall be paid on a *Cost Plus Net Fee Basis* as detailed herein, in the Amount Not To Exceed $411,420.00.

3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The Mayor and City Council approved this Agreement on the 30th Day of November, 2017.

IN WITNESS WHEREOF the parties have executed this Agreement through their duly authorized officers.

NEEL-SCHAFFER, INC.

By: _____

Title: Senior Vice President

Date: 11/07/2017

CITY OF MURFREESBORO, TENNESSEE

By: _____

Title: Mayor

Date: 11-30-17

APPROVED AS TO FORM:

Craig D. Tindall, City Attorney

TERMS AND CONDITIONS

SECTION I: GENERAL RECITALS

WHEREAS, the CITY requires PE-NEPA, Preliminary Engineering, ROW and Final Engineering Design Services, including bidding and Construction Engineering & Inspection (CE&I), for the Rutherford Boulevard Adaptive Signal Control Technology (ASCT) project; and,

WHEREAS, the CITY proposes under the authority of this Agreement to employ the ENGINEER, a firm adjudged by the CITY upon representations of Engineer to be qualified, for the performance of Professional Services described herein on the proposed project as identified herein; and,

WHEREAS, the CITY is authorized under its charter and state laws to enter into this Agreement.

NOW, THEREFORE, in consideration of these premises and mutual covenants herein set forth, it is agreed by and between the parties hereto as follows:

SECTION II: SERVICES OF THE ENGINEER

A. PROJECT'S LOCATION AND GENERAL STATEMENT OF ENGINEER'S ASSIGNMENT. The ENGINEER shall provide the engineering design services, bidding, and CE&I, in cooperation with the CITY for the Rutherford Boulevard Adaptive Signal Control Technology (“ASCT”) project.

B. GENERAL PROJECT CRITERIA. The ENGINEER'S efforts shall include, but not be limited to the Scope of Work and Tasks set forth in the Request for Proposal issued by CITY on June 26, 2017 (“RFP”) and Proposal of NEEL-SCHAFFER dated July 19, 2017, both of which are incorporated herein as if copied verbatim.

   1) Criteria needed to supplement the foregoing shall be as directed by the CITY. Throughout the entire work the ENGINEER will endeavor to obtain the most feasible plan with appropriate weight and consideration given to minimizing the cost of the project.

   2) Note: In accordance with the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction, Sections 107.14 and 107.18, the Contractor is responsible for project site safety. The ENGINEER’S employees are responsible for their personal safety. The ENGINEER is not charged with the role of safety inspector per Section 105.10 and Section 105.11 of Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction.

C. SCHEDULES. The ENGINEER agrees to begin work immediately after receiving authorization to proceed with the work. Any time limitations herein stated are to be conditional upon timely receipt of various information to be supplied by the CITY and upon prompt review and approval by the CITY of the ENGINEER'S work and directly related work performed by other as requested by the ENGINEER during the term of this agreement.

D. EXPERT WITNESS SERVICES: It is understood and agreed that ENGINEER'S services under this Agreement do not include any participation whatsoever in any litigation. Should such services be required, a Professional Service Agreement Addendum may be negotiated between the CITY and ENGINEER describing the services desired and providing a basis for compensation to ENGINEER. This provision does not apply to any litigation between the CITY and the ENGINEER.

SECTION III: CITY'S SERVICES

The CITY agrees to provide to the ENGINEER, without delay, or as they become available, the following:

A. Copies of all requested material available regarding and indicating policies of the CITY with reference to geometrics, standards, specifications and methods, and other memoranda and directives pertaining to any part or phase of the work.

B. Access to and use of all reports, data, or information in the possession of the CITY which might prove pertinent to the work set forth herein. No warranty is made as to the sufficiency of such data furnished by the CITY.

C. Right-of-Entry onto the Project site for ENGINEER'S necessary field studies and surveys. ENGINEER shall endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.

D. All information furnished the ENGINEER by the CITY, electronically or otherwise, is provided solely for the specific purpose set forth in this Agreement. Should the ENGINEER use such information for any other purpose, it shall do so at its own risk, and shall assume full responsibility for such action.

E. The CITY shall provide a project supervisor to oversee and coordinate with the ENGINEER'S project supervisor.

Contact Person	Jim Kerr, Transportation Director
Phone	(615) 893-6441
Email	jkerr@murfreesborotn.gov

The "Contact Person" designated above shall have the complete authority to communicate on behalf of the CITY with respect to project scope, instructions, and to receive information. Changes in Professional Services, negotiation of fees, and other substantial changes under this Agreement may require approval of the City Council.

F. The CITY, with the assistance of ENGINEER upon request by the CITY and as outlined in the

project scope, shall provide public information/relations for project development.

SECTION IV: TDOT STANDARD TERMS AND CONDITIONS

A. GOVERNING LAW: This Agreement shall be governed by the laws of the State of Tennessee. ENGINEER agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The ENGINEER acknowledges and agrees that any rights or claims against the CITY or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all applicable laws.

B. GENERAL COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:

1) The ENGINEER is assumed to be familiar with and observe and comply with those Federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the state and Federal Government regarding fortifications, military and naval establishments and other areas. The ENGINEER shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

2) The parties agree that failure of the ENGINEER to comply with this provision shall constitute a material breach of this Agreement and subject the ENGINEER to repayment of all damages by the CITY as a result of said breach.

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

D. SUBMISSION OF THE PROCEEDINGS, AGREEMENTS, AND OTHER DOCUMENTS: The ENGINEER shall submit to the CITY such data, reports, records, agreements, and other documents relating to the Project as the CITY, TDOT and the Federal Highway Administration may require.

E. APPROPRIATION OF FUNDS: This Agreement is subject to the appropriation and availability of CITY, State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the CITY reserves the right to terminate the Agreement upon thirty (30) days written notice to the ENGINEER. Said termination shall not be deemed a breach of contract by the CITY. Upon receipt of the written notice, the ENGINEER shall cease all work

associated with the Agreement. Should such an event occur, the ENGINEER shall be entitled to compensation for all satisfactory and authorized services completed as of the notice of termination date. Upon such termination, the ENGINEER shall have no right to recover from the CITY any actual, general, special, incidental, consequential or any other damages whatsoever of any description or amount.

F. RIGHTS AND REMEDIES NOT WAIVED: In no event shall the making by the CITY of any payment to the ENGINEER constitute or be construed as a waiver by the CITY of any breach of covenant or any default which may then exist on the part of the ENGINEER and the making of such payment by the CITY while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the CITY with respect to such breach or default. Any invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

G. CITY NOT OBLIGATED TO THIRD PARTIES: The CITY shall not be obligated or liable hereunder to any party other than the ENGINEER.

H. INDEPENDENT CONTRACTOR: The parties hereto, in the performance of this agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

J. EMPLOYMENT COMPLIANCE.

1) EQUAL EMPLOYMENT OPPORTUNITY:

a. In connection with the performance of any Project, the ENGINEER shall not discriminate against any employee or applicant because race, age, color, religion, gender, pregnancy, marital status, military status, disability or national

origin. The ENGINEER will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, gender, pregnancy, marital status, military status, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. The ENGINEER shall insert the foregoing provision in all agreements modified only to show the particular relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such subcontractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the ENGINEER shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the CITY or TDOT setting forth the provisions of the nondiscrimination clause.

2) TITLE VI, CIVIL RIGHTS ACT OF 1964. During the performance of this contract, the ENGINEER, for itself, its assignees, and successors in interest (hereinafter referred to as the "ENGINEER ") agrees as follows:

a. Compliance with Regulations: The ENGINEER shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710.405(b), as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The ENGINEER, with regard to the work performed by itself during the contract, shall not discriminate on the grounds of race, age, color, religion, gender, pregnancy, military status, disability or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The ENGINEER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations. (http://www.tdot.state.tn.us/civil-rights/titlevi/)

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations

made by the ENGINEER for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the ENGINEER of the ENGINEER'S obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, age, color, religion, gender, pregnancy, military status, disability or national origin.

d. INFORMATION AND REPORTS: The ENGINEER shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY or other parties participating in the funding of this agreement to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the ENGINEER is in the exclusive possession of another who fails or refuses to furnish this information, the ENGINEER shall so certify to the CITY and shall set forth what efforts it has made to obtain the information.

e. EXECUTIVE ORDERS 11246 AND 11375: During the performance of work under this Agreement the ENGINEER agrees to comply with the policies set forth in Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

f. TITLE VI ADDITIONAL ASSURANCES: ENGINEER incorporates by reference Tennessee Department of Transportation Title VI Assurances-Appendix A by reference as if copied verbatim herein. (http://www.tdot.state.tn.us/civil-rights/titlevi/)

g. SANCTIONS FOR NONCOMPLIANCE: In the event of the ENGINEER'S noncompliance with the nondiscrimination provisions of this contract, the CITY shall impose such contract sanctions as it may determine to be appropriate, including, but not necessarily limited to:

i. withholding of payments to the ENGINEER under the contract until the ENGINEER complies, and/or

ii. cancellation, termination, or suspension of the contract in whole or in part.

3. AMERICANS WITH DISABILITIES ACT: ENGINEER will comply with all the requirements as imposed by the Americans with Disabilities Act and the regulations of the federal government issued thereunder. The ENGINEER shall comply with the Vocational Rehabilitation Act of 1973 as approved by Congress on September 26, 1973, herein incorporated by reference, which prohibits employment discriminations

against physically handicapped persons.

4. VIETNAM ERA VETERANS READJUSTMENT ACT OF 1974: The ENGINEER shall comply with Section 2012 of the Vietnam Era Veterans Readjustment Act of 1974 which requires the ENGINEER to take affirmative action to employ and advance in employment qualified veterans of the Vietnam Era.

K. CONFLICTS OF INTEREST:

1. ENGINEER warrants that no amount shall be paid directly or indirectly to an employee or official of the CITY, the State or the Federal government as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to ENGINEER in connection with any work contemplated or performed relative to this Agreement.

2. The ENGINEER shall insert in all agreements entered into in connection with the Project and shall require its subcontractors to insert in each of its subcontracts, the following provision:

"No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the ENGINEER in connection with any work contemplated or performed relative to this Agreement."

L. CONFLICT OF INTEREST: No member of or delegate of the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

M. LOBBYING: With respect to project involving federal aid, the ENGINEER certifies, by signing this Agreement to the best of its knowledge and belief, that:

1) No federally appropriated funds have been paid or will be paid, by or on behalf of the ENGINEER, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of this Agreement, or any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan or cooperative agreement, the ENGINEER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3) The ENGINEER will require that the language of this certification be included in all subcontracts at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly. The ENGINEER understands that this certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

4) The ENGINEER agrees that during the period of performance of this agreement it and its sub-recipients must file a disclosure form at the end of each calendar year quarter in which there occurs any event that requires disclosure or materially affects the accuracy of the information contained in any previously filed disclosure form. Events that are considered to materially affect the accuracy of information reported are described in Subpart A, Section 1230.110(c) of the Office of Management and Budget interim final guidance pertaining to Federal government-wide restrictions on lobbying established by Section 319 of Public Law 101-121.

N. RECORDS:

1) The ENGINEER shall maintain documentation for all charges against the CITY under this Agreement. All costs charged to the Project, including any approved services contributed by the ENGINEER or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the CITY and TDOT the nature and propriety of the charges. The books, records, and documents of the ENGINEER, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the CITY at all times during the period of this Agreement and for at least three (3) years after final payment is made.

2) Copies of these documents and records shall be furnished to the CITY, TDOT or their duly appointed representatives, upon request. Records of costs incurred includes the ENGINEER'S general accounting records and the Project records, together with supporting documents and records, of the ENGINEER and all subcontractors considered necessary by the CITY for a proper audit of costs. If any litigation, claim or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit finding involving the records have been resolved.

3) The aforesaid requirements to make records available to the CITY and TDOT shall be a continuing obligation of the ENGINEER and shall survive a termination of the Agreement.

4) ENGINEER shall consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the CITY.

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

P. TERMINATION FOR CONVENIENCE: The CITY may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the CITY. The CITY shall give the ENGINEER at least thirty (30) days written notice before the effective termination date. The ENGINEER shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the notice of termination date, but in no event shall the CITY be liable to the ENGINEER for compensation for any service which has not been rendered. The final decision as to the amount for which the CITY is liable shall be determined by the CITY. Should the CITY exercise this provision, the ENGINEER shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

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

R. SEVERABILITY: If any provision of this Agreement is held invalid, to the extent reasonable, the invalidate provision shall be severed and the remainder of this Agreement shall not be affected. In such an instance, the parties shall continue to conform to the remaining terms of this Agreement; provided, however, in the event that any section granting the CITY a right of termination is severed, this Agreement shall immediately terminate.

S. AGREEMENT FORMAT: All words used herein in the singular form shall extend to and include all plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

T. THIRD PARTY BENEFICIARIES AND SUBCONTRACTORS:

1) The ENGINEER certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

2) The ENGINEER further certifies by its signature hereunder that it will not enter into any subcontract that relates to this project or to any work funded under this Agreement

without prior approval of such proposed contract to the CITY.

3) The ENGINEER hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the ENGINEER to the repayment of funds received from or through the CITY under this Agreement and to the payment of all damages suffered by the CITY as a result of said breach.

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

V. CITY LIABILITY: The CITY shall have no liability except as specifically provided in this Agreement.

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

Y. REQUIRED APPROVALS: The CITY is not bound by this Agreement until it is approved by the appropriate CITY officials in accordance with its charter, applicable Tennessee State laws and regulations.

SECTION V: PAYMENTS

For the satisfactory performance of all services as set forth herein, the CITY agrees to compensate the ENGINEER as hereinafter provided, subject to final approval of the CITY:

A. ACTUAL COST OF PERFORMING SAID SERVICES PLUS A FIXED AMOUNT: As the extent of the ENGINEER'S efforts cannot be predetermined with exactness at this time, it is not feasible to establish payment on a lump sum amount or unit-of-work basis; therefore, it is mutually agreed by and between the parties hereto that compensation to the ENGINEER will be on the basis of the ENGINEER'S actual cost of performing said services plus a fixed amount to cover net fee only, as is qualified hereinafter. All costs incurred under the terms of this agreement shall be subject to the requirements of the Federal-aid Policy Guide, 23 CFR 172 and the provisions of Chapter 1, Section 31.2, Title 48 of the Federal Acquisition Regulations System. Actual costs eligible for reimbursement are those directly attributable and properly allocable to the accomplishment of the specific work for which the ENGINEER'S services have been retained under the agreement. These may include:

1) LABOR: Actual basic salaries for productive technical personnel and other employees for work-time directly connected with and essential to performance of work chargeable to the project, also salaries of principals for time they are productively engaged in work or activities that are necessary to fulfill the provisions and conditions of the contract, are allowable project charges; plus,

2) PAYROLL ADDITIVES AND GENERAL OVERHEAD:

a. State Funded Projects - Payroll additive and general overhead costs eligible for reimbursement shall be as recognized and accepted for use as defined by this agreement or by the state's Finance Office following an audit of the ENGINEER'S total overhead costs. It is agreed that under this agreement those combined costs shall be invoiced at the lesser rate of (1) actual audited rate adjusted for the TDOT's "Standard Procurement Policy for Consultant and Technical Services" or (2) the maximum allowable rate of One Hundred Forty-Five and 00/100 (145%) percent of direct labor. It is agreed that the appropriate percentage shall be used for invoicing purposes for combined payroll additive and general operating overhead costs. The 145% rate cap (for state funded projects) shall also apply to subcontracted work. Subcontractors with an unlimited status shall also invoice at the lesser rate of (1) the actual audited rate or (2) the maximum allowable rate of One Hundred Forty-Five and 00/100 (145.00%) percent of direct labor. Subcontractors with limited status shall invoice at a self-certified rate with a maximum rate of One Hundred Twenty-Five and 00/100 (125.00%). It is further agreed that the ENGINEER'S payments to any individual owning more than 2% of the company as a bonus or under an executive management incentive plan shall not be considered as eligible costs pursuant to determination of said overhead rates. The maximum indirect salary for any employee shall be capped at $150,000.00 per year.

b. Federally Funded Projects – Payroll additive and general overhead costs eligible for reimbursement shall be as recognized and accepted for use as defined by this agreement or by the state's Finance Office following an audit of the ENGINEER'S total overhead costs. It is agreed that the appropriate percentage shall be used for invoicing purposes for combined payroll additive and general operating overhead costs. Subcontractors (for federally funded projects) with unlimited status shall invoice at the actual audited rate as approved by the External Audit. Subcontractors with limited status shall invoice at a self-certified rate with a maximum rate of One Hundred Twenty-Five and 00/100 (125%) percent.

3) OUT-OF-POCKET DIRECT PROJECT EXPENSE: Any non-salary cost, including non-salary sub-contracted work, identified specifically with the project is a direct charge to the project, and similar costs which are identified specifically with other work of the ENGINEER are direct costs of that work and are not to be charged directly or indirectly to this project. Accordingly, any direct project non-salary costs under this agreement not included in the ENGINEER'S general operating overhead or payroll additives in conformance with its normal accounting practices, as is justified, will be eligible for reimbursement at the ENGINEER'S actual cost. Vehicle mileage (use of the ENGINEER'S own equipment) shall be supported by the date, time, origin, and

destination of each trip. Vehicle costs will be reimbursed in accordance with the vehicle reimbursement schedule included in the TDOT's "Standard Procurement of Engineering and Technical Services Policy." As the rates in this schedule are subject to be revised periodically, the reimbursement will be based on the rates applicable for the billing period. Auto rental will be actual costs but shall not exceed local commercial rates. Billings for any actual out-of-pocket expense directly identifiable with the project shall be supportable by a listing of numbered original bills, invoices, expense accounts, and miscellaneous supporting materials which shall be retained for review and audit by CITY representatives. The ENGINEER'S costs for lodging, meals, and other involved travel-related costs shall be governed by the rates set forth in the latest edition of the state's Comprehensive Travel Regulations.

4) ENGINEER'S NET FEE: For the performance of the work and in consideration of the complexities and responsibilities involved, it is agreed that ENGINEER shall receive a net fee based on the formula set forth below herein. The "net fee" for purposes of this Agreement is ENGINEER'S profit. Due to the uncertainty of (1) the ENGINEER'S schedule, and (2) the number of work crews needed for the project, it is agreed by the CITY and the ENGINEER to base the payment of the agreed net fee on the actual labor costs rather than the estimated labor costs as used for the basis of this agreement. The net fee for each progress billing shall be determined using the ENGINEER'S actual direct labor for the billing period multiplied by 2.35 times the agreed upon net fee of Eleven and 00/100 percent (11.00%) (Fee = Direct Labor x 2.35 x .11).

5) ENGINEER'S FEE FOR SERVICES: For the performance of all services of the ENGINEER, as prescribed herein, the CITY agrees to reimburse the ENGINEER its actual cost (to be determined as herein provided) and its aforesaid net fee. For the completion of its total work assignment. The compensation ceiling of this agreement is hereby established at FOUR HUNDRED ELEVEN THOUSAND FOUR HUNDRED TWENTY 00/100 Dollars ($411,420.00), which compensation ceiling shall not be exceeded without a prior supplemental agreement between the parties hereto for the purpose of increasing said top-side amount. The ENGINEER'S proposal for services shall be incorporated into the supporting documentation for services included herein. It is agreed that said ceiling is subject to change through supplemental agreement. It is also agreed that if it appears that due to underestimation of man-hour or increase in salary rates the top-side limiting amounts for the ENGINEER'S services may be exceeded, the same will be subject to adjustment by mutual agreement to absorb the ENGINEER'S additional costs that will be incurred by reason of said underestimation of man-hours or increase in salary rates upon written request by the ENGINEER prior to the limiting amount being exceeded. Except in unusual cases deemed justifiable and prearranged in writing with the CITY, any request from the ENGINEER for ceiling adjustments to cover PAST incurred costs beyond the ceiling for incurred costs not yet covered by an approved Supplemental Agreement will be denied, and the expense

of said costs shall be borne by the ENGINEER. The ENGINEER shall maintain a constant familiarity of the relationship between its gross earnings and the ceiling of this agreement.

B. ADDITIONAL WORK: In the event that the CITY, in writing, requests the ENGINEER to perform additional services on the project not covered by Section II of this agreement, the ENGINEER agrees to perform the same; payment therefor shall be made by the CITY under Paragraph A, sub-paragraphs 1, 2 and 3 of this section after a written agreement between the CITY and the ENGINEER has been entered into and approved. At the discretion of the CITY, said agreement may provide for an appropriate increase(s) in the ENGINEER'S net fee for the performance of said Additional Work. It is understood and agreed that no work relative to Additional Work or Change of Work (see paragraph C immediately below) shall be performed by the ENGINEER prior to the CITY'S issuance of a work order for such Additional Work or Change of Work except in those cases when the CITY deems it to be in the public interest to issue a written order prior to the origination of a supplemental agreement. In such instances, the City will consider an early issuance of a work order upon its prior ascertainment of the necessity for the work and upon its assurance that additional compensation is warranted.

C. CHANGE OF WORK: In the event the CITY should decide during the course of this work that there exists the need to change any work performed by the ENGINEER under this Agreement after some element of work has been approved by the CITY, the CITY shall notify the ENGINEER, in writing, to make the change, and the ENGINEER shall make the change as directed. Payment therefor is to be made by the CITY after a written agreement is entered into between the CITY and the ENGINEER providing for appropriate adjustment in the compensation ceiling inclusive of appropriate adjustment in the ENGINEER'S net fee, which amounts shall be as negotiated.

D. MODE OF PAYMENT: The ENGINEER'S billings are to be segregated in accordance with the TDOT project numbers assigned to the work. Progress invoices with status of work shall be submitted by the ENGINEER to the CITY at a frequency of one per month in an amount equal to one hundred percent (100%) of the earned fee for the time period in question, the earned fee being defined as the amount determined under Paragraph A, sub-paragraphs 1, 2, 3 and 4 of this section based upon a mutually acceptable invoice of payroll and direct project out-of-pocket expense for the ENGINEER'S work performed as of the date of this Statement plus a part of the ENGINEER'S net fee. The net fee for each progress billing shall be determined using the ENGINEER'S actual direct labor for the billing period multiplied by 2.35 times the agreed upon net fee of Eleven and 00/100 percent (11.00%) (Fee = Direct Labor x 2.35 x .11). The ENGINEER'S records and backup data on all items of cost entering into the billings for the professional services rendered under this agreement are subject to audit by representatives of the CITY, and copies thereof shall be furnished, if requested, as required under Paragraphs P and Q of Section IV of this Agreement. Payments on all subsequent supplemental agreements shall also be reported in his same manner.

F. TRAVEL EXPENSES: If the Project includes travel compensation, reimbursement to the ENGINEER for travel, meals, or lodging shall be subject to amounts and limitations specified in the State Comprehensive Travel Regulations," as they are amended from time to time.

G. FINAL SETTLEMENT: Final settlement shall be made by the CITY to the ENGINEER within thirty (30) days following the completion and approval of all the ENGINEER'S work as set out in Section II and mutual approval of the CITY'S post-work audit report. ENGINEER must submit the final invoice on the project to the CITY within sixty (60) days after the completion of the Project. Invoices submitted after the sixty (60) day time period may not be paid.

SECTION VI: MISCELLANEOUS PROVISIONS

The ENGINEER and the CITY mutually agree as follows:

A. OWNERSHIP OF ENGINEERING DOCUMENTS: Tracings, plans, specifications, any maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the CITY. Basic design notes and sketches, charts, computations, all original drawings, and other data prepared or obtained under this Agreement shall be made available, upon request, to the CITY without restriction or limitation of their use. CITY may use such items as it determines, however, ENGINEER shall incur no liability for CITY's use of such items other than in connection with the Project. ENGINEER shall have the right to re-use any product(s) of the Services and shall retain its rights in its standard drawing details, designs, specifications, CADD files, databases, computer software and other proprietary information.

B. DELAYS AND EXTENSIONS: Time is of the essence with this Agreement. Reasonable extensions of promised times shall be mutually arrived at by the parties in the event of unavoidable delays.

C. PROGRESS: The ENGINEER shall prepare detailed progress schedules for the several phases or items of the work and shall submit daily progress reports based on such schedules to the CITY as set forth in the NEEL-SCHAFFER Proposal dated July 19, 2017. Each report shall provide an identification of work accomplished since the previous report. ENGINEER estimates the work to be completed approximately March 2021.

D. SUBLETTING, ASSIGNMENT, OR TRANSFER: Subletting, assignment, or transfer of all or part of the interest of the ENGINEER is prohibited unless by written consent of the CITY and all agencies participating in the funding of this Agreement.

E. EMPLOYMENT OF CITY WORKERS: The ENGINEER shall not engage, on a full, part-time, or other basis during the period of the Agreement, any professional or technical personnel who are or have been at any time during the period of the Agreement in the employ of the CITY or the State of Tennessee, except regularly retired employees, without the written consent of the CITY.

F. COVENANT AGAINST CONTINGENT FEES: The ENGINEER warrants that it has not

employed or retained any company or person other than a bona fide employee working solely for the ENGINEER to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

G. ENGINEER'S ENDORSEMENT: The ENGINEER'S endorsement shall be placed on the final maps of the survey, on preliminary and final construction plans, specifications, estimates, also other engineering data and documents furnished by the ENGINEER to the CITY, as applicable.

H. CONTROL: To the extent applicable, all work by the ENGINEER is to be performed in a manner satisfactory to the CITY and in accordance with the established customs, practices, and procedures of the Tennessee Department of Transportation ("TDOT") and in conformity with the standards adopted by the American Association of State Highway and Transportation Officials and approved by the Secretary of Transportation as provided in Title 23 U.S.C., Sec. 109(b) as amended. The decision of the CITY is to control in all questions regarding locations, type of design, dimension of design, and similar questions. The ENGINEER is to periodically request sufficient conferences to insure that the work is being done by the ENGINEER in a satisfactory manner and that all locations and designs are made in accordance with the wishes of the CITY.

I. COST ESTIMATES: The CITY hereby acknowledges that ENGINEER cannot warrant that opinions or estimates of costs provided by ENGINEER will not vary from actual cost incurred by the CITY.

J. EFFECT OF EXISTING DATA ON AMOUNTS PAYABLE: The ENGINEER hereby certifies that prior to Agreement of the parties to this Agreement on the amounts payable, as expressed in Section V, ENGINEER reviewed, considered, and evaluated existing engineering data, traffic counts, services and projections to be provided by the CITY, other materials and data to be furnished by the CITY, and determined the amounts payable in contemplation of the effect of said data and materials upon its undertaking under this Agreement. Existing engineering data so reviewed, considered, and evaluated includes, but is not necessarily limited to, those set out in Section III.

K. EQUIPMENT AND INSTRUMENTATIONS: It is understood and agreed that if any additional equipment is needed for the project, the CITY must be notified prior to any action. If necessary, said equipment shall be purchased by the CITY in compliance with the CITY'S low bid procedures. Said equipment shall be considered as the CITY'S property unless other means pertaining to the disposition of same are provided elsewhere within this Agreement.

L. ENVIRONMENTAL PROTECTION REGULATIONS: Under this Agreement the ENGINEER shall give due consideration to and, as applicable, comply with the standards, orders, or requirements set forth under Section 306 of the Clean Air Act (42 U.S.C. 1857 h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

M. ENERGY POLICY AND CONSERVATION ACT: Under this Agreement the ENGINEER shall give due consideration to and, as applicable, comply with the standards, orders, and requirements relating to energy efficiency contained in the TDOT energy conservation plans issued in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

N. STANDARD OF CARE: The ENGINEER shall assume full responsibility for the quality of the ENGINEER'S work and its conformance with all applicable laws, rules, regulations and orders governing said work. The ENGINEER shall perform its duties in conformance with the reasonable standard of care as applicable to members of its profession within the State of Tennessee practicing under similar conditions. There is no warranty, express or implied, by way of illustration and not limitation, warranty for fitness of particular purpose, or warranties of merchantability.

O. COPYRIGHTING: The ENGINEER shall be prohibited from copyrighting any papers, reports, forms or other material which is a part of any work under this Agreement without written approval from the CITY. Publication rights to any documents produced are reserved by the CITY.

P. NOTICES: Any notice required hereunder shall be sufficiently given when sent to the signatories hereunder or to the above-named contact person via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

Q. PROHIBITION OF ILLEGAL IMMIGRANTS: The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Agreement to supply goods or services to the state of Tennessee, shall be a material provision of this Agreement, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Agreement.

1) The ENGINEER hereby attests, certifies, warrants, and assures that the ENGINEER shall not knowingly utilize the services of an illegal immigrant in the performance of this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Agreement. The ENGINEER shall reaffirm this attestation, in writing, by submitting to the CITY a completed and signed copy of the document as Attachment C, hereto, semi-annually during the period of this Agreement. Such attestations shall be maintained by the ENGINEER and made available to CITY officials upon request.

2) Prior to the use of any subcontractor in the performance of this Agreement, and semi-annually thereafter, during the period of this Agreement, the ENGINEER shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Agreement. Attestations obtained from such subcontractors shall be maintained by the ENGINEER and made available to CITY officials upon request.

3) The ENGINEER shall maintain records for all personnel used in the performance of this Agreement. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the CITY.

4) The ENGINEER understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit the ENGINEER from contracting with, or submitting an offer, proposal, or bid to contract with the state of Tennessee to supply goods or services for a period of one year after the ENGINEER is discovered to have knowingly used the services of illegal immigrants during the performance of this Agreement.

5) For purposes of this Agreement, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Agreement.

R. IRAN DIVESTMENT ACT: It is the intent of the Tennessee General Assembly to fully implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195). The ENGINEER and each party hereto certifies under penalty of perjury, that to the best of its knowledge and belief that each party is not a person included within the list created pursuant to T.C.A. §12-12-106. The ENGINEER shall reaffirm this attestation, in writing, by submitting to the CITY a completed and signed copy of the document as Attachment D, attached hereto.

S. ELECTRONIC FORMAT: ENGINEER deliverables may include database design, electronic computer-aided design and drafting (CADD) files, or other electronic documents or deliverables. Unless specifically directed otherwise by the CITY prior to execution of this Agreement, databases and electronic files shall be developed based on ENGINEER'S standard practice and procedure. ENGINEER shall not be liable for any erroneous information supplied by the CITY or third party that ENGINEER relies upon and incorporates into an electronic file or other documents.

T. WARRANTY: Due to the easily alterable nature of electronic media, files, documents, and other deliverables, ENGINEER makes no warranties, either expressed or implied, with respect to the accuracy, completeness, merchantability, or fitness for any particular purpose, including, but not limited to, performance in any software used by the CITY or any other consultant or contractor.

U. INSURANCE:

1) During the performance of the Services under this Agreement, ENGINEER shall maintain the following minimum insurance:

a. General Liability Insurance with a combined single limit of $1,000,000 per occurrence and $2,000,000 annual aggregate.

b. Automobile Liability Insurance with a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.

c. Worker's Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of $500,000 for each occurrence.

d. Professional Liability Insurance with a limit of $1,000,000 annual aggregate.

2) ENGINEER shall have endorsed the CITY as an additional insured on the General Liability Insurance, Automobile Liability Insurance, and Worker's Compensation Insurance policies and as a certificate holder on the Professional Liability Insurance policy.

3) ENGINEER shall, upon execution of this Agreement, furnish CITY certificates of insurance in a form(s) as is agreeable to the CITY, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to CITY.

4) No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. CITY agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as CITY deems adequate to indemnify CITY, ENGINEER, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

V. ENTIRETY OF THE AGREEMENT

1. This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with

reference to the subject matter hereof that are not merged herein and superseded hereby. No alternation, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto, except that all terms and conditions contained in a CITY purchase order or other standard or preprinted work authorization issued by the CITY shall be null and void, even if such document is of later date

2. This Agreement includes this document and, by this reference, incorporates the following as if fully set forth herein:

   a. Attachment A — Scope of Services

   b. Attachment B — Schedule of Hourly Fees of NEEL-SCHAFFER/Cost Proposal

   c. Attachment C — Immigration Attestation

   d. Attachment D — Iran Divestment Act Attestation

ATTACHMENT A — Scope of Services

ATTACHMENT A – SCOPE OF SERVICES

TECHNICAL DESCRIPTION OF BASIC PROFESSIONAL SERVICES
RUTHERFORD BLVD ADAPTIVE SIGNAL CONTROL TECHNOLOGY (ASCT) PROJECT

This is an Exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, 2017, between the City of Murfreesboro, Tennessee, (OWNER) and Neel-Schaffer, Inc. (ENGINEER), for providing professional engineering services. The Basic Services of ENGINEER and the responsibility of the OWNER as described in the Agreement are amended or supplemented as indicated below, and the estimated time periods for the completion of certain project phases are as indicated below.

A. PRELIMINARY DESIGN AND NEPA PHASE - As part of the Preliminary Design phase, the ENGINEER shall only undertake those tasks of the design development that is sufficient to identify existing and proposed conditions to the extent that will allow formulation of initial documentation as required by the Tennessee Department of Transportation (TDOT) and the Federal Highway Administration (FHWA). This includes the Systems Engineering Analysis Report (SEAR) and environmental reporting in accordance with the National Environmental Policy Act (NEPA) requirements.

The Basic Services relating to the Preliminary Design Phase and included in the Basic Services fee shall include relevant design and activities, including but not limited to:

Project Management and General Coordination with City Officials
TDOT and FHWA Coordination
Initial Traffic Data Collection
SEAR Documentation
Preliminary Signal Design
Preliminary Pedestrian Accommodation Design
Preliminary Fiber Optic Communication Design
Initial Utility Coordination
Preparation of Draft Utility-Make Ready Information
NEPA Environmental Documentation
ASCT Vendor Selection Assistance
Initial Opinion of Probable Cost

A.1. Project Management and General Coordination with City Officials

This task will consist of general project management, administrative, and accounting activities for the project. It will further comprise the following throughout the life of the project: a project kickoff meeting, project status and invoicing documentation, preparing and distributing meeting minutes, scheduling of review meetings or activities, and discussion of project issues. Project invoicing will occur no more frequently than one per month and be accompanied by a brief synopsis of project activities undertaken during the respective billing period.

A.2. TDOT and FHWA Coordination

This task accounts for the communication and input needed with state and federal officials during procurement of the required preliminary design documentation. Preparation of SEAR and NEPA reporting will require close coordination with TDOT and/or FHWA-Tennessee Division officials (SEAR only). The task includes seeking input and advisory information during the preparation of the required documentation. Coordination will include submission of intermediate information to confirm desired intent, draft documentation, updates and revisions to documentation based on review comments and interaction with involved third-parties.

A.3. Initial Traffic Data Collection

The preliminary design phase includes effort to collect limited traffic data along the project corridor. The project will conduct 24-hour, 7-day bi-directional vehicle counts at strategic locations between key intersections. This information will supplement the necessary existing conditions observations and information required by the SEAR, and provide insight into the preferred type of ASCT operating parameters.

The following identifies planned locations for the ADT counts along Rutherford Blvd:

- Between S Church Street and SE Broad Street
- Between SE Broad Street and Bradyville Pike
- Between Bradyville Pike and John Bragg Hwy/Mercury Blvd
- Between John Bragg Hwy/Mercury Blvd and Greenland Drive/Halls Hill Pike, and
- Between Greenland Drive/Halls Hill Pike and Lascassas Pike

A.4. Development and Compilation of SEAR Documentation

Federal requirements prescribe that a systems engineering analysis, culminating in a SEAR, be conducted for all ITS and ASCT projects using federal transportation funding. The SEAR outlines an orderly process for considering needs, constraints and requirements for a successful implementation and deployment of ASCT systems. The SEAR will follow the FHWA's Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems. The SEAR will include the following elements:

- Concept of Operations (ConsOps)
- System Requirements
- Verification Plan
- Validation

The ENGINEER shall prepare a SEAR for the ASCT for the identified corridor and project limits stated in Task A.5. The SEAR shall contain detail pertaining to the planned ASCT deployment within the selected corridor limits. The ENGINEER shall follow the FHWA Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems draft guidance document, as applicable, in the development of the SEAR.

All stakeholders in the ASCT and its integration and operation of each corridor shall be included in the review and input of the ASCT SEAR. The SEAR shall include the Concept of Operations for the ASCT, an ASCT system requirements section, and a verification and validation section. The SEAR shall identify the needs, goals, objectives and constraints in the Concept of Operations section of the SEAR.

Concept of Operations

The Concept of Operations (ConOps) will be prepared through detailed discussions with OWNER staff, TDOT, FHWA and other key stakeholders, as identified by the OWNER. A one-day workshop will be held in which the stakeholders will document the goals and objectives of the adaptive project, based on the maintaining agency's aspirations and expectations of the respective operation and their available resources. The objectives will be compared and ranked using a structured pair-wise comparison to the FHWA model documents, providing the team with a basis on which to evaluate objectives against constraints.

Prior to the workshop, the ENGINEER will prepare a description of the network and traffic characteristics, and an initial description of limitations of the existing system that should be addressed by adaptive operation, and the data collected in Task A.3. These descriptions will be discussed in the operational objectives workshop, and further defined in the Con Ops workshop. In broad terms, the participants will agree on improvements that are desirable and reasonable in order to overcome the current limitations. The workshop participants will then agree on traffic control strategies that will be applied to pursue the operational objectives on the identified corridor.

The constraints that may be applied to the successful implementation of the project will be identified, such as limitations on budget, staff resources and capabilities, equipment and schedules. These constraints will be used for trade-off analysis, initially in reviewing the objectives and in a later task reviewing the system requirements. The trade-offs will identify those objectives that cannot be met without relaxing those constraints, and alternatively quantify the cost of relaxing the constraints in order to meet all objectives. Once the trade-off analysis is completed, the user needs will be confirmed. These needs will then drive the selection of system requirements.

Operational scenarios will then be prepared that will describe the situations under which adaptive control will be expected to operate, and the manner in which the system would be expected to respond to the described traffic conditions.

As part of this process, an initial procurement plan will be developed. Alternative procurement approaches, suitable for adaptive signal system procurement, that are consistent with OWNER and TDOT policies, procedures and funding source requirements will be considered. A recommendation for a procurement type will be defined during this process by the ENGINEER.

System Requirements

Based on the user needs documented in the ConOps, the ENGINEER will prepare draft system requirements. Each requirement will be directly related to a user need, which will keep the requirements focused on the operational objectives and thus prevent creep outside the approved scope. The user needs will be reviewed to ensure there are no “orphans”, therefore ensuring that each need will be supported by at least one requirement. This will avoid the risk of a fully compliant implementation not meeting the project’s objectives.

The draft requirements will be reviewed by the stakeholders, in which the applicability of each requirement will be confirmed and details missing from the draft will be added. Following the review, and based on subsequent completion of detection technology and budget analysis, the requirements will be finalized. While estimates may not be directly included in the SEAR document, they will be formulated, presented and discussed for moving forward after this stage of the SEAR.

Verification and Validation

Once the ConOps and System Requirements have been defined, the Validation and Verification sections of the SEAR can be developed. These sections shall outline the testing of the software for adherence to the requirements that have been defined in the document. These tests shall be conducted as part of a future task for this project, with the ASCT software vendor.

A validation plan will also be developed, describing the methods to be used to validate that each objective has been met by the implemented system. This plan will identify the method to be used to validate each objective, the timing of each validation test, the responsible parties, the required

budget, an overview of the test procedures to be used, and a proposed schedule for the validation report(s) and other activities measuring the long term goals of the ASCT.

The SEAR shall be submitted once as a draft format for review prior to the production of a final document. In the interest of meeting schedule requirements, ASCT Technical Specifications and project bid documentation, shall begin after the final SEAR has been submitted to TDOT and FHWA for final approval. At that stage, it is not anticipated to have major changes to the SEAR final document.

Deliverables:
- Draft SEAR Document
- Final SEAR Document

A.5. Preliminary Design Plans

Preparation of preliminary plans constitutes development of the initial design of the system within the physical environment. This considers the needs and issues related to the construction of the proposed system elements along the roadway network and modifications to the existing traffic signal control system. Preliminary plans will be prepared in accordance with TDOT Design Guidelines. Preliminary design plans will also follow the guidance presented in the SEAR. Project scope assumes all design and permanent improvements will occur within existing Right-of-Way.

Project Limits

The project area includes the Rutherford Boulevard / Northfield Boulevard corridor extending from SE Broad St to Memorial Blvd. This length of coverage will provide for connection of new FO trunk cable along the project corridor and connecting to existing and planned FO trunk cable. The project area also includes provision to install F.O. trunk cable between the Rutherford Blvd corridor and SE Broad St to allow connectivity with existing city communications cable. To make this link, new fiber optic cable will be installed along Mercury Blvd between Rutherford Blvd and SE Broad St. Signalized intersections along Rutherford Boulevard consist of

- SE Broad St (U.S. 41),
- Bradyville Pk (SR-99),
- Haven Dr (future),
- Billy Blvd,
- Mercury Blvd (U.S. 70S),
- E Main St,
- Alumni Dr,
- MTSU Blvd,
- Greenland Dr/Halls Hill Pk,
- Gold Valley Dr,
- Norris Ln,
- Lascassas Pk (SR-96),
- Pitts Ln,
- N Tennessee Blvd,
- Highland Ave

Field Inventory and Base Drawing Preparation

This task will conduct necessary field visits and collect information necessary to prepare preliminary design and plan sheet development. Most notably, this includes initial assessment of traffic signal cabinet, traffic signal controller and local traffic signal detection. Plan preparation will utilize existing aerial orthophotography imagery and GIS-based planimetric data available from external parties to establish base mapping. Base map information will be provided by the city of Murfreesboro and other third-party utility sources as available. Also, this task includes acquisition of digital field mapping to document utility pole locations and attachment information. Mobile LIDAR technology will be deployed along project corridors to collect field data. This survey data will be processed to provide digital location of utility poles and estimate heights of pole attachments.

Preliminary Utility Make-Ready Assessment and Documentation

As part of the preliminary plan preparation, review and preparation of utility make-ready information will be undertaken. Preliminary plans will include draft documentation of utility poles and attachment heights of existing lines. Murfreesboro Electric Department (MED) has been identified as a key partner for this process. Preliminary plan preparation will include contributions and review from MED officials. The project scope envisions and will emphasize avoidance and minimizing the need for replacement of exiting utility poles for installation of project F.O. cable. Information will be provided in the design plans to document existing pole information and attachment heights and proposed adjustments allowing for attachment of new city-owned fiber optic cable infrastructure.

Preliminary F.O. Trunk Cable and Traffic Signal Upgrade Layout Sheets

Layout sheets will be prepared illustrating corridor and intersection perspectives. Corridor sheets will provide layout of existing and proposed conditions for installation of F.O. trunk cable and related facilities. Intersection plan sheets will be used to show modifications at signalized intersections.

Preliminary Pedestrian Curb Ramp and Crosswalk Modifications *(specific intersections)*

Improvements to pedestrian accessibility and accommodations are planned at certain signalized study intersections. Modifications will include replacement of curb ramps and select sections of sidewalk. Pedestrian signal and pushbutton equipment will also be installed where deemed appropriate. Project scoping has identified the following Rutherford Blvd/Northfield Blvd intersections: E Main St, Halls Hill Pk, Lascassas Pk and Tennessee Blvd.

Preliminary ASCT Detection Locations

The preliminary plan phase will investigate and determine tentative installation locations for ASCT detection that will help operate the ASCT system. Stop bar and advance detection zones will be shown as estimated based on the SEAR requirements and in compliance with the general detection requirements of many ASCT systems. The detection technology and exact needs of the system detection will be based upon ASCT vendor selection and the criteria set forth by the winning ASCT vendor. The final detection technology and placement will be shown on the final design plans, in coordination with the winning ASCT vendor and their specifications.

Preliminary CCTV Camera Locations

Preliminary plan preparation will include initial investigation into the installation of new CCTV surveillance cameras. Project scope anticipates provision for up to nine CCTV cameras along the corridor. Camera positions may be a combination of mid-block and intersection locations. The project intends to maximize sharing of FO cable splice points and power service feeds with other field instrumentation.

Preliminary plans will be circulated for review and comment: Title Sheet, Present Layout Sheet, Proposed Layout Sheet and Utility Make-Ready information. Because no R.O.W. acquisition is expected, preparation of Property Map and ROW Detail sheets are excluded from the scope. Existing ROW lines will be delineated based on information from planimetric data showing property and parcel lines.

A.6. NEPA Documentation and Submittal

As part of the environmental review process, the project's scope of work includes preparation of NEPA documentation commensurate to the classification assigned to the project. The tasks required for this will follow procedures as outlined in the Tennessee Environmental Procedures Manual (TEPM) as maintained by TDOT. Project officials anticipate that the project will be classified as a "C"-List Categorical Exclusion. Based on this level of environmental documentation, the project

scope excludes preparation of custom technical studies and will not require direct FHWA oversight or review. Formal public engagement or outreach is also not included in development of the environmental document. It is anticipated that the level of coordination will include outreach to traditional third-party stakeholders as identified in the TEPM for purposes of confirming no impact or that outreach is not required based on the project characteristics. Documentation will follow standard template as shown in "Streamlined Documentation Checklist (SDC) for NEPA Programmatic or C-List Categorical Exclusion (CE)". Submittal of NEPA documentation will follow completion of the SEAR and be prepared in conjunction with and in the latter stage of preliminary plan development. Substantial completion of preliminary plan development is needed to confirm information and inform preparation of the NEPA documentation.

A.7. ASCT Vendor Selection Process

The preliminary design phase will conclude with the solicitation and selection of the preferred ASCT vendor per the procurement method stated in the ConOps. Retention of the preferred vendor prior to development of final plans will allow the ASCT vendor to have a prominent role as advisor and technical resource in final plan and specification development. The ENGINEER will provide assistance in preparing the Vendor Bid Package for solicitation and advising city officials during the review of prospective vendor submittals. The ENGINEER will assist the OWNER in developing evaluation criteria for the selection process. Results of the ASCT Vendor evaluation will be based on the technical requirements and functionality desired of the preferred vendor and per the SEAR. The city of Murfreesboro will be responsible for solicitation, administration and contracting of the preferred vendor.

ASCT VENDOR SELECTION PHASE – The ENGINEER will assist the OWNER during the Selection Phase of the ASCT Vendor. It is anticipated that the selection of the ASCT Vendor will be separate and before the final design plans are created. The ENGINEER will assist the OWNER in the required advertisement/RFQ process, with the cost of such advertising to be borne by the OWNER. The ENGINEER will organize the ASCT Vendor selection meeting and assist in any necessary oral interviews or ASCT Vendor presentations with the Technical Review Committee (TRC) that consists of stakeholders as identified by the OWNER. The ENGINEER will assist the stakeholders in evaluating the ASCT Vendor qualifications packages by providing grading recommendations and criteria as set from the SEAR. Tasks and meetings include

ASCT Vendor RFQ Development Meeting
Addenda / Requests for Information during ASCT Vendor selection process
Assistance to TRC in technical review of the ASCT Vendor RFQ packages
ASCT Vendor Oral Presentations Meeting Coordination and Assistance

Subsequent to the approval of the environmental documentation, the ENGINEER will not proceed with development of construction plans until Notice-to-Proceed with Final Design is received from TDOT.

B. RIGHT-OF-WAY (UTILITIES ONLY) / FINAL DESIGN PHASE - Tasks related to Right-of-Way (Utilities Only) / Final Design Phase will only commence upon receipt of Notice-to-Proceed with Final Design from TDOT officials. The Basic Services relating to the Right-of-Way (Utilities Only) / Final Design Phase and included in the Basic Services fee shall include relevant required design and plans including but not limited to:

TDOT Coordination
Stakeholder Engagement for Final System Design
Final Signal Design
Final Pedestrian Accommodation Design
Final Fiber Optic Communication Design

Final Signal Detection Design
Utility Coordination
Final Documentation of Utility-Make Ready Information
Preliminary and Final Quantity Estimates
Opinion of Probable Cost
Traffic Control Plan
Standard and Special Notes
TMC Assessment and Upgrade Review
Project Special Provisions
Coordination with ASCT Vendor / Vendor Review and Participation
Preparation of Draft Contract Bid Proposal Documents

During the Final Design Phase, ENGINEER shall prepare construction documents. The ENGINEER will deliver to the OWNER a complete set of electronic original drawings, including digital plans and documents, to be properly coordinated, approved, and accepted by the OWNER.

The ENGINEER will prepare Right-of-Way (Utility-Only) and Final Construction Plans in accordance with TDOT Roadway Design Guidelines. Right-of-Way (Utility-Only) plans will be submitted to TDOT for review and comment. Upon incorporation of remarks from TDOT and utility stakeholders, the ENGINEER will submit final Right-of-Way (Utility-Only) plans to TDOT, including the project's preliminary estimate and opinion of probable cost. Based on the type and scope of the ASCT project, the scope of services excludes Right-of-Way services (as no right-of-way acquisition is expected), geotechnical services, right-of-way staking, and preparation of property exhibits and descriptions. The scope also excludes documentation and acquisition of permits. If it is subsequently determined that permits are required, submittal and acquisition of permits will be the responsibility of the OWNER or additional arrangements will be made to allow for assistance by the ENGINEER.

The ENGINEER will assist with the preparation of any Special Provision document. The Special Provision will serve as additional detail and specification information for materials and services to be provided by the project contractor. The ASCT Vendor will provide guidance and input relative to the content and needs in the Special Provisions Document. The Special Provisions document shall also specify any OWNER Traffic Management Center (TMC) equipment, hardware or software that is needed as part of the construction bid per the SEAR and ASCT Vendor requirements.

The ENGINEER will assist the OWNER in coordinating with utility stakeholders, specifically the electric utility pole owner, allowing for installation of fiber optic cable infrastructure to be attached to existing utility poles.

The ENGINEER will assist the OWNER with preparation of project bid documents. This comprises the construction plan set, special provisions, bid tab and contract bid manual documentation. The OWNER will provide standard contract bid provisions and inserts. A draft of the contract bid manual will be presented for review and approval by the OWNER and TDOT during th Final Design Phase.

C. PROJECT BIDDING PHASE – The ENGINEER will assist the OWNER during the Bidding Phase of the project. The ENGINEER will assist the OWNER in the required advertisement for bids, with the cost of such advertising to be borne by the OWNER. The ENGINEER will also attend the bid opening, tabulate the bids and assist the OWNER in evaluating the bids. Tasks include relevant documentation and activities:

Pre-bid Meeting
Addenda / Requests for Information during Bid Process
Bid Opening / Review

Bid Tabulation and Review
TDOT Coordination (TDOT Approval of Bid Documents)

D. CONSTRUCTION ENGINEERING AND INSPECTION PHASE – Per the consulting engineering solicitation, the OWNER anticipates retaining the ENGINEER for construction phase services. This would include construction engineering inspection (CEI) in accordance with TDOT Local Program and TDOT Construction Division guidelines. In addition, these services would include tasks related to fulfillment of recommendations documented in the project SEAR documentation.

NOTE: Final scoping of the PROJECT BIDDING PHASE and the CONSTRUCTION ENGINEERING AND INSPECTION PHASE (Scope Tasks C and D) will occur in advance and in anticipation of authorization of Notice-to-Proceed to Construction by TDOT. Details related to these project phases will be more formally defined at this stage of project development. For purposes of initial engagement and contracting of professional services, the scope of services and related professional fee estimate provides for ENGINEER services from Preliminary Design / NEPA Phase through Right-Of-Way (Utilities Only) / Final Design Phase, including preparation of draft contract bid documents (task items A and B).

ATTACHMENT B — Schedule of Hourly Fees NEEL-SCHAFFER

PROJECT: S Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION: From SE Broad Street to Memorial Blvd
COUNTY: Rutherford
CONSULTANT: Neel-Schaffer
Prepared By: G Judy
Date Prepared: 10/23/2017

PE-NEPA Phase	Manhours					
TASK	Project Manager	Senior Engineer	Project Engineer	Engineer	Technician / Designer	Total Per Task
Coordination and Administration						
Project Management & Adminstration	36					36
Status Meetings	24	24	24			72
TDOT/FHWA Coordination	8	12				20
Coordination with NEPA Sub		4				4
Coordination with SEAR Consultant	24		24			48
Sub-Total Coordination/Admin Task	92	40	48	0	0	180
Initial Traffic Data Collection						
Coordinate Data Collection	2		2			4
Review and Assimilate Traffic Data			2	4		6
Sub-Total Traffic Data Task	2	0	4	4	0	10
Develop and Compile SEAR						
Develop Concept of Operations			See Subconsultant Documentation			0
Develop System Requirements						0
Develop Verification Plan						0
Develop Validation Plan						0
Stakeholder Coordination	24	12				36
Prepare Draft SEAR						0
Review SEAR with TDOT/FHWA						0
Prepare Final SEAR	8	4		8		20
Sub-Total SEAR Task	32	16	0	8	0	56
Develop Preliminary Plans						
Field Visits and Signal Equip Inventory			8	24		32
Base Map and Plan Sheet Preparation			16	40		56
Conduct Initial Utility Make Ready Inventory	Inventory Performed by Surveyor					0
Follow-Up Utility Make Ready Site Visits			4	24		28
Draft Make-Ready Recommendations-Tabular	4		20	40		64
Coordination with Utility Owner (MED)	4	4	16			24
Update/Revise Make-Ready Information			12	24		36
Prepare Prelim Make-Ready Plan Sheets	12		24	60		96
Review and Integrate SEAR into Prelim Design	12	4	16	24		56
Prepare Prelim FO Truck Cable Plan Sheets	4		12	24		40
Prepare Prelim Signal Modification Plan Sheets	8		36	72		116
Prelim Assessment of CCTV Cameras	4	4	8	16		32
Prelim Assessment of ASCT Detection	4	4	16	16		40
Review and Evaluate Curb Ramps/Ped Accomodations (4 ints)		8				8
Prepare Prelim Curb Ramp/Sidewalk Modifications (4ints)		24				24
Review Prelim Plans per TDOT Checklist	4	8				12
Internal QA Plan review	4	12	8			24
Address Comments from Plan Review			8	24		32
Sub-Total Prelim Plans Tasks	60	68	204	388	0	720
Prepare Environmental (NEPA) Document	See Subconsultant Documentation					
Contact/Coordination with Technical Agencies						
Prepare Draft NEPA Documentation (Streamline)						
Coordination with TDOT						
Prepare Final NEPA Documentation (Streamline)						
Sub-Total NEPA Tasks						
Request / Receive NTP to Final Plans from TDOT						
ASCT Vendor Selection						
Coordination and Stakeholder Involvement	20					20
Assist with Vendor RFQ Package	12	8				20
Assist with RFI / Addenda Prep	6	8				14
Assist with Review and Selection of Vendor	8	4				12
Sub-Total Vendor Selection Tasks	46	20	0	0	0	66
TOTAL Hours	232	144	256	400	0	**1032**
Mandays	29.00	18.00	32.00	50.00	0.00	**129.00**
% of Total Project	22.48%	13.95%	24.81%	38.76%	0.00%	100.00%

PROJECT: S Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION: From SE Broad Street to Memorial Blvd
COUNTY: Rutherford
CONSULTANT: Neel-Schaffer
Prepared By: G Judy
Date Prepared: 10/23/2017

PERSONNEL	MANDAY RATE	MANDAYS	DIRECT LABOR COST
PROJECT MANAGER / ENGINEER MANAGER	$496.00	29.00	$14,384.00
SR PROJECT ENGINEER / PROFFESIONAL III	$420.00	18.00	$7,560.00
PROJECT ENGINEER / PROFFESIONAL II	$328.00	32.00	$10,496.00
ENGINEER / PROFFESIONAL I	$240.00	50.00	$12,000.00
TECHNICIAN / DESIGNER	$192.00	0.00	$0.00
TOTAL NUMBER OF MANDAYS		129.00	$44,440.00

FEE SUMMARY		
Direct Labor		$44,440.00
Overhead	156.70%	$69,637.48
Net Fee (Direct labor X 2.35 X 11%)		$11,487.74
Total (Direct Labor+Overhead+Net Fee)		$125,565.22
Direct Cost (Subs, See Page 2 for Details)		$103,510.09
TOTAL		**$229,075.31**

PE-NEPA PHASE DIRECT EXPENSES

PROJECT:	S Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION:	From SE Broad Street to Memorial Blvd
COUNTY:	Rutherford
CONSULTANT:	Neel-Schaffer
Prepared By:	G Judy
Date Prepared:	10/23/17

Reproduction Costs:

Item Description	Number / Unit	Unit Price	Item Subtotal	Item Total Cost
Photo-copies	250	$ 0.20	$ 50.00	
Full size bond		$ 2.00	$ -	
Half size bond	500	$ 1.00	$ 500.00	
Full size vellum			$ -	
Half size vellum			$ -	
Full size mylar			$ -	$ 550.00

Travel:

	Number of Trips	No. of Miles/No. of People			
Per Diem (75%)			$ 22.50 Per Day	$ -	
Per Diem			$ 30.00 Per Day		
Transportation	15.00 Round Trips	X 25.00 Miles X	$ 0.47 Per Mile	= $ 176.25	
Lodging				$ -	$ 176.25

* Rate must agree amounts in effect with State of Tennessee travel regulations.
First and last day of travel must be at the 75% Per Diem Rate.

Other Expenses:

Item Description	Number / Unit	Unit Price	Item Subtotal	Item Total Cost
NEPA Sub (Griggs & Maloney)	1	$ 7,324.03	$ 7,324.03	
Traffic Count (7-day ADT)	1	$ 5,000.00	$ 5,000.00	
SEAR Sub (C2S)	1	$ 63,313.33	$ 63,313.33	
Wiser, Inc.	1	$ 27,146.48	$ 27,146.48	
			$ -	
			$ -	
			$ -	$ 102,783.84

TOTAL DESIGN DIRECT EXPENSES	**$ 103,510.09**

PROJECT: S Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION: From SE Broad Street to Memorial Blvd
COUNTY: Rutherford
CONSULTANT: Neel-Schaffer
Prepared By: G Judy
Date Prepared: 10/23/2017

ROW-FINAL DESIGN	Manhours					
TASK	Project Manager	Senior Engineer	Project Engineer	Engineer	Technician / Designer	Total Per Task
Coordination and Administration						
Project Management & Adminstration	40					40
Status Meetings	20	10	20			50
City Coordination	8	12				20
TDOT Coordination	8	12				20
Utility Coordination	4	4	16			24
ROW Field Review Meeting & Memo	4		12			16
Const Field Review Meeting & Memo	4		12			16
Coordination with SEAR Consultant	24		24			48
Sub-Total Coordination/Admin Task	112	38	84	0	0	234
Develop ROW (Utility Only) / Const Plans						
Coordination with ASCT Vendor	40	40	24			104
Coordination with SEAR Vendor	24		24			48
Draft Final Traffic Signal Upgrades	4		16	90		110
Draft Final FO Trunk Cable Design	8		16	40		64
Draft Final ASCT Vehicle Detection Design	4		4	36		44
Draft Final Utility Make-Ready Documentation			4	24		28
Draft Final Pedestrian Accomodation Design (4 ints)		16		16		32
Draft EPSC Plans (Up to 2 Phases)		8				8
Prepare Preliminary Estimate & Opinion of Prob Cost	4	10	8	12		34
Review ROW Plans per TDOT Checklist		8	4	8		20
Internal QA/QC	8	16	8	16		48
Address Comments from ROW Field Review	4		4	24		32
TMC Assessment and Upgrade Review	12	4		16		32
Draft Comm Assignment & FO Cable Splice Details	4		4	24		32
Draft Special Provisions Document	24	16	100			140
Title Sheet / Index Sheet / General Notes			4	8		12
Special Notes	2		4	4		10
Traffic Control (Typical Only)				4		4
Prepare Draft Final Const Plans			4	8		12
Review Const. Plans per TDOT Checklist	4	8				12
Internal QA/QC		20	4	16		40
Address Comments from Const Field Review	4		4	36		44
Final Construction Plan Assimilation	8	4	8			20
Final Estimate and Opinion of Prob Cost	4	4	12	12		32
Final Special Provisions Document	8		16			24
Sub-Total ROW/Const Plans Task	166	154	272	394	0	986
Develop Bid Manual & Const Documents						
Prepare Draft Contract Manual	2	16	4			22
Submit and Coordinate with TDOT	4	4				8
Address Bid Manual Review Comment		4	8			12
Request / Receive NTP to Construction from TDOT	4	4				8
Sub-Total Bid Manual Task	10	28	12	0	0	50
TOTAL Hours	288	220	368	394	0	**1270**
Mandays	36.00	27.50	46.00	49.25	0.00	**158.75**
% of Total Project	22.68%	17.32%	28.98%	31.02%	0.00%	100.00%

PROJECT: S Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION: From SE Broad Street to Memorial Blvd
COUNTY: Rutherford
CONSULTANT: Neel-Schaffer
Prepared By: G Judy
Date Prepared: 10/23/2017

PERSONNEL	MANDAY RATE	MANDAYS	DIRECT LABOR COST
PROJECT MANAGER / ENGINEER MANAGER	$496.00	36.00	$17,856.00
SR PROJECT ENGINEER / PROFFESIONAL III	$400.00	27.50	$11,000.00
PROJECT ENGINEER / PROFFESIONAL II	$328.00	46.00	$15,088.00
ENGINEER / PROFFESIONAL I	$224.00	49.25	$11,032.00
TECHNICIAN / DESIGNER	$192.00	0.00	$0.00
TOTAL NUMBER OF MANDAYS		158.75	$54,976.00

FEE SUMMARY		
Direct Labor		$54,976.00
Overhead	156.70%	$86,147.39
Net Fee (Direct labor X 2.35 X 11%)		$14,211.30
Total (Direct Labor+Overhead+Net Fee)		$155,334.69
Direct Cost (Subs, See Page 4 for Details)		$27,006.11
TOTAL		**$182,340.80**

ROW-FINAL DESIGN DIRECT EXPENSES

PROJECT:	S Rutherford Blvd ASCT Project (PIN 125505.00)
DESCRIPTION:	From SE Broad Street to Memorial Blvd
COUNTY:	Rutherford
CONSULTANT:	Neel-Schaffer
Prepared By:	G Judy
Date Prepared:	10/23/17

Reproduction Costs:

Item Description	Number / Unit	Unit Price	Item Subtotal	Item Total Cost
Photo-copies	150	$ 0.20	$ 30.00	
Full size bond		$ 2.00	$ -	
Half size bond	750	$ 1.00	$ 750.00	
Full size vellum			$ -	
Half size vellum			$ -	
Full size mylar			$ -	$ 780.00

Travel:

	Number of Trips	No. of Miles/No. of People			
Per Diem (75%)			$ 22.50 Per Day	$ -	
Per Diem			$ 30.00 Per Day		
Transportation	8.00 Round Trips	X 25.00 Miles X	$ 0.47 Per Mile	= $ 94.00	
Lodging				$ -	$ 94.00

* Rate must agree amounts in effect with State of Tennessee travel regulations.
First and last day of travel must be at the 75% Per Diem Rate.

Other Expenses:

Item Description	Number / Unit	Unit Price	Item Subtotal	Item Total Cost
SEAR Sub (C2S)	1	$ 26,132.11	$ 26,132.11	
			$ -	
			$ -	
			$ -	
			$ -	
			$ -	
			$ -	$ 26,132.11

TOTAL DESIGN DIRECT EXPENSES **$ 27,006.11**

Proposal Summary
S Rutherford Blvd ASCT Project - PIN 125505.00

Breakdown by Phase*

Phase	Neel-Schaffer	Neel-Schaffer Directs	Wiser (Survey)	G&M (Env. Doc)	QC (Traffic Data)	C2S (SEAR/Support)		Total By Phase
PE-NEPA	$125,565.22	$726.25	$27,146.48	$7,324.03	$5,000.00	$63,313.33		$229,075.31
ROW/Final	$155,334.69	$874.00				$26,132.11		$182,340.80
Bidding	$0.00	$0.00				$0.00		$0.00
CEI Services	$0.00	$0.00				$0.00		$0.00
							Total Fee	**$411,416.11**
							Total Estimated Fee (Rounded)	**$411,420.00**

Breakdown by Prime & Sub-Consultants*

Firm	Responsibility	OH Rate	% Net Fee	Prime Fee	Sub Fees
Neel-Schaffer	Prime	156.70%	11.00%	$282,500.16	
Wiser	Survey	124.34%	10.00%		$27,146.48
Griggs & Maloney	Env. Documents	125.00%	9.00%		$7,324.03
Quality Counts	Traffic Counts	n/a	n/a		$5,000.00
C2S	SEAR / ITS	140.58%	10.00%		$89,445.44
			Sub-Totals	$282,500.16	$128,915.95
			Total Fee	**$411,416.11**	
			Total Estimated Fee (Rounded)	**$411,420.00**	

** Initial professional services contract provides for tasks thru final plans and NTP for Construction byTDOT. Bidding and CEI phase services will be determined prior to project bidding.*

ATTACHMENT C

ATTESTATION REGARDING PERSONNEL USED IN CONTRACT/AGREEMENT PERFORMANCE

SUBJECT CONTRACT/ AGREEMENT NUMBER:	City of Murfreesboro Rutherford Boulevard Adaptive Signal Control Technology (ASCT); Federal Project Number: CM-9311(22) PIN Number: 125505.00
ENGINEER/ CONTRACTOR LEGAL ENTITY NAME:	Neel-Schaffer, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	64-0671634

The Engineer/ Contractor, identified above, does hereby attest, certify, warrant, and assure that the Engineer/Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract/ Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of the Contract/ Agreement.

SIGNATURE: _____

DATE: **11/7/2017**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Engineer/ Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Engineer/ Contractor.

Compliance and non-compliance procedures will be as specified in the Tennessee Department of Finance and Administration's Policy on "Ensuring Compliance with Federal Immigration Laws by State Contractors and Subcontractors."

ATTACHMENT D

Iran Divestment Act

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not a person included within the list created pursuant to T.C.A. §12-12-106.

Signature: Date: 11/7/2017

Title: Tennessee Operations Manager

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Asphalt Purchases Report

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☐
Direction	☐
Information	☒

Summary

Report of asphalt purchases.

Staff Recommendation

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

Background Information

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

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

Council Priorities Served

Responsible budgeting

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 Purchases FY 2022

Invoice Date	Approval	Vendor	Type	Rate	Qty	Total	FY Total
7/20	DH	Vulcan	307-BM	$58.39	18.60	$1,086.05	$1,086.05
7/20	DH	Vulcan	307-BM	$58.39	18.38	$1,073.21	$2,159.26
7/20	DH	Vulcan	307-BM	$58.39	18.56	1,083.72	$3,242.98
7/20	DH	Vulcan	307-BM	$58.39	18.27	1,066.79	$4,309.77
7/26	DH	Hawkins	411- E	$66.50	18.70	1,243.55	$10,074.44
7/26	DH	Hawkins	307-BM	$59.00	13.60	802.40	$10,876.84
8/10	DH	Vulcan	411-E	$67.35	13.66	920.00	$11,796.84
8/17	DH	Vulcan	307-BM	$58.51	10.72	627.23	#REF!
10/15	DH	Hawkins	411-E	$66.50	16.48	1,095.92	$16,493.88
10/20	DH	Hawkins	307-BM	$62.75	16.69	1,047.30	$17,541.18
11/30	DH	Hawkins	307-BM	$60.00	22.34	1,340.40	$18,881.58
11/30	DH	Hawkins	307-BM	$60.00	19.28	1,156.80	$20,038.38
11/30	DH	Hawkins	307-BM	$60.00	17.25	1,035.00	$21,073.38
11/30	DH	Hawkins	307-BM	$60.00	20.26	1,215.60	$22,288.98
11/30	DH	Hawkins	307-BM	$60.00	19.00	1,140.00	$23,428.98
11/30	DH	Hawkins	411-E	$67.50	17.31	1,168.43	$24,597.41
11/30	DH	Hawkins	307-BM	$65.00	22.37	1,454.05	$26,051.46
11/30	DH	Hawkins	307-BM	$65.00	19.89	1,292.85	$27,344.31
11/30	DH	Hawkins	307-BM	$65.00	22.86	1,485.90	$28,830.21
11/30	DH	Hawkins	307-BM	$65.00	17.69	1,149.85	$29,980.06
11/30	DH	Hawkins	307-BM	$65.00	3.06	198.90	$30,178.96
12/13	DH	Hawkins	307-BM	$60.50	21.02	1,271.71	$31,450.67
12/13	DH	Hawkins	411-E	$68.25	14.47	987.58	$32,438.25
12/18	DH	Hawkins	411-E	$68.25	17.62	1,202.57	$33,640.82
12/18	DH	Hawkins	411-E	$68.25	3.54	241.61	$33,882.43
12/28	DH	Hawkins	307-BM	$60.50	18.00	1,089.00	$34,971.43
12/28	DH	Hawkins	307-BM	$60.50	13.77	833.09	$35,804.52
12/29	DH	Hawkins	307-BM	$60.50	15.84	958.32	$36,762.84
1/31	DH	Hawkins	411-E	$68.25	11.80	805.35	$39,868.19
2/18	DH	Hawkins	307-BM	$60.75	11.91	723.53	$40,591.72
2/18	DH	Hawkins	307-BM	$58.00	20.29	1,176.82	$41,768.54
5/23	DH	Hawkins	411-D	$82.50	4.01	86.51	$41,855.05

MWRD - OPERATIONS & MAINTENANCE

Asphalt Quotes FY 2022

	Blue Water		Hawkins		Vulcan		Notes
	Binder	*Topping*	*Binder*	*Topping*	*Binder*	*Topping*	
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*	$60.50	$68.25	$60.50	$69.50	
Jan	*$65.00*	*$75.00*	$60.50	$68.25	$60.50	$69.50	
Feb	*$65.00*	*$75.00*	$60.75	$68.75	$0.00	$0.00	
Mar	*$65.00*	*$75.00*	$61.50	$70.50	$63.70	$73.76	
Apr	*$65.00*	*$75.00*	$64.00	$74.50	$66.76	$77.85	
May	*$65.00*	*$75.00*	$65.25	$75.50	$68.70	$80.44	
Jun	*$65.00*	*$75.00*	$66.50	$77.00	$69.54	$81.50	

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Purchase of Meter Vaults for Operational Inventory

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

MWRD Operations & Maintenance purchase of meter vaults.

Staff Recommendation

Approval to purchase meter vaults from Fortiline.

Background Information

MWRD O&M uses meter vaults for its operations, which requires a sufficient inventory of this equipment to be maintained. A request for bids to provide the meter vaults varying in size was issued and the department received one bid from Fortiline.

The cost per vault will be recovered as tap fees are purchased so they are a zero net gain or expense to the Department's operating budget. The contract price will be valid for one year.

Council Priorities Served

Responsible budgeting

Maintaining and inventory of critical equipment needs allows the City to efficiently respond to operational needs while securing the best price of the equipment.

Fiscal Impact

None. The expense is recovered through fees during the budget year or carrying costs over a budget year is de minimus.

Attachments

1. Fortiline Quote
2. Fortiline Contract

QUOTE

FORTILINE WATERWORKS
a MORSCO brand

Due to the continued cost and supply challenges in the DUCTILE IRON PIPE, PVC and HDPE markets, the pricing of these products will be based solely on the availability at the time of shipment. Also, given the volatility in these markets we will not be responsible for product availability and shipment delays, as they are out of our control. Bid prices should be considered an estimate, materials will only be priced at time of shipment until the current supply chain challenges are resolved. These terms are in leu of our standard terms. We appreciate your partnership.

CUSTOMER NO	QUOTING BRANCH	QUOTE NO	QUOTE DATE	PAGE
215810	FORTILINE NASHVILLE	6217990	6/26/22	1

CUSTOMER

MURFREESBORO WATER&SEWER DEPT.
P.O. BOX 1477
MURFREESBORO, TN 37133

PROJECT INFORMATION

43-GANG VLT ANNUAL CONTRACT 6-28-22

LINE	QTY	UOM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
			********** GIVEN THE CURRENT PRICING AND SUPPLY CHAIN CHALLENGES ALL MATERIAL WILL BE PRICED AT TIME OF SHIPMENT AND THE PRICES BELOW ARE TO BE USED AS AN ESTIMATE FOR BID PURPOSES ONLY **********		
			GANG VAULT ANNUAL CONTRACT TERMS 6-28-22 TO 6-28-23		
			MWSD 3 GANG NON-TRAFFIC VAULT		
60	1	EA	4" PEXPE DIP 8'00 W/3 1"CC TAP CLASS 56 PIPE	N/C	N/C
70	3	EA	1"CORP STOP CCXFNPT 74101BCAPF NO LEAD	N/C	N/C
80	3	EA	1"X12" METER SETTER MIPXDP NO LEAD 720-412WDMD 44	N/C	N/C
90	3	EA	5/8"X1" MTR ADPT MIPXFIP KIT 710J14KIT NO LEAD	N/C	N/C
100	3	EA	1"X18" BRASS NIPPLE	N/C	N/C
110	1	EA	29X59 APS300 RETRO HATCH ALUM W/SLAM LOCK NO HASP USF	N/C	N/C
120	1	EA	67"X37"X41.5" CONCRETE MTR VLT 3 GANG	5,434.5000	5,434.50
			Package Sub-total:		**5,434.50**
			MWSD 4 GANG NON-TRAFFIC VAULT		
150	1	EA	4" PEXPE DIP 8'00 W/4 1"CC TAP CLASS 56 PIPE	N/C	N/C
160	4	EA	1"CORP STOP CCXFNPT 74101BCAPF NO LEAD	N/C	N/C
170	4	EA	1"X12" METER SETTER MIPXDP NO LEAD 720-412WDMD 44	N/C	N/C
180	4	EA	5/8"X1" MTR ADPT MIPXFIP KIT 710J14KIT NO LEAD	N/C	N/C
190	4	EA	1"X18" BRASS NIPPLE	N/C	N/C
200	1	EA	29X59 APS300 RETRO HATCH ALUM W/SLAM LOCK NO HASP USF	N/C	N/C
210	1	EA	67"X37"X41.5" CONCRETE MTR VLT 4 GANG	6,247.9500	6,247.95
			Package Sub-total:		**6,247.95**

ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES

All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date.
After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

CUSTOMER NO	JOB NAME	QUOTE NO	QUOTE DATE	PAGE
215810	43-GANG VLT ANNUAL CONTRACT 6-28-2	6217990	6/26/22	2

LINE	QTY	UOM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
			MWSD 5 GANG NON-TRAFFIC VAULT		
240	1	EA	4" PEXPE DIP 8'00 W/5 1"CC TAP CLASS 56 PIPE	N/C	N/C
250	5	EA	1"CORP STOP CCXFNPT 74101BCAPF NO LEAD	N/C	N/C
260	5	EA	1"X12" METER SETTER MIPXDP NO LEAD 720-412WDMD 44	N/C	N/C
270	5	EA	5/8"X1" MTR ADPT MIPXFIP KIT 710J14KIT NO LEAD	N/C	N/C
280	5	EA	1"X18" BRASS NIPPLE	N/C	N/C
290	1	EA	29X59 APS300 RETRO HATCH ALUM W/SLAM LOCK NO HASP USF	N/C	N/C
300	1	EA	67"X37"X41.5" CONCRETE MTR VLT 5 GANG	7,060.5000	7,060.50
			Package Sub-total:		**7,060.50**
			MWSD 6 GANG NON-TRAFFIC VAULT		
330	1	EA	4" PEXPE DIP 8'00 W/6 1"CC TAP CLASS 56 PIPE	N/C	N/C
340	6	EA	1"CORP STOP CCXFNPT 74101BCAPF NO LEAD	N/C	N/C
350	6	EA	1"X12" METER SETTER MIPXDP NO LEAD 720-412WDMD 44	N/C	N/C
360	6	EA	5/8"X1" MTR ADPT MIPXFIP KIT 710J14KIT NO LEAD	N/C	N/C
370	6	EA	1"X18" BRASS NIPPLE	N/C	N/C
380	1	EA	29X59 APS300 RETRO HATCH ALUM W/SLAM LOCK NO HASP USF	N/C	N/C
390	1	EA	67"X37"X41.5" CONCRETE MTR VLT 6 GANG	7,875.0000	7,875.00
			Package Sub-total:		**7,875.00**
				Subtotal:	26,617.95
				Tax:	.00
				Bid Total:	26,617.95

ALL STOCK DELIVERIES ARE SUBJECT TO SHIPPING CHARGES

All PVC and HDPE material is quoted for shipment within 7 days of quote/bid date. All other material is quoted for shipment within 30 days of quote/bid date.
After 7 days for PVC and HDPE or 30 days for all other material, ALL quoted prices are subject to review based on current market conditions.

Ent By ZR 6/26/22 23:30:03

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CONTRACT BETWEEN
THE CITY OF MURFREESBORO
AND
FORTILINE, INC., dba FORTILINE WATERWORKS

This Agreement is entered into and effective as of the ____ day of _____ 2022 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 ("Contractor").
This Agreement consists of the following documents:

This Agreement consists of the following documents:

- This document
- "ITB-66-2020 – Meter Vaults" issued June 14, 2022 (the "Solicitation");
- Contractor's Proposal, dated 06/27/2022 ("Contractor's Proposal");
- Contractor's Price Proposal, dated 06/26/2022 (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-66-2022– Meter Vaults" 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 150 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. 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.

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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 and expires in one year, unless extended by mutual agreement of Contractor and the City or earlier terminated as set forth herein. 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-66-2022– Meter Vaults. Prices submitted are for one (1) each:
Three-Gang 1" Meter Vault $5,434.50
Four-Gang 1" Meter Vault $6,247.95
Five-Gang 1" Meter Vault $7,060.50
Six-Gang 1" Meter Vault $7,875.00
for a **total price of $26,617.95**.
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, (ii) upon request, an endorsement

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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:	If to Contractor:
City Manager City of Murfreesboro 111 West Vine Street Murfreesboro, TN 37130	Fortiline Waterworks Kyle Stetson 1317 Elm Hill Pike Nashville, TN 37210 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

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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.

    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.**

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

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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.

Signatures on Next Page

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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 _____, 2022 (the "Effective Date").

City of Murfreesboro, Tennessee

By: _____
Shane McFarland, Mayor

Approved as to form:

DocuSigned by:
Adam F. Tucker
43A2035E51F9491...
Adam F. Tucker, City Attorney

Fortiline, Inc. dba Fortiline Waterworks

By: Kyle Stetson
Kyle Stetson, General Market Manager

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: GE iFix annual support (SCADA software)

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Renewal of GE GlobalCare iFix annual support services.

Staff Recommendation

Approve annual support for GE GlobalCare iFix.

Background Information

Water and Wastewater Plants use this software to view and control the operations of the plant and remote sites. It is critical that this part of the control system continue to function as needed to enable the operators to monitor and control the processes. The GE GlobalCare Support renewal includes technical support for any issues with the iFix application and software updates.

Council Priorities Served

Responsible budgeting

Maintaining software provides operating information that assist MWRD in evaluating and extending the lifespan of equipment, thereby ensuring reliable operation of facilities.

Fiscal Impact

This expenditure, $29,757, is funded by the Department's FY23 operating budget.

Attachments

Automatech quote for GE iFix annual support

AutomaTech
We Make Plant Information Flow

Send Purchase Order and/or Correspondence to:
ORDERS@AUTOMATECH.COM

PLEASE LIST THE FOLLOWING AS THE
VENDOR ON YOUR PURCHSE ORDER:
GE Digital LLC
2700 Camino Ramon
San Ramon, CA 94583-9130

Quote #	**BMIQ-07052022-455867**
Quote Date	Jul 07, 2022
Expiration Date	August 7, 2022
Quote Revision	1-Updated some licenses*
Currency	USD
Customer RFQ	Jeff Broach
Payment Terms	NET 30 DAYS
Inco Terms	

Primary Sales Person **Travis Hancuff**
Primary Sales Email **Orders@automatech.com**
Primary Sales Phone **774-283-6016**

- PO MADE OUT TO GE DIGITAL LLC
- SEND PO TO ORDERS@AUTOMATECH.COM

Bill To :	**End User :**
MURFREESBORO WATER & SEWER 2032 BLANTON DRIVE MURFREESBORO , TN 37129-0000 **US**	MURFREESBORO WATER & SEWER 2032 BLANTON DRIVE MURFREESBORO , TN 37129-0000 **US**
Bill To CSN : 13322900	End User CSN : 13322900

*Per customer request, downgraded 2 iClient licenses from 17 clients to 15 clients, and removed the following licenses from the support renewal: PO35E005 Portal v3.5 Enterprise 5 CALs, SN 3-25348601-022-001

Please note new total on page 4: $29,757.10

Detailed Report:

IFIX-TERML

Serial No.	Base Serial Number	Type of License	Part No.	Part Description	Comments	Quantity	Level	Renewal Date	Price
3-06441401-003-001			IF65PDUNLEN-S	iFix v6.5 Plus Development Unlimited Points English SCADA Synchronization		1	Premier	Aug 06, 2023	$2,520.09
3-06441401-009-001			IF65PDUNLEN-S	iFix v6.5 Plus Development Unlimited Points English SCADA Synchronization Backup License		1	Premier	Aug 06, 2023	$1,260.13
3-25348601-003-001			IF65PDUNLEN-SE	iFix v6.5 Plus Development Unlimited Points English SCADA Synchronization Electronic Signature		1	Premier	Aug 06, 2023	$3,079.77

3-25348601-008-001			IF65PRUNLEN-SE	iFix v6.5 Plus Runtime Unlimited Points English SCADA Synchronization Electronic Signature Backup License		1	Premier	Aug 06, 2023	$1,209.25
					TOTAL	4		Aug 06, 2023	$8,069.24
								IFIX-TERML Subtotal	**$8,069.24**

DRIVER-TERML

Serial No.	Base Serial Number	Type of License	Part No.	Part Description	Comments	Quantity	Level	Renewal Date	Price
3-06441401-006-001			DR-G0P253V0	Drivers IGS- Industrial Gateway Server for Basic Points 253 Additional IGS Protocols IOT Gateway plug in No Tags		1	Premier	Aug 06, 2023	$195.04
3-06441401-012-001			DR-G0P253V0	Drivers IGS- Industrial Gateway Server for Basic Points 253 Additional IGS Protocols IOT Gateway plug in No Tags Backup License		1	Premier	Aug 06, 2023	$97.52
3-25345501-003-001			DR-G0P253V0	Drivers IGS- Industrial Gateway Server for Basic Points 253 Additional IGS Protocols IOT Gateway plug in No Tags		1	Premier	Aug 06, 2023	$195.04
3-25345501-006-001			DR-G0P253V0	Drivers IGS- Industrial Gateway Server for Basic Points 253 Additional IGS Protocols IOT Gateway plug in No Tags Backup License		1	Premier	Aug 06, 2023	$97.52
					TOTAL	4		Aug 06, 2023	$585.12
								DRIVER-TERML Subtotal	**$585.12**

ICLIENT-TERML

Serial No.	Base Serial Number	Type of License	Part No.	Part Description	Comments	Quantity	Level	Renewal Date	Price

3-06441401-015-001			IC65TSDEN-C015	iClient v6.5 Thin-Terminal Services Development / Runtime English 15 Client		1	Premier	Aug 06, 2023	$4,323.61
3-06441401-018-001			IC65TSDEN-C015	iClient v6.5 Thin-Terminal Services Development / Runtime English 15 Client Backup License		1	Premier	Aug 06, 2023	$2,161.72
3-25348601-013-001			IC2022TSDEN-C015E	iClient v2022 Thin-Terminal Services Development / Runtime English 15 Client Electronic Signature	Downgraded license from 17 Client to 15 Client per Jeff Broach 7/6/2022	1	Premier	Aug 06, 2023	$4,770.40
3-25348601-016-001			IC2022TSDEN-C015E	iClient v2022 Thin-Terminal Services Development / Runtime English 15 Client Electronic Signature Backup License	Downgraded license from 17 Client to 15 Client per Jeff Broach 7/6/2022	1	Premier	Aug 06, 2023	$2,385.12
					TOTAL	4		Aug 06, 2023	$13,640.85
								ICLIENT-TERML Subtotal	**$13,640.85**

HISTORIAN-TERML

Serial No.	Base Serial Number	Type of License	Part No.	Part Description	Comments	Quantity	Level	Renewal Date	Price
3-06441401-021-001			HS91E0000502500-M2	Historian v9.1 Enterprise 5000 Points 2500 Additional CALs Two Mirror		1	Premier	Aug 06, 2023	$5,146.00
3-25348601-019-001			HS91S0000252500	Historian v9.1 Standard 2500 Points 2500 Additional CALs		1	Premier	Aug 06, 2023	$2,315.89
3-42626401-004-001			HS91T0000100000	Historian v9.1 Essential 1000 Points		1	Premier	Aug 06, 2023	$0.00
3-42626401-011-001			HS91T0000100000	Historian v9.1 Essential 1000 Points		1	Premier	Aug 06, 2023	$0.00
3-42626401-025-001			HS91E0000010000002500-EM2D	Historian v9.1 Enterprise 100000000 Points 2500 Additional CALs eSignature Additional Datastores Add On		1	Premier	Aug 06, 2023	$0.00
3-42626401-034-001			HS91T0000100000	Historian v9.1 Essential 1000 Points		1	Premier	Aug 06, 2023	$0.00

3-42626401-038-001			HS91T0000100000	Historian v9.1 Essential 1000 Points		1	Premier	Aug 06, 2023	$0.00
					TOTAL	7		Aug 06, 2023	$7,461.89
								HISTORIAN-TERML Subtotal	**$7,461.89**

Total: **$29,757.10**

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: GPS Rover Units Upgrades & New Purchase

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Request to purchase two Leica GPS units for use by MWRD Engineering.

Staff Recommendation

Approval of purchase.

Background Information

MWRD has purchased Leica GPS (Global Positioning System) reference stations & survey grade rover units since 2003. The rover units and reference station have been upgraded/replaced over the years to keep pace with changing technology. The last upgrade/replacement for two existing units was in 2017. These units are at the end of their useful life.

A third unit was purchased in 2021. All three units are necessary to collect GPS data for assets in MWRD's fast growing service areas. The units will be used by inspectors to capture assets in stormwater, rehabilitation sewer construction, and in capital infrastructure projects.

Council Priorities Served

Expand infrastructure

Documenting and integrating new infrastructure in the City's Geographic Information System (GIS) creates efficiency in operations and maintenance as well as effective asset management in determining consequence and likelihood of failure of critical assets and associated prioritization of repair and replacement activities.

Fiscal Impact

The purchase from Transit & Level, Inc. total $56,996. Funding will come from the FY23 Capital Expenditures budget. The budget allocation for this purchase is $60,000.

Attachments

1. Transit & Level, Inc Quote – S258693
2. Sole Source – Tennessee Distribution

transit & level inc.
service before the sale

Invoice

Transit and Level Clinic, Inc.

TRANSIT & LEVEL CLINIC - CORP
201 TOWERVIEW COURT
CARY, NC 27513

Order #	Date
S258693	07/25/2022

Bill To:	Ship To:
MURREESBORO WATER AND SEWER PO BOX 1477 MURFREESBORO, TN 37133	MURREESBORO WATER AND SEWER PO BOX 1477 MURFREESBORO, TN 37133

Customer: MURREESBORO WATER AND SEWER

Sales Rep	Payment Terms	Carrier	Ship Service	Date Scheduled	PO#
admin	Net 30 Days	Delivery		07/25/2022	

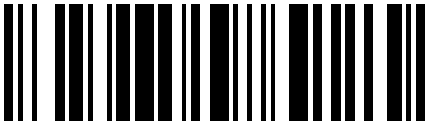
Item #	Type	Number	Description	Unit Price	Qty Ordered	Total Price
1	Sale	799187	799187 LEICA GKL341 CHARGER PROF 5000	$805.00	2 ea	$ 1,610.00
2	Kit	KIT-876479	KIT-876479 LEICA CS20 LTE FIELD CONTROLLER	$8,155.00	2 ea	$ 16,310.00
3	Sale	876479	876479 LEICA CS20 LTE FIELD CONTROLLER	$0.00	2 ea	$ 0.00
4	Sale	827698	827698 LEICA CAPTIVATE - MEASURE & STAKEOUT FOR CS20	$0.00	2 ea	$ 0.00
5	Sale	827699	827699 LEICA CAPTIVATE - MEASURE & STAKE TO LINE FOR CS20	$0.00	2 ea	$ 0.00
6	Sale	905306	905306 LEICA GEB333 BATTERY	$0.00	4 ea	$ 0.00
7	Sale	767856	767856 LEICA MSD1000 1GB SD CARD	$0.00	2 ea	$ 0.00
8	Sale	807157	807157 LEICA BASE PLATE HOLDER FOR CS20	$0.00	2 ea	$ 0.00
9	Sale	6009619	6009619 1YR CS20 BASIC CCP	$0.00	2 ea	$ 0.00
10	Sale	827708	827708 LEICA CAPTIVATE: TS HIDDEN POINT	$335.00	2 ea	$ 670.00
11	Kit	KIT-855304	KIT-855304 LEICA GS18T LTE&UHF SMARTANTENNA PACKAGE	$21,681.00	2 ea	$ 43,362.00
12	Sale	855304	855304 LEICA GS18 T LTE & UHF PERFORMANCE GNSS	$0.00	2 ea	$ 0.00
13	Sale	856074	856074 LEICA LOP60 GLONASS OPTION, GS18T	$0.00	2 ea	$ 0.00
14	Sale	905306	905306 LEICA GEB333 BATTERY	$0.00	4 ea	$ 0.00
15	Sale	937440	937440 LEICA GVP743 GNSS ROVER CONTAINER	$0.00	2 ea	$ 0.00
16	Sale	752292	752292 LEICA GLS30 CARBON FIBER GPS 2.0M SNAP LOCK	$0.00	2 ea	$ 0.00
17	Sale	6003686	6003686 1YR VIVA GNSS (GS1x) BASIC CCP	$0.00	2 ea	$ 0.00
18	Discount	Discount (by Item)	Discount (by item)			-$ 4,956.16

transit & level inc.
service before the sale

Invoice

Transit and Level Clinic, Inc.
TRANSIT & LEVEL CLINIC - CORP
201 TOWERVIEW COURT
CARY, NC 27513

Order #	Date
S258693	07/25/2022



Subtotal:	**$56,995.84**
Sales Tax:	**$0.00**
Total:	**$56,995.84**
Paid:	**$0.00**
Balance Due:	**$56,995.84**

Approval:_____ Date:_____

Leica Geosystems Inc.
5051 Peachtree Corners Circle
Suite 250
Norcross, GA 30092
Phone (770) 326-9500
Fax (770) 447-0710
www.leica-geosystems.com

Tommy A. Biddix
GIS Coordinator
Murfreesboro Water Resources Dept.
220 NW Broad St.
Murfreesboro, TN 37130

July 25, 2022

This letter is to confirm the sales and distribution of Leica Geosystems S&E (Surveying and Engineering Division), is made by our authorized Leica Dealer, CW Lawley, Inc./DBA: Transit and Level Clinic, in Tennessee. Leica Geosystem (S&E) has set territories across North America handled either by a Direct representative or authorized Leica Dealer. These set territories are for exclusive distribution of the Geomatic products to ensure the customer has local representation to provide sales, service, and support at the local level, and with access to Leica national support and service as well.

Mr. Biddix,

Please accept this letter as confirmation that Tennessee is handled by CW Lawley, Inc./DBA: Transit and Level Clinic. Transit and Level Clinic are the sole source for Leica High end Survey and Engineering products.

Transit and Level Clinic
730 Fesslers Ln.
Nashville, TN 37210

Regards,

C. Dean Howell, PLS

C. Dean Howell, PLS
Regional Sales Manager
NC, SC, TN, AL, MS and Tidewater Virginia
Leica Geosystems, Inc.
Mobile: 336.944.7501
Support: 800.327.4773
E-Mail: dean.howell@leicaus.com

Support: survey.support@leicaus.com
Website: http://www.leica-geosystems.com

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Lawn Care & Landscaping First Amendment

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Extension of contract for lawn care and landscaping for the Stones River Water Treatment Plant.

Staff Recommendation

Approve first amendment for the Barton Lawn Care contract.

Background Information

Barton Lawn Care was awarded the lawn care and landscaping contract for the Stones River Water Treatment Plant though June 30, 2022. The contract includes three one-year options to extend the contract. This request is to extend the contract through June 30, 2023.

Council Priorities Served

Responsible Budgeting

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

Fiscal Impact

Funding is in the FY23 Operating Budget with a contract price through June 30, 2023. If approved, the contact has an option to renew for up to two additional one-year terms. The estimated annual expense is $32,100.

Attachments

First Amendment Lawn Care and Landscaping

DocuSign Envelope ID: 7CF7DCE7-8BA7-483E-89B7-99D3B470F76F

AMENDMENT NO. 1
TO THE
CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
BARTON LAWN CARE
FOR GRASS CUTTING AND LANDSCAPING FOR
STONES RIVER WATER TREATMENT PLANT

This First Amendment ("First Amendment") to the Contract entered October 21, 2021 ("Contract") is effective as of this _____, by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee Barton Lawn Care, a Sole Proprietorship of the State of Tennessee, ("Contractor").

RECITALS

WHEREAS, pursuant to clause 2 of the Agreement, the term of this contract was from October 21, 2021, to June 30, 2022, with three one-year options, unless extended upon agreement of the Contractor and the City; and,

WHEREAS, the City and Contractor wish to extend the Contract term pursuant to clause 2 of the current Contract for an additional year, and all other terms of the contract including unit price, shall remain unchanged:

NOW THEREFORE, the Contract is hereby amended as set forth below:

1. The Contract is amended by extending the term of the contract for an additional year through June 30, 2023.

2. This amendment is hereby effective on _____.

3. All other terms of the Contract shall continue in full force and effect and are otherwise unchanged by this First Amendment.

City of Murfreesboro

By: _____
Shane McFarland, Mayor

Barton Lawn Care

DocuSigned by:
By: Gary Barton
Gary Barton, Owner

Approved as to form:

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

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: MicroMain Global CMMS

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Conversion from the MicroMain Classic system to MicroMain Global which is a cloud-based Computerized Maintenance Management System (CMMS) for MWRD's treatment plants' assets.

Staff Recommendation

Approve CMMS upgrade from MicroMain in accordance with their proposal.

Background Information

MWRD is currently using MicroMain's CMMS Classic system which utilizes the Department's servers. Like most software providers, they are trying to move to a cloud-based system Global. While the Department can continue with the Classic system, the servers would need to be updated and require paying for support, and there are other limitations on the Classic system that do not exist on the Global. Global has more flexibility such as no charge for support or upgrades, the ability to use mobile devices, and the ability to manage work orders offline and more. There is, however, an annual fee for the administrators and users.

The proposal includes cleaning up existing data, preforming a pre-data import consultation, reviewing and correcting issues from the data import and providing 2-day online training.

The proposal is for five years. There is a discount of $4,820 if the 5-year plan is approved. Year 1 is $12,334, Year 2 through Year 5 is $6,974 each year, for a total of $40,230 for five years.

Council Priorities Served

Responsible budgeting

Provides asset management for all equipment at each facility thereby improving maintenance operations and increasing equipment's lifespan.

Fiscal Impact

The total cost for MicroMain Global is $40,230. If approved, funding will come from each FY expense budget for the next 5-years.

Attachments

MicroMain Global CMMS Proposal

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AGREEMENT BETWEEN CITY OF MURFREESBORO AND MICROMAIN CORP. FOR MAINTENANCE MANAGEMENT SOFTWARE (SaaS)

This Agreement is entered into and effective as of the _____ (the "Effective Date"), by and between the **City of Murfreesboro,** a municipal corporation of the State of Tennessee (the "City"), and **MicroMain Corp.** a corporation with its principal office in the State of Texas ("Contractor").

This Agreement consists of the following documents:

- This document
- Contractor's Sales Proposal for MM Global Maintenance Software-as-a-Service (SaaS) ("Contractor's Proposal");
- Any properly executed amendments to this Agreement.

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

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

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase, Contractor's SaaS subscription as set forth in Contractor's Proposal.

2. **Term.** The term of this Contract shall begin on the Effective Date and continue for a period of five years. 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, which reflects a **total purchase price of $40,320.00,**

DocuSign Envelope ID: 98594E18-72F3-44F2-BE50-780C395FCA12

inclusive of all 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 10 weeks of order to: 5528 Sam Jared Dr, Murfreesboro, TN 37130. Delivery Contact: Alan Cranford (tel.: 615-848-3222 ext. 3301, email: acranford@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 warrants that the products purchased herein when used in accordance with the Documentation shall operate and conform in all material respects with this Agreement. If the products do not perform as warranted, Contractor shall use commercially reasonable efforts to correct the products so that it operates in all material respects in conformity with the written representations of Contractor. If it cannot correct the products within a reasonable period of time, as mutually agreed by the parties, Contractor shall refund the purchase price of the products. Because Tennessee law may not allow Customer to agree to the disclaimer of warranties any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and Customer reserves all rights afforded to local governments under law for all general and implied warranties.

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.** If the City so informs Contractor of a need for insurance coverage 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

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prior to commencement of work and upon renewal or expiration of the policies reflected thereupon, (ii) upon request, an endorsement naming the City as additional insured under the terms of the policy as follows: "The City of Murfreesboro, Tennessee, its officers, employees, contractors, consultants, and agents."

8. **Indemnification.**
   a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and reasonable attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws. Contractor's maximum liability to the City hereunder shall not exceed the limits of Contractor's insurance policies as evidenced by the Certificate of Insurance delivered by Contractor to the City in connection with this Contract; provided that, in the event said Certificate of Insurance is cancelled, lapses, or otherwise expires, this limitation shall be of no further force or effect unless and until Contractor provides the City with a new valid Certificate of Insurance containing the same or greater insurance amounts.
   b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
   c. Copyright, Trademark, Service Mark, or Patent Infringement.
      i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
      ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
         1. Procure for the City the right to continue using the products or services.
         2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.

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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:	If to Contractor:
City Manager, City of Murfreesboro	Spencer Pope
111 West Vine Street	3267 Bee Caves Rd
Murfreesboro, TN 37130	Suite 107-230
	Austin TX 78746
	spope@micromain.com

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

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

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

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

14. **No Waiver of Limitations Periods.** The parties shall have and maintain any applicable limitation period provided by state law in which to provide a notice, present a claim, or initiate an action in a court of competent jurisdiction. To the extent any other provision in the documents forming this Agreement provides a shorter limitation period, the City disclaims such provision, and Contractor acknowledges such disclaimer.

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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.

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.

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21. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, pandemics, epidemics, shortages in materials or supplies required or the manufacture or shipment of the products, governmental order, or other cause of similar or dissimilar nature beyond its control.

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

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

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

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

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

CITY OF MURFREESBORO, TENNESSEE

By: _____
Shane McFarland, Mayor

MICROMAIN CORP.

DocuSigned by:
By: Shane McCallay
F934EF413B3B409...
Shane McCallay, Chief Revenue Officer

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
49A2935E5BF94D1...
Adam F. Tucker, City Attorney

DocuSign Envelope ID: 98594E18-72F3-44F2-BE50-780C395FCA12

Prepared for:

Murfreesboro Water & Sewer Department

By: Spencer Pope

spope@micromain.com

Murfreesboro Water & Sewer Department

&

MicroMain

The most powerful, flexible, & easy-to-use maintenance management software

Since 1991, MicroMain has helped our customers manage their assets with a relentless focus on their overall experience. Don't believe us, just ask our customers like - Teledyne Technologies, PPG, Newell Brands, Mattel, Hilton, Cardinal Health, and Medline Industries.

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Increase Productivity, Reduce Downtime & Automate Your Maintenance Operations

Implementation

The implementation process is a critical step that will set the pace for your success. That is why we take this step very seriously. We have assembled a highly responsive and communicative Implementation Team with a proactive and engaging strategy to help with your implementation process. We don't stop until you're happy!

MicroMain Implementation Team

- Implementation Success Manager
- Account Executive
- Customer Success Manager
- Implementation Specialist
- Database Engineer

Implementation Process

- **Customer Kick-Off Call** - A scheduled call with the MicroMain Implementation Team

DocuSign Envelope ID: 98594E18-72F3-44F2-BE50-780C395FCA12

and Murfreesboro Water & Sewer Department's power users. Expectations are set for the project plan, timeline, deliverables, and business requirements. Upon completion, MicroMain will provide Excel data templates and documentation to assist with implementation.

- **Pre-Data Import Consultation** – This will be a scheduled meeting with a Software Implementation Specialist (SIS) and Database Engineer. Your SIS will conduct discovery to understand Murfreesboro Water & Sewer Department's work process and business requirements better to help map out the data transfer and import. With the guidance of the SIS and Database Engineer, Murfreesboro Water & Sewer Department will transfer data into the Excel templates provided by MicroMain.
- **Data Import** – Murfreesboro Water & Sewer Department will provide the completed Excel data templates to your Database Engineer to import into the instance.
- **Data Review** – After data import completion, a meeting will be scheduled with the SIS and Database Engineer to start the reviewing process. If any changes or errors are discovered during this meeting, MicroMain will provide the necessary services to assure a successful and approved data import.
- **2-Day Online Training** – Before Murfreesboro Water & Sewer Department's training, your SIS will schedule a meeting to address any special requirements or schedule that Murfreesboro Water & Sewer Department will need for the training. After this meeting, a training agenda will be provided.
- **GO-LIVE** – Once the training has been completed, Murfreesboro Water & Sewer Department will be prepared to go live.

Product	List Price	Murfreesboro Water & Sewer Department's Price	Quantity	Subtotal
MM Global Maintenance Annual Administrator User Login MM Global Maintenance - Annual Administrator User Login Fee	$1,068.00	$961.00	2	$1,922.00
MM Global Maintenance Annual Technician User Login Fee MM Global Maintenance - Annual Technician User Login Fee	$468.00	$421.00	12	$5,052.00

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Advanced Implementation Plan " "* Project Planning w/ Project Coordinator * Assigned Customer Success Manager * Pre-Data Consultation * Data Conversion * Data Import * Post- Data Consultation	$4,895.00	$2,000.00	1	$2,000.00
2-Day Virtual Consulting & Training 2-Day Virtual Consulting & Training for Global and Classic	$3,360.00	$3,360.00	1	$3,360.00

Year 1 Total **$12,334.00**

Product	List Price	Murfreesboro Water & Sewer Department's Price	Quantity	Subtotal
MM Global Maintenance Annual Administrator User Login MM Global Maintenance - Annual Administrator User Login Fee	$1,068.00	$961.00	2	$1,922.00
MM Global Maintenance Annual Technician User Login Fee MM Global Maintenance - Annual Technician User Login Fee	$468.00	$421.00	12	$5,052.00

Year 2 Total **$6,974.00**

Product	List Price	Murfreesboro Water & Sewer Department's Price	Quantity	Subtotal
MM Global Maintenance Annual Administrator User Login MM Global Maintenance - Annual Administrator User Login Fee	$1,068.00	$961.00	2	$1,922.00
MM Global Maintenance Annual Technician User Login Fee MM Global Maintenance - Annual Technician User Login Fee	$468.00	$421.00	12	$5,052.00

Year 3 Total **$6,974.00**

DocuSign Envelope ID: 98594E18-72F3-44F2-BE50-780C395FCA12

Product	List Price	Murfreesboro Water & Sewer Department's Price	Quantity	Subtotal
MM Global Maintenance Annual Administrator User Login MM Global Maintenance - Annual Administrator User Login Fee	$1,068.00	$961.00	2	$1,922.00
MM Global Maintenance Annual Technician User Login Fee MM Global Maintenance - Annual Technician User Login Fee	$468.00	$421.00	12	$5,052.00

Year 4 Total **$6,974.00**

Product	List Price	Murfreesboro Water & Sewer Department's Price	Quantity	Subtotal
MM Global Maintenance Annual Administrator User Login MM Global Maintenance - Annual Administrator User Login Fee	$1,068.00	$961.00	2	$1,922.00
MM Global Maintenance Annual Technician User Login Fee MM Global Maintenance - Annual Technician User Login Fee	$468.00	$421.00	12	$5,052.00

Year 5 Total **$6,974.00**

Total Contract Value $ 40,320.00

By "accepting' this proposal, client agrees to the products and services listed in this Statement of Work (SOW)

MicroMain	Murfreesboro Water & Sewer Department
Spencer Pope	

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MicroMain	Murfreesboro Water & Sewer Department

Senior Account Executive

spope@micromain.com

+1 (919) 407-2960

** All Annual SaaS Agreements will auto renew*
** You may cancel this agreement at anytime, by written notice, up to 30 days prior to the annual renewal period*
** All agreements start 30 days after the signing date*
** Payment Terms: Net 30*

COUNCIL COMMUNICATION

Meeting Date: 8/18/2022

Item Title: Minutes of City Council Meetings

Department: Finance

Presented by: Jennifer Brown, City Recorder/Finance Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

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

July 13, 2022 (Regular Meeting)
July 21, 2022 (Regular Meeting)

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 12:00 p.m. on Wednesday, July 13, 2022, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Rick LaLance
Bill Shacklett
Kirt Wade
Shawn Wright

Council Member Ronnie Martin was absent and excused from this session.

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
Gary Whitaker, Assistant City Manager
Angela Jackson, Executive Director/
Community Services
Chris Griffith, Executive Director/
Public Infrastructure
Sam Huddleston, Executive Director/
Development Services
Erin Tucker, Budget Director
Greg McKnight, Planning Director
Joshua Miller, Administrative Assistant

Mayor McFarland stated that an Executive Session had been held prior to the meeting and then commenced the meeting with a prayer followed by the Pledge of Allegiance.

The following letters from the Mayor were presented to the Council:

(Insert letter dated July 13, 2022 here with regards to Board of Zoning Appeals, Historic Zoning Commission, and Planning Commission Reappointments/Appointments.)

Upon recommendation of Mayor McFarland, Mr. Wright made a motion to reappoint Mr. Ken Halliburton (term expires June 30, 2025) to the Board of Zoning Appeals. Mr. Wade seconded the motion and all members of the Council voted "Aye".

Mr. Wade made a motion to appoint Mr. David Becker (term expires June 30, 2027), Mr. Chase Salas, Planning Commission liaison (term expires June 30, 2027), and Mr. Jim Thompson (term expires June 30, 2027) to the Historic Zoning Commission. Mr. Wright seconded the motion and all members of the Council voted "Aye".

Mr. Wade made a motion to reappoint Ms. Kathy Jones (term expires June 30, 2025) to the Planning Commission. Mr. Wright seconded the motion and all members of the Council voted "Aye".

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

(Insert letter dated July 13, 2022 here with regards to Restated

Agreement for Conveyance of Real Estate with Kasai North America.)

Mr. Craig Tindall, City Manager, presented the request to approve the First Amendment to the Restated Agreement for Conveyance of Real Estate with Kasai North America, Inc. and authorize execution of the Release of Option which will result in securing the City additional land for future economic development projects.

Mr. Shacklett made a motion to approve the First Amendment to the Restated Agreement for Conveyance of Real Estate with Kasai North America, Inc. and authorize execution of the Release of Option which will result in securing the City additional land for future economic development projects. Mr. LaLance 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 July 13, 2022 here with regards to
Salem Highway Sewer Upgrades – Easement Offers.)

Mr. Darren Gore, Assistant City Manager, presented the request to approve the purchase of temporary construction easements along Salem Highway, in the amount of $40,850, with additional approval to move forward with condemnation if easement offers are not accepted, for the upsizing of the area's sewer interceptor.

Vice-Mayor Scales Harris made a motion to approve the purchase of temporary construction easements along Salem Highway, in the amount of $40,850, with additional approval to move forward with condemnation if easement offers are not accepted, for the upsizing of the area's sewer interceptor. Mr. Wade 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 July 13, 2022 here with regards to Solid
Waste Management Solution Triple Bottom Line Weighting.)

Mr. Darren Gore, Assistant City Manager, presented a triple bottom line accounting framework with a multi-criteria analysis form to assist Council with the decision making regarding seeking a solid waste management solution and helping staff determine which direction to pursue. Mr. Gore answered questions from Council and discussed the options staff had prepared.

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

(Insert letter dated July 13, 2022 here with regards to Overview
of Traffic Planning for Economic Development Projects.)

Mr. Craig Tindall, City Manager, and Mr. Chris Griffith, Executive Director of Public Infrastructure, presented Council with the amount of current active road projects the City has, future road improvement opportunities in the City and the limitations on the timeframe

of those opportunities due to State/Federal involvement, Broad Street improvements, Medical Center Parkway improvements, and Gateway Boulevard improvements. Council discussed the various phases of the road improvement projects and discussed funding sources for the projects with staff. Mrs. Erin Tucker, Budget Director, discussed the CIP process with Council, Bond Issuance funding, and reallocation of funds due to projects stalling or priorities shifting.

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

(Insert letter dated July 13, 2022 here with
regards to May 2022 Dashboard packet.)

The May 2022 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.

The City Recorder/Finance Director stated that there were no beer permits nor any statements to be paid.

Council Member Kirt Wade asked that staff bring an update to Council regarding the future park on the west side of town and that he recommends that staff put the Bourbon Brothers/Notes Live project on the agenda of the next Council meeting.

At the suggestion of Mayor McFarland, Council and staff discussed horizontal property regimes (HPR's), the few that had been approved in the history of the City, and Council's view on if HPR's matched the vision for the City.

There being no further business, Mayor McFarland adjourned this meeting at 1:44 p.m.

_____
SHANE MCFARLAND – MAYOR

ATTEST:

_____
JENNIFER BROWN - CITY RECORDER

July 21, 2022

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, July 21, 2022, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Madelyn Scales Harris
Ronnie Martin
Bill Shacklett
Kirt Wade
Shawn Wright

Council Member Rick LaLance was absent and excused from this session.

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
Erin Tucker, Budget Director
Greg McKnight, Planning Director
Randolph Wilkerson, Employee Services Director
Russell Gossett, Solid Waste Director
Marina Rush, Principal Planner
Joshua Miller, Administrative Assistant

Vice-Mayor Scales Harris commenced the meeting with a prayer followed by the Pledge of Allegiance.

Mr. Randolph Wilkerson, Employee Services Director, recognized STARS Award recipients Murfreesboro Fire Rescue Department employees Captain Tim Lampitt, Engineer Marcus Cartwright, Firefighter Tyson Donaldson, and Firefighter Richard Goodyear. The crew of Engine 9 were nominated for responding to a call and being notified that there was a possibility of an infant in a locked car. With the assistance of an off duty nurse the crew's quick actions helped save the life of the child. Mayor McFarland presented plaques recognizing Captain Tim Lampitt, Engineer Marcus Cartwright, Firefighter Tyson Donaldson, and Firefighter Richard Goodyear's ability to represent the best of what Murfreesboro City Employees have to offer, exhibiting core values and creating a better quality of life for citizens.

The Consent Agenda was presented to the Council for approval:

1. Housing Rehabilitation – 306 First Avenue (Community Development)
2. Vehicle Purchase of 2022 Ford F-150 4x4 (Engineering)
3. Acquisition of ROW and Easements for River Rock/Beasie Connector (Engineering)

4. Retail Liquor Certificate of Compliance – Murfreesboro Wine & Spirits – Ownership Change (Finance)
5. City Manager Approved Budget Amendments for FY22 (Finance)
6. Public Records Request Annual Report (Finance)
7. St. Clair Senior Center Grant with Greater Nashville Regional Council (Parks)
8. Mandatory Referral for Abandonment of Raw Water Line Easement along Dejarnette Lane (Planning)
9. Mandatory Referral for Dedication of Electric Easements along Joe B Jackson Parkway (Planning)
10. Edward Byrne Memorial Justice Assistance Grant Application (JAG) Program and MOU with Rutherford County Sheriff's Office for 2022 (Police)
11. Contract with On Duty Depot, Inc. for Police Vehicle Equipment (Police)
12. Asphalt Purchases Report (Water Resources)
13. Commercial Painting Inc. Contract Change Order No. 4 (Water Resources)
14. WRRF Sodium Hypochlorite Contract Amendment (Water Resources)

(Insert letters from Community Development, Engineering (2), Finance (3), Parks, Planning (2), Police (2), & Water Resources (3) Departments here.)

Mr. Martin made a motion to approve the Consent Agenda. Vice-Mayor Scales Harris seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated July 21, 2022 here with regards to approval of Minutes of City Council Meetings.)

Mr. Wright made a motion to approve the minutes as written and presented for the regular meeting held on June 23, 2022 and the regular Meeting held on June 30, 2022. Mr. Martin seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated July 21, 2022 here with regards to removal of accessible Sewer Charges.)

An ordinance, entitled "ORDINANCE 22-O-24 amending the Murfreesboro City Code, Chapter 33, Water Resources, Section 33-1, Water Resources rates & charges, regarding accessible sewer charges," which passed first reading on June 30, 2022, was read to the Council and offered for passage on second and final reading, upon motion made by Mr. Martin, seconded by Vice-Mayor Scales Harris. Upon roll call said ordinance was passed on second and final reading by the following vote:

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

Nay: None

(Insert ORDINANCE 22-O-24 here.)

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

(Insert letter dated July 21, 2022 here with regards to rezoning approximately 13.8 acres located at the southwest corner of Medical Center Parkway and Robert Rose Drive [2022-403].)

An ordinance, entitled "ORDINANCE 22-OZ-17 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 13.7 acres along Medical Center Parkway, Robert Rose Drive, and Maplegrove Drive from Mixed Use (MU) District and Gateway Design Overlay One (GDO-1) District to Planned Unit Development (PUD) District, Commercial Highway (CH) District and Gateway Design Overlay One (GDO-1) District (Vintage Apartments and TDK Office PUD); TDK Construction, applicant [2022-403]," which passed first reading on June 30, 2022, was read to the Council and offered for passage on second and final reading, upon motion made by Mr. Wright, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on second and final reading by the following vote:

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

Nay: None

Abstain: Shane McFarland

(Insert ORDINANCE 22-OZ-17 here.)

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

(Insert letter dated July 21, 2022 here with regards to Pension Plan Amendments.)

An ordinance, entitled "ORDINANCE 22-O-19 amending Appendix C, Employees' Revised Pension Plan, of the Murfreesboro City Code, to comply with requirements regarding Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE" Act)," was read to the Council and offered for passage on first reading upon motion made by Mr. Wright, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
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 July 21, 2022 here with regards to
Amending the Zoning Ordinance [2022-803].)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 22-R-PH-20 adopted by the City Council on June 23, 2022, with respect to amending the Murfreesboro City Code, Appendix A -Zoning, Chart 1, Chart 1 Endnotes, Chart 4, and Section 9 pertaining to uses permitted, City of Murfreesboro Planning Department, applicant [2022-803]. Notice of said public hearing was published in the July 5, 2022 edition of a local newspaper as follows:

(Insert notice here.)

Ms. Marina Rush, Principal Planner, presented the recommendation of the Planning Commission to approve amending the ordinance pertaining to uses permitted, specifically relating to parking.

Mayor McFarland then declared the public hearing, open and invited those present who wished to speak for or against amending the Zoning Ordinance, step forward to the lectern.

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

An ordinance, entitled "ORDINANCE 22-O-20 amending Murfreesboro City Code Appendix A, Zoning, Chart 1, Chart 1 Endnotes, Chart 4, and Section 9 pertaining to uses permitted, City of Murfreesboro Planning Department, applicant [2022-803]," was read to the Council and offered for passage on first reading upon motion made by Mr. Martin, seconded by Mr. Wright. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Madelyn Scales Harris
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 July 21, 2021 here with regards to
Outside the City Sewer Request – 3905 Ashley Drive.)

Ms. Marina Rush, Principal Planner, presented the recommendation of the Planning Commission to approve the property located at 3905 Ashley Drive as an outside the City sewer customer due to the failing septic tank located on the property and drainage issues making it unlikely that a septic tank can adequately service the property.

Mr. Martin made a motion to approve the property located at 3905 Ashley Drive as an outside the City sewer customer due to the failing septic tank located on the property and drainage issues making it unlikely that a septic tank can adequately service the property. Vice-Mayor Scales Harris seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated July 21, 2022 here with regards to sewer allocation variance – Beasie Road – ML Rose.)

Mr. Greg McKnight, Planning Director, presented the request to approve ML Rose Restaurant's request for additional density above the sewer allocation ordinance's zoning allowance. He stated that the proposed development will use approximately 2.96 sfu's more than the ordinance allows, but staff views the advantages of job creation and additional property and sales tax revenue of greater benefit than the requested additional number of units above what is allowed by the ordinance.

Vice-Mayor Scales Harris made a motion to approve ML Rose Restaurant's request for additional density above the sewer allocation ordinance's zoning allowance. Mr. Wright seconded the motion and all remaining members of the Council present voted "Aye", except Mr. Martin who voted "Nay".

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

(Insert letter dated July 21, 2022 here with regards to rescheduling public hearings from July 21, 2022 to September 22, 2022 an Annexation petition and plan of services [2022-501] for approximately 68 acres located along Highway 99 south of Clearidge Drive; and a zoning application [2022-401] for approximately 68 acres located along Highway 99 south of Clearidge Drive to be zoned PRD simultaneous with annexation.)

The following RESOLUTION 22-R-PH-18.1 was read to the Council and offered for adoption upon motion made by Mr. Wright, seconded by Mr. Martin. 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 22-R-PH-18.1 here rescheduling the time for Public Hearings to consider (1) adoption of a Plan of Services for and annexation of approximately 68 acres located along Highway 99 south of Clearidge Drive and (2) zoning of approximately 68 acres located along Highway 99 south of Clearidge Drive to Planned Residential Development (PRD) District; which have been proposed to be annexed to the City of Murfreesboro, Tennessee, Ferrari Partners, LP and Patterson Company, applicants [2022-501 & 2022-401].)

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

(Insert letter dated July 21, 2022 here with regards to scheduling public hearings for September 1, 2022 for a Zoning application [2022-410] for approximately 19.5 acres to be rezoned from RS-15 to RS-8 and approximately 6.0 acres to be rezoned from RS-15 to CF located along Franklin Road; a Zoning application [2022-413] for approximately 10.8 acres located along Wilkinson Pike to be rezoned from RS-15, MU, GDO-1, & GDO-2 to PRD, GDO-1, & GDO-2; Annexation petition and plan of services [2022-505] for approximately 0.9 acres located along Elam Road as well as approximately 3,700 linear feet of Elam Road right-of-way and the right-of-way of the Elam Road/I-24 frontage road; and a Zoning application [2022-412] to amend the Parkway Place PID on approximately 151 acres located along Joe B Jackson Parkway and Richard Reeves Drive and to zone approximately 0.9 acres located along Elam Road to PID simultaneous with annexation.)

The following RESOLUTION 22-R-PH-26 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. Wright. 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 22-R-PH-26 here fixing the time for a Public Hearing to consider a proposed amendment to rezone approximately 19.5 acres from Single-Family Residential Fifteen (RS-15) District to Single-Family Residential Eight (RS-8) District and approximately 6.0 acres from Single-Family Residential Fifteen (RS-15) District to Commercial Fringe (CF) District along Franklin Road, Beazer Homes applicant, [2022-410].)

The following RESOLUTION 22-R-PH-27 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. Wright. 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 22-R-PH-27 here fixing the time for Public Hearings to consider a proposed amendment to rezone approximately 10.8 acres along Wilkinson Pike from Single-Family Residential Fifteen (RS-15) District, Mixed Use (MU) District, Gateway Design Overlay One (GDO-1) District and Gateway Design Overlay Two (GDO-2) District to Planned Residential Development (PRD) District (Toll Brothers at Gateway PRD), Gateway Design Overlay One (GDO-1) District and Gateway Design Overlay Two (GDO-2) District; Toll Brothers, applicant, [2022-413].)

The following RESOLUTION 22-R-PH-28 was read to the Council and offered for adoption upon motion made by Mr. Shacklett, seconded by Mr. Wright. 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 22-R-PH-28 here fixing the time for Public Hearings to consider (1) adoption of a Plan of Services for and annexation of approximately 0.9 acres located along Elam Road as well as approximately 3,700 linear feet of Elam Road right-of-way and the right-of-way of the Elam Road/I-24 frontage road and (2) proposed amendment to approximately 151 acres in the Planned Industrial Development (PID) District (Parkway Place PID) along Joe B. Jackson Parkway and Richard Reeves Drive and zoning of approximately 0.9 acres along Elam Road to Planned Industrial Development (PID) District; which have been proposed to be annexed to the City of Murfreesboro, Tennessee, Swanson Developments, LP, applicant [2022-505 & 2022-412].)

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

(Insert letter dated July 21, 2022 here with regards to Community Investment Program Funds Transfer.)

Mrs. Erin Tucker, Budget Director, presented the request to approve the CIP transfer of $125,000 from the land acquisition/contingency line items to Parks – Land purchase line items in the FY18 and FY21 CIP bond issuances for the purchase of 42 acres of park land approved by Council on June 23, 2022.

Mr. Shacklett made a motion to approve the CIP transfer of $125,000 from the land acquisition/contingency line items to Parks – Land purchase line items in the FY18 and FY21 CIP bond issuances for the purchase of 42 acres of park land approved by Council on June 23, 2022. Vice-Mayor Scales Harris seconded the motion and all members of the Council voted "Aye".

Mayor McFarland announced that Item No. 25 on the Agenda, Development Agreement with Notes Live, Inc., was to be pulled at this time.

The following letter from the Executive Director of Development Services was presented to the Council:

(Insert letter dated July 21, 2022 here with regards to HOME Affordable Housing Program Funding Participation Threshold.)

Mr. Sam Huddleston, Executive Director of Development Services, presented the request to approve the designation of $244,702 from the General Fund as local funding to meet the HOME program minimum funding threshold of $750,000.

Vice-Mayor Scales Harris made a motion to approve the designation of $244,702 from the General Fund as local funding to meet the HOME program minimum funding threshold of $750,000. Mr. Martin seconded the motion and all members of the Council present voted "Aye".

The following letter from the Executive Director of Public Infrastructure was presented to the Council:

(Insert letter dated July 21, 2022 here with regards to Medical Center Parkway and Gateway Boulevard Projects.)

Mr. Chris Griffith, Executive Director of Public Infrastructure, presented the request to approve reallocation of Fiscal Year 2019, Fiscal Year 2021, and Fiscal Year 2022 bond funds for the widening of Medical Center Parkway and extension of Gateway Boulevard, in the estimated amount of $26 Million, funded from the CIP.

Vice-Mayor Scales Harris made a motion to approve reallocation of Fiscal Year 2019, Fiscal Year 2021, and Fiscal Year 2022 bond funds for the widening of Medical Center Parkway and extension of Gateway Boulevard, in the estimated amount of $26 Million, funded from the CIP. Mr. Martin seconded the motion and all members of the Council present voted "Aye".

The following letter from the Solid Waste Director was presented to the Council:

(Insert letter dated July 21, 2022 here with regards to Purchase of Roll-Off Truck.)

Mr. Russell Gossett, Solid Waste Director, presented the request to approve the Contract with Municipal Equipment, Inc., in the amount of $1,114,778, funded from the Department's Fiscal Year 2023 Operating Budget, for the purchase of three automated side loader garbage trucks.

Mr. Martin made a motion to approve the Contract with Municipal Equipment, Inc., in the amount of $1,114,778, funded from the Department's Fiscal Year 2023 Operating Budget, for the purchase of three automated side loader garbage trucks. Vice-Mayor Scales Harris seconded the motion and all members of the Council present voted "Aye".

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

(Insert letter dated July 21, 2022 here with regards to CCTV Equipment Purchase.)

Mr. Darren Gore, Assistant City Manager, presented the request to approve the Sourcewell Contract with 502 Equipment, LLC, in the amount of $223,577, funded from the Department's O&M Capital Budget, for purchase of CCTV Equipment.

Vice-Mayor Scales Harris made a motion to approve the Sourcewell Contract with 502 Equipment, LLC, in the amount of $223,577, funded from the Department's O&M Capital Budget, for purchase of CCTV Equipment. Mr. Martin seconded the motion and all members of the Council present voted "Aye".

The City Recorder/Finance Director stated that there was no licensing nor any statements to consider.

Upon recommendation of Mayor McFarland, Mr. Martin made a motion to reappoint Mr. Richie Bolin (term expires June 30, 2026); Mr. Alton Fann (term expires June 30, 2026); and Mr. Phillip Lim (term expires June 30, 2026) to the Board of Electrical Examiners and to reappoint Mr. Eddie Miller (term expires June 30, 2025) and Dr. Trey Duke, City Schools Liaison (term expires June 30, 2025) to the Parks and Recreation Commission. Mr. Wright seconded the motion and all members of the Council present voted "Aye".

There being no further business, Mayor McFarland adjourned this meeting at 6:33 p.m.

ATTEST: SHANE MCFARLAND – MAYOR

JENNIFER BROWN - CITY RECORDER

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Pension Plan Amendments

Department: Administration

Presented by: Erin Tucker, Budget Director

Requested Council Action:

Ordinance	☒
Resolution	☐
Motion	☐
Direction	☐
Information	☐

Summary

Pension Plan amendments regarding Pension Committee member size and eligibility requirements and adoption of SECURE Act requirements surrounding required minimum distributions

Staff Recommendation

Approve Plan amendments as outlined in Ordinance 22-O-19 on second reading

Background Information

The following Plan document changes are recommended:

1. Article X, Section 10.01 states that the City's Pension Plan requires three participants in the plan to serve as members of the Pension Committee. It further states that one of these members shall not be an officer or department head of the Employer.
    a. As the City's active employees participating in the Plan continue to decline, it is recommended the Plan be amended to allow the option for non-participating employees to participate on the Committee.
    b. Staff recommends removing the disqualification of an officer or department head of the Employer from serving as a Committee member. This will expand the class of eligible participants to serve on the Committee.
2. Outside Legal Counsel recommends considering reducing the Committee size from 8 members to 7 members.
3. The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE" Act) requires that the Pension Plan Document be adjusted to reflect the change in the required minimum distribution age from 70 ½ to 72 for those participants born after June 30, 1949. As a related matter, following the issuance of relevant final Treasury Regulations, any reference in the Pension Plan Document to applicable life expectancy tables (Uniform Life, Single Life or Joint & Last Survivor) should instead reference the Tables as published in Regulation 1.401(a)(9)-9, subject to adjustment by Regulation 1.401(a)(9)-9(f).

Council Priorities Served

Responsible budgeting

The plan amendment reflects relevant and required actuarial and minimum distribution language, as well as updates committee member eligibility to better serve the Plan.

Fiscal Impact

None

Attachments

Ordinance 22-O-19

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ORDINANCE 22-O-19 amending Appendix C, Employees' Revised Pension Plan, of the Murfreesboro City Code, to comply with requirements regarding Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE" Act).

WHEREAS, the City of Murfreesboro, Tennessee (the "City") has previously established and currently maintains Appendix C, the City of Murfreesboro Employees' Revised Pension Plan (the "Plan"); and

WHEREAS, the City has retained the right to amend the Plan; and

WHEREAS, the Plan was most recently amended by Ordinance 17-O-06 on April 6, 2017; and

WHEREAS, pursuant to the relevant provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act"), the required minimum distribution provisions of the Plan must be modified to reflect changes in applicable law, effective as of January 1, 2020; and

WHEREAS, the Plan must be amended to reflect other changes in applicable regulations, effective as of January 1, 2022; and

WHEREAS, City Council believes it to be reasonable and prudent and consistent with good governance to restructure the membership of the Pension Committee; and

WHEREAS, the Pension Committee reviewed and decided to recommend these amendments to the City Council at its Committee meeting on July 20, 2022.

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

SECTION 1. Appendix C of the Murfreesboro City Code is hereby amended at Section 9.03, Minimum Distributions, by deleting subsection (b)(2)(i) in its entirety and substituting in lieu thereof the following:

> **(i) Life expectancy rule, spouse is Beneficiary**. If the Participant's surviving spouse is the Participant's sole "Designated Beneficiary," then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later, provided, however, that with respect to a Participant born after June 30, 1949, if such Participant's surviving spouse is the Participant's sole "Designated Beneficiary," then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72, if later.

SECTION 2. Appendix C of the Murfreesboro City Code is hereby amended at Section 9.03, Minimum Distributions, by deleting subsection (h)(7) in its entirety and substituting in lieu thereof the following:

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(7) Required beginning date. "Required Beginning Date" means the April 1st of the calendar year following the later of (1) the calendar year in which the Participant attains age 70 ½, or (2) the calendar year in which the Participant retires, provided, however, that with respect to a Participant born after June 30, 1949, "Required Beginning Date" means the April 1st of the calendar year following the later of (1) the calendar year in which the Participant attains age 72, or (2) the calendar year in which the Participant retires.

SECTION 3. Appendix C of the Murfreesboro City Code is hereby amended at Section 10.01 by deleting the body of the current section in its entirety and substituting in lieu thereof the following:

The Employer shall appoint a Pension Committee consisting of seven (7) members. Two (2) members shall be Participants in the Plan. One (1) additional member shall be a current City employee, who may be but is not required to be a Participant in the Plan. All members of the Pension Committee shall be appointed for a three (3) year term of office.

SECTION 4. Appendix C of the Murfreesboro City Code is hereby amended by adding a new Section 17.04 as follows:

Section 17.04.
Notwithstanding any provision of the Plan to the contrary, any reference to applicable life expectancy tables such as the Uniform Life Table, the Single Life Table, or the Joint and Last Survivor Table (the "Tables") shall be deemed to be a reference to the Tables as published in Regulation 1.401(a)(9)-9 from time to time, subject to adjustment as described in Regulation 1.401(a)(9)-9(f).

SECTION 5. Except as otherwise provided herein, the terms of the Plan shall remain in full force and effect.

SECTION 6. This Ordinance shall take effect fifteen (15) days after passage upon second and final reading, the public welfare and the welfare of the City requiring it. Notwithstanding the foregoing, upon the passage of 15 days after passage upon second and final reading, Sections 1 and 2 of this Ordinance shall be considered effective retroactively as of January 1, 2020, and Section 4 shall be considered effective retroactively as of January 1, 2022.

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

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: FY23 Budget Amendment Ordinance

Department: Administration

Presented by: Erin Tucker, Budget Director

Requested Council Action:

Ordinance	☒
Resolution	☐
Motion	☐
Direction	☐
Information	☐

Summary

Amendment to the City's FY23 Budget.

Staff Recommendation

Approve Ordinance 22-O-29 on second reading, amending the City's budget.

Background Information

GENERAL FUND

FY22 Reserve Adjustments

The FY23 Budget includes carryforward of funding from FY22 that were budgeted but not spent before June 30, 2022. The budgeted carryforward should be adjusted as follows:

Parks & Recreation

The Siegel office building project has been deferred. The FY23 budget reflects $1,394,200 in carryforward funds from FY22, however the actual carryforward amount is $1,422,850, of which $1,265,894 is funded from the DA21 grant. The grant funds allocated for this project will be reallocated to the Fire Rescue and Parks & Recreation Administrative office build-out.

Economic Development

The Downtown Parking Study should be reduced by $48,914 to reflect FY22 expenditures and the remaining contract balance of $21,087.

Fire Rescue

The Fire Rescue department has $34,354 in expenditures carrying forward from FY22 to FY23. This includes equipment for the fire apparatus funded by the DA21 grant of $2,428, an increase to the budget for repairs and maintenance of $28,482 and an increase to miscellaneous equipment purchases of $3,444.

Police

The Police department budget did not include the carryforward of $725,000 for the grant funded Public Safety Camera System. An additional $706,070 was not budgeted

for the carryforward of previously budgeted equipment, including the real time crime information center, license plate recognition software and body camera equipment subscription services. Once implemented, the license plate recognition software and body camera equipment subscription services will be an annual expense.

FY23 Budget Amendment

The following items are budget amendments to the Unassigned Fund Balance for the FY23 budget:

Communications

As part of the new Comcast Franchise Agreement, the Communications department received a $100,000 Government Access Channel Equipment grant for communications equipment. This amendment reflects the increased grant revenues and expense.

Community Development

In FY23, the City was awarded a HOME grant that includes grant revenues of $505,298 and a one-time local match of $244,702, which is funded from Unforeseen. Council approved this grant agreement at the July 21, 2022, City Council meeting. This amendment will reflect the increased grant revenues and expenditures.

Council Priorities Served

Responsible budgeting

The budget amendments reflect the increased expenses for the specified funds.

Fiscal Impact

The amendment to the FY23 Budget will decrease the FY22 Reserved Carryforward Fund Balance by $1,445,160. There is no impact to Unassigned Fund Balance.

Attachments

1. FY23 Budget Ordinance 22-O-29 and Exhibit A

DocuSign Envelope ID: 97318697-AEED-49E9-A926-4F195523067C

ORDINANCE 22-O-29 amending the 2022-2023 Budget (1st Amendment).

WHEREAS, the City Council adopted the 2022-2023 Budget by motion; and,

WHEREAS, the City Council adopted an appropriations ordinance, Ordinance 22-O-11, on June 8, 2022 to implement the 2022-2023 Budget; and,

WHEREAS, it is now desirable and appropriate to adjust and modify the 2022-2023 Budget and authorized full-time position counts adopted by this Ordinance to incorporate expenditure and hiring decisions made during the 2022-2023 fiscal year.

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

SECTION 1. The 2022-2023 Budget adopted by the City Council is hereby revised and amended as shown on Exhibit A, attached hereto.

SECTION 2. The 2022-2023 Authorized Full-time Position Counts adopted by the City Council is hereby revised and amended as shown on Exhibit B, attached hereto.

SECTION 3. 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 2022-2023 at the earliest practicable time, 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

Department	Account	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
General Fund				
Revenues				
Community Development	Federal Grant - HOME	$ -	$ 505,298.00	$ 505,298.00
Communications	Other Grant Revenue	$ -	$ 100,000.00	$ 100,000.00
				$ 605,298.00
Expenditures				
	Assigned			
Parks & Recreation	Building Expense - DA21	$ 1,394,200.00	$ -	$ (1,394,200.00)
Police	Machinery & Equipment - DA21	$ -	$ 725,000.00	$ 725,000.00
Fire	Machinery & Equipment - DA21	$ 2,739.61	$ 5,167.56	$ 2,427.95
Other General Government	Unforeseen Grant Expenses - DA21	$ -	$ 1,265,894.27	$ 1,265,894.27
Other General Government	Unforeseen Expenses	$ -	$ 156,955.22	$ 156,955.22
Fire	Machinery & Equipment	$ 110,535.00	$ 112,981.00	$ 2,446.00
Fire	Computer Equipment	$ 14,400.00	$ 15,398.00	$ 998.00
Fire	Repair & Maintenance - Hose & Nozzles	$ 24,100.00	$ 39,836.00	$ 15,736.00
Fire	Repair & Maintenance - Other Machinery & Equipment	$ 45,000.00	$ 57,746.00	$ 12,746.00
Police	Machinery & Equipment	$ 28,400.00	$ 734,470.00	$ 706,070.00
Economic Development	Contractual Services	$ 195,000.00	$ 146,086.39	$ (48,913.61)
	Unassigned			
Communications	Grant Expense		$ 100,000.00	$ 100,000.00
Community Development	Home Grant Expense	$ -	$ 505,298.00	$ 505,298.00
				$ 2,050,457.83
CHANGE IN ASSIGNED FUND BALANCE (CASH)		$ (8,601,807.83)	$ (7,156,648.00)	$ (1,445,159.83)
CHANGE IN UNASSIGNED FUND BALANCE (CASH)		$ (1,281,632.00)	$ (1,281,632.00)	$ -
	TOTAL CHANGE IN FUND BALANCE (CASH)	$ (9,883,439.83)	$ (11,328,599.66)	(1,445,159.83)

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Amending the Zoning Ordinance
[Second Reading]

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	☒
Resolution	☐
Motion	☐
Direction	☐
Information	☐

Summary

Ordinance amending the Zoning Ordinance regarding uses permitted.

Staff Recommendation

Enact the ordinance amendment.

The Planning Commission recommended approval of this ordinance amendment.

Background Information

The Planning Department presented an ordinance amendment [2022-803] to amend the Zoning Ordinance as it pertains to *Chart 1: Uses Permitted*, including some ancillary amendments to other sections. During its regular meeting on June 1, 2022, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval subject to the proposed "medical clinic" use being removed from the chart. Since that time, Staff has deleted any proposed modifications to the chart that would create a separate row for "medical office" and "medical clinic."

On July 21, 2022, Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Establish Strong City Brand

The proposed amendment reinforces the City's commitment to customer service, as it seeks to modernize and improve the Uses Permitted chart in the Zoning Ordinance.

Attachments:

Ordinance 22-O-20

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ORDINANCE 22-O-20 amending Murfreesboro City Code Appendix A, Zoning, Chart 1, Chart 1 Endnotes, Chart 4, and Section 9 pertaining to uses permitted, City of Murfreesboro Planning Department, applicant [2022-803].

WHEREAS, the City desires to clarify several of the permitted uses, address any gaps regarding uses in some zoning districts and remove and/or combine some the land uses to be more relevant for current zoning practices.

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

SECTION 1. Appendix A, Chart 1, Uses Permitted by Zoning District, of the Murfreesboro City Code is hereby amended by deleting it in its entirety and substituting in lieu thereof the attached Chart 1.

SECTION 2. Appendix A, Chart 1 Endnotes, of the Murfreesboro City Code is hereby amended at Endnotes 1 and 3 by deleting in their entirety and substituting in lieu thereof the following:

1. In the OG-R, OG, CL, CF, CH, MU, CBD, H-I, G-I, L-I, CM, CM-R, and CM-RS-8 zones a single dwelling unit shall be permitted as an accessory use in conjunction with a commercial or industrial use if such dwelling unit is attached to or located within the commercial or industrial building and is occupied by an employee of the business establishment occupying the commercial or industrial building.

3. Motor Vehicle Sales and/or Rentals (Automobile) shall be subject to the following additional standards:

   (a) each lot used for automobile sales and/or rentals shall include a principal structure designed and constructed in accordance with the provisions of this article and all other applicable regulations and codes;

   (b) in addition to meeting the minimum parking required in Chart 4 of this article, supplementary parking spaces meeting the following requirements shall be provided for customers, employees, and service vehicles:

      (1) customer parking shall be clearly designated via signage and striping and shall be provided at the following minimum ratios:

Total number of vehicles on sales/rental lot	Minimum number of customer parking spaces required
0-25	2
25-50	3
51-75	4
76-100	5
101-150	6
151-200	7
201-250	8
251 or more	10

      (2) one employee parking space shall be provided for each employee on the largest shift;

      (3) one parking space shall be provided for each service vehicle;

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(4) all driveways and parking areas, including automobile storage and display areas, shall be surfaced with asphalt, concrete, or other hard dustless surface material. Bituminous surface treatments ("tar and chip") shall not be allowed on any driveway, automobile storage area, or parking lot.

(5) Parking and display of automobile inventory shall occur only in areas designated in the special use permit application. Driveway aisles, public right-of-way, and landscaped areas shall not be used for automobile parking or display;

(c) automobile parts and salvage/junk automobiles shall not be stored on any outdoors portion of the site;

(d) all automobiles visible from the public right-of-way or lying adjacent to any area zoned for residential uses shall be operational;

(e) tents and other temporary or accessory structures shall not be erected on the site except in accordance with the provisions of this article (Appendix A: Zoning);

(f) outdoor sound amplification shall not be allowed;

(g) the following landscape buffers shall apply to automobile sales and/or rental lots lying adjacent to residential, mixed use, and office zoning districts:

Adjacent Zoning	Buffer Required
RS-15, RS-12, RS-10, RS-8, RS-4, R-D, RM-12, RM-16, RS-A, R-MO, MU, OG-R	Type E
OG, CU, P, CBD	Type D

(h) all loading and unloading of automobiles shall be accomplished on-site. Automobile loading, unloading, staging, and maneuvering shall not be permitted within any public right-of-way. Loading/unloading areas shall be provided as follows:

(1) each site used for automobile sales and/or rental shall provide a loading/unloading area of 150 feet in length by 25 feet in width;

(2) the required loading/unloading area shall not block or utilize any portion of the designated customer, employee, or service vehicle parking area(s) or any internal driveway as required by Section 26 of this article (Appendix A: Zoning);

(i) fencing may be constructed in automobile inventory areas, provided that such fencing meets the following standards:

(1) no barbed wire or razor wire shall be permitted;

(2) chain-link fencing shall be plastic coated with black or green coating; and

(3) chain-link fencing shall not be allowed along the perimeter of any automobile storage area lying adjacent to a public right-of-way;

(j) automobile service bays and overhead service area doors shall not be visible from any public right-of-way;

(k) mechanical and other automobile services shall not be performed within 100 feet of any property zoned for residential use, regardless of any lesser minimum building setbacks;

(l) hours of operation shall be limited to "daytime hours" as defined in the Murfreesboro Noise Control Ordinance;

(m) if a site plan is required by Section 7 of this article (Appendix A - Zoning), the applicant shall provide a site plan showing all proposed structures,

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parking areas, automobile storage areas, landscaped areas, buffers, delivery/loading areas, and fencing. The site plan shall also indicate the maximum number of for-sale, for-rent, and/or for-lease automobiles that can be accommodated by the provided parking and storage areas; and

(n) where the requirements of this subsection exceed those of other subsections and exhibits in this article excepting Section 24, Article III, the standards set forth in this subsection shall supersede those subsections and exhibits.

SECTION 3. Appendix A, Chart 4, Required Off-Street Parking and Queuing Spaces by Use, of the Murfreesboro City Code is hereby amended by adding the following new uses, in alphabetical order, under the Use subheading "Commercial."

Payday loan, title loan, or check-cashing service	1 for each 300 square feet of floor area or 5 spaces, whichever is greater
Plasma donation center	1 for each 200 square feet of floor area or 5 spaces, whichever is greater

SECTION 4. Appendix A, Chart 4, Required Off-Street Parking and Queuing Spaces by Use, of the Murfreesboro City Code, is hereby amended under the Use subheading "Commercial," by amending the following existing use to read as follows:

Public Assembly	Revise this use in Chart 4 to "Group Assembly" instead to match the language used in Chart 1.

SECTION 5. Appendix A, Section 9, Standards for Special Permit Uses, of the Murfreesboro City Code, is hereby amended at (D)(2)(ffff) by deleting in its entirety and substituting in lieu thereof the following:

(ffff) *Motor Vehicle Sales and/or Rentals (Automobile) shall be subject to the following additional standards*:

[1] each lot used for automobile sales and/or rentals shall include a principal structure designed and constructed in accordance with the provisions of this article (Appendix A: Zoning) and all other applicable regulations and codes;

[2] in addition to meeting the minimum parking required in Chart 4 of this article (Appendix A: Zoning), supplementary parking spaces meeting the following requirements shall be provided for customers, employees, and service vehicles:

[a] customer parking shall be clearly designated via signage and striping and shall be provided at the following minimum ratios:

Total number of vehicles on sales/rental lot	Minimum number of customer parking spaces required
0-25	2
25-50	3
51-75	4
76-100	5
101-150	6

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151-200	7
201-250	8
251 or more	10

[b] one employee parking space shall be provided for each employee on the largest shift;
[c] one parking space shall be provided for each service vehicle;
[d] all driveways and parking areas, including automobile storage and display areas, shall be surfaced with asphalt, concrete, or other hard dustless surface material. Bituminous surface treatments ("tar and chip") shall not be allowed on any driveway, automobile storage area, or parking lot.
[e] Parking and display of automobile inventory shall occur only in areas designated in the special use permit application. Driveway aisles, public right-of-way, and landscaped areas shall not be used for automobile parking or display;

[3] automobile parts and salvage/junk automobiles shall not be stored on any outdoors portion of the site;
[4] all automobiles visible from the public right-of-way or lying adjacent to any area zoned for residential uses shall be operational;
[5] tents and other temporary or accessory structures shall not be erected on the site except in accordance with the provisions of this article;
[6] outdoor sound amplification shall not be allowed;
[7] the following landscape buffers shall apply to automobile sales and/or rental lots lying adjacent to residential, mixed use, and office zoning districts:

Adjacent Zoning	Buffer Required
RS-15, RS-12, RS-10, RS-8, RS-4, R-D, RM-12, RM-16, RS-A, R-MO, MU, OG-R	Type E
OG, CU, P, CBD	Type D

[8] all loading and unloading of automobiles shall be accomplished on-site. Automobile loading, unloading, staging, and maneuvering shall not be permitted within any public right-of-way. Loading/unloading areas shall be provided as follows:
[a] each site used for automobile sales and/or rental shall provide a loading/unloading area of 150 feet in length by 25 feet in width;
[b] the required loading/unloading area shall not block or utilize any portion of the designated customer, employee, or service vehicle parking area(s) or any internal driveway as required by Section 26 of this article;

[9] fencing may be constructed in automobile inventory areas, provided that such fencing meets the following standards:
[a] no barbed wire or razor wire shall be permitted;
[b] chain-link fencing shall be plastic coated with black or green coating; and
[c] chain-link fencing shall not be allowed along the perimeter of any automobile storage area lying adjacent to a public right-of-way;

[10] automobile service bays and overhead service area doors shall not be visible from any public right-of-way;
[11] mechanical and other automobile services shall not be performed within 100 feet of any property zoned for residential use, regardless of any lesser minimum building setbacks;
[12] hours of operation shall be limited to "daytime hours" as defined in the Murfreesboro Noise Control Ordinance;

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[13] the applicant shall provide a site plan showing all proposed structures, parking areas, automobile storage areas, landscaped areas, buffers, delivery/loading areas, and fencing. The site plan shall also indicate the maximum number of for-sale, for-rent, and/or for-lease automobiles that can be accommodated by the provided parking and storage areas;

[14] where the requirements of this subsection exceed those of other subsections and exhibits in this article (Appendix A: Zoning), excepting Section 24 Article III, the standards set forth in this subsection shall supersede those subsections and exhibits; and

[15] the Board of Zoning Appeals may require additional standards to ensure the compatibility of the automobile sales lot with other properties in the vicinity.

SECTION 6. 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

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USES PERMITTED[3]	ZONING DISTRICTS																								
	RS 15	RS 12	RS 10	RS 8	RS 6	RS 4	RD	RM 12	RM 16	RS-A	R MO	OG R	OG	CL	CF[14]	CH	MU	CBD	HI	GI	LI	CM-RS-8	CM-R	CM	CU	P
DWELLINGS																										
Single-Family detached	X	X	X	X	X	X	X	X	X	X[27]		X		X								X	X		X	
Single-Family attached or detached, zero-lot line (max. 2 units attached)[23]							X	X	X	X[24]		X		X									X		X	
Single-Family attached, townhouse[25, 26, 28]								X	X	X													X		X	
Two-Family							X	X	X			X		X									X		X	
Three-Family								X	X			X		X									X		X	
Four-Family								X	X			X		X									X		X	
Multiple-Family								X[21]	X[21]								X[21]	X[21]							X	
OTHER HOUSING																										
Accessory Apartment	S[8]	S[8]	S[8]	S[8]	S[8]	S[8]				S[8]																
Accessory Dwelling Unit												X[1]	X[1]	X[1]	X[1]	X[1]	X	X[1]	X[1]	X[1]	X[1]	X[1]	X[1]	X[1]		
Assisted-Care Living Facility[15]							S	X	X	X		X	X	X	X	X	X	X				X	X	X	S	
Bed-and-Breakfast Homestay	S	S	S	S	S		S	S	X	S		S		X	X	X		X				S	S	S	X	
Bed-and-Breakfast Inn	S	S	S	S	S		S	S	S	S		S		S	X	X		X				S	S	S	S	
Boarding House[15]							S	S	X	X		S		X	X	X		X					S	S	X	
Emergency Shelter	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Extended Stay Hotel/Motel																X	X									
Family Crisis Shelter												S		S	S	S			S	S	S		S			
Family Violence Shelter								S	S			S	S	S	X	X			X	X	X		X	S	S	
Fraternity/Sorority												S		S	S	S							S	S	S	
Group Shelter								S	S			S	S	S	S	S			S	S						
Class I Home for the Aged [15]	S	S	S	S	S	S	S	X	X	X		X		X	X	X		X				S	S	S	S	
Class II Home for the Aged [15]	S	S	S	S	S		S	S	S	S		S		X	X	X		X				S	S	S	S	
Class III Home for the Aged [15]								S	S			S		S	X	X	X	X				S	S	S	S	
Hotel																X	X	X	X	X	X					
Mission[10]																			S	S	S					
Mobile Homes											X															
Motel																X	X		X	X	X					
Rooming House							S	S	S									X					S	S	X	
Student Dormitory									S																X	
Transitional Home							S	S	S			S	S										S	S		
INSTITUTIONS																										
Adult Day Care Center	S	S	S	S	S	S	S	S	S	S		X	X	X	X	X	X		X	X	X	S	X	X		
Adult Day Care Home	S	S	S	S	S	S	S	S	S	S	S	X	S	X	X	X		X	X	X	X	X	X	X		
Airport, Heliport	S	S	S	S	S	S	S	S		S						S			S	S	S	S	S	S	S	S
Cemetery, Mausoleum	S	S	S	S	S	S	S	S	S	S	S	S	S			S			S	S	S					

X = Use permitted by right.
S = Use requiring site plan review and approval subject to the issuance of a special use permit in accordance with the provisions of Sections 8 and 9 of this article.

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USES PERMITTED[3]	ZONING DISTRICTS																									
	RS 15	RS 12	RS 10	RS 8	RS 6	RS 4	RD	RM 12	RM 16	RS-A	R MO	OG R	OG	CL	CF[14]	CH	MU	CBD	HI	GI	LI	CM-RS-8	CM-R	CM	CU	P
Church[13]	S	S	S	S	S	S	S	X	X	S	S	S	X	X	X	X	X	X	X	X	X	S	S	X	X	
College, University												X	X			X	X						X		X	
Day-Care Center							S	S	S		S	S	S	X	X	X	X	X	X	X	X	S	S	S		
Family Day-Care Home	S	S	S	S	S	S	S	S	S	S	S	S		X	X	X		X	X	X	X	S	S	S	X	
Group Day-Care Home	S	S	S	S	S	S	S	S	S	S	S	S		X	X	X		X	X	X	X	S	S	S	X	
Hospital												X	X			X	X		X	X	X	X	X	X		
Lodge, Club, Country Club[13]	S	S	S	S	S	S	S	S	S	S	S	S	S	S	X	X	X	X	X	X	X	S	S	S		
Mental Health Facility												X	X	X		X	X		X	X	X		X	X		
Morgue																X	X		X	X	X		X	X		
Museum							S	S	S			S	S	S	X	X	X	X	X	X	X	S	S	S	X	S
Nursing Home												X	X	S	S	S	X		X	X	X	X	X	X		
Nursery School							S	S	S		S	S	S	S	S	S	X		S	S	S	S	S	S	X	
Park	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Philanthropic Institution							S	S	S			X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Pet Cemetery	S	S	S												S	S			S	S	S					
Public Building[13]	S	S	S	S	S	S	S	S	S	S	S	S	S	X	X	X	X	X	X	X	X	S	S	S	X	
Recreation Field[13]	S	S	S	S	S	S	S	S	S	S	S	S	S	X	X	X	X		X	X	X	S	S	S	X	X
Senior Citizens Center	S	S	S	S	S	S	S	X	X	S		X	X	X	X	X	X		X	X	X	S	X	X		
School, Public or Private, Grades K - 12[13]	S	S	S	S	S	S	S	S	S	S	S	S	S	X	X	X	X	X	X	X	X	S	S	S	X	
Student Center								S	S			S	S	S	S	S	X						S	S	X	
AGRICULTURAL USES																										
Customary General Farming	X[6]	X[6]	X[6]	X[6]	X[6]	X[6]	X[6]	X[6]	X[6]	X[6]	X[6]	X	X	X	X[6]	X	X	X	X	X	X	X	X	X	X	X
Crop, Soil Preparation Agricultural Services	S	S	S	S	S	S	S	S	S	S	S				X	X			X	X	X				X	X
Farm Labor and Management Services												X	X	X	X	X		X	X	X	X				X	
Fish Hatcheries and Preserves																			X	X	X					
Grain, Fruit, Field Crop and Vegetable Cultivation and Storage	X	X	X	X	X	X	X	X	X	X	X								X	X	X				X	
Livestock, Horse, Dairy, Poultry, and Egg Products	S	S	S	S	S	S	S	S	S	S									X	X	X				X	
Timber Tracts, Forest Nursery, Gathering of Forest Products	S	S	S	S	S	S	S	S	S	S	S								X	X	X					
COMMERCIAL																										
Adult Cabaret																			X[9]							
Adult Entertainment Center																			X[9]							
Adult Motel																			X[9]							
Adults-Only Bookstore																			X[9]							
Adults-Only Motion Picture Theater																			X[9]							

X = Use permitted by right.
S = Use requiring site plan review and approval subject to the issuance of a special use permit in accordance with the provisions of Sections 8 and 9 of this article.

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USES PERMITTED[3]	ZONING DISTRICTS																									
	RS 15	RS 12	RS 10	RS 8	RS 6	RS 4	RD	RM 12	RM 16	RS-A	R MO	OG R	OG	CL	CF[14]	CH	MU	CBD	HI	GI	LI	CM-RS-8	CM-R	CM	CU	P
Amusements, Commercial Indoor															X	X	X	X	X	X	X				S	
Amusements, Commercial Outdoor excluding Motorized																X	X		X	X	X				S	S
Amusements, Commercial Outdoor Motorized except Carnivals																			S	S	S					
Animal Grooming Facility															X	X	X		X	X	X					
Antique Mall															X	X	X	X	X	X	X					
Antique Shop <3,000 sq. ft.												X	X	X	X	X	X	X	X	X	X		X			
Art or Photo Studio or Gallery												X	X	X	X	X	X	X	X	X	X		X		X	
Automotive Repair [12]																X	X		X	X	X					
Bakery, Retail														X	X	X	X	X	X	X	X					
Bank or Credit Union, Branch Office or Main Office												X	X	X	X	X	X	X	X	X	X					
Bank, Drive-Up Electronic Teller												X	X	X	X	X	X	X	X	X	X					
Barber or Beauty Shop												X	X	X	X	X	X	X	X	X	X		X			
Beer, Packaged														X	X	X		X	X	X	X					
Boat Rental, Sales, or Repair																			X	X	X					
Book or Card Shop												X	X	X	X	X	X	X	X	X	X		X			
Brewery, Artisan[29]														X	X	X		X	X	X	X					
Brewery, Micro[29]																X		X	X	X	X					
Brewpub[30]														X	X	X	X	X	X	X	X					
Business School												X	X		X	X	X	X	X	X	X					
Business and Communication Service												X	X	X	X	X	X	X	X	X	X					
Campground, Travel-Trailer Park																**S**			**S**	**S**	**S**					
Carnivals																S			S	S	S					S
Catering Establishment												X	X	X	X	X	X	X	X	X	X		X			
Clothing Store														X	X	X	X	X	X	X	X					
Coffee, Food, or Beverage Kiosk														X	X	X	X		X	X	X					
Commercial Center														X	X	X	X		X	X	X					
Convenience Sales and Service, maximum 5,000 sq. ft. floor area														X	X	X	X	X	X	X	X					
Crematory																			S	S	S					

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USES PERMITTED[3]	ZONING DISTRICTS																									
	RS 15	RS 12	RS 10	RS 8	RS 6	RS 4	RD	RM 12	RM 16	RS-A	R MO	OG R	OG	CL	CF[14]	CH	MU	CBD	HI	GI	LI	CM-RS-8	CM-R	CM	CU	P
Department or Discount Store															X	X	X	X	X	X	X					
Distillery, Artisan[29]																X		X	X	X	X					
Drive-In Theater																X			X	X	X					
Dry Cleaning														X	X	X	X	X	X	X	X					
Financial Service												X	X	X	X	X	X	X	X	X	X					
Fireworks Public Display																										X
Fireworks Retailer																S			S	S	S					
Fireworks Seasonal Retailer														S	S	S			S	S	S					
Flower or Plant Store												X	X	X	X	X	X	X	X	X	X		X			
Funeral Home														S		X	X		X	X	X					
Garage, Parking																X	X	X	X	X	X					
Garden and Lawn Supplies															S	X	X	X	X	X	X					
Gas--Liquified Petroleum, Bottled and Bulk																X			X	X	X					
Gas Station														X	X	X	X	X	X	X	X					
General Service and Repair Shop																X	X	X	X	X	X					
Glass--Auto, Plate, and Window																X	X		X	X	X					
Glass--Stained and Leaded														X	X	X	X	X	X	X	X					
Greenhouse or Nursery																X	X		X	X	X					
Group Assembly, <250 persons												S	S		X	X	X	X	X	X	X	S	S	S		
Group Assembly, >250 persons												S	S		S	S	X	S	S	S	S	S	S	S		
Health Club												X	X	X	X	X	X	X	X	X	X		X			
Ice Kiosk, Automated															X	X		X	X	X	X					
Interior Decorator												X	X	X	X	X	X	X	X	X	X		X			
Iron Work																X			X	X	X					
Janitorial Service															X	X	X	X	X	X	X					
Karate, Instruction															X	X	X	X	X	X	X					
Kennels																X			X	X	X					
Keys, Locksmith															X	X	X	X	X	X	X					
Laboratories, Medical												X	X		X	X	X		X	X	X	X	X	X		
Laboratories, Testing															X	X	X		X	X	X					
Laundries, Self-Service														X	X	X			X	X	X					
Lawn, Tree, and Garden Service																X			X	X	X					
Liquor Store															X	X	X	X	X	X	X					
Livestock, Auction																			X	X	X					
Lumber, Building Material																			X	X	X					
Manufactured Home Sales																			X	X						
Massage Parlor																			X[9]							

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USES PERMITTED[3]	ZONING DISTRICTS																								
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Motor Vehicle Sales, Rental (Automobiles)																S	S		X[3]	X[3]	X[3]					
Motor Vehicle Sales, Rental (Other Than Automobiles)																S	S		X	X	X					
Motor Vehicle Service [12]																X	X		X	X	X					
Movie Theater															X	X	X	X	X	X	X					
Music or Dancing Academy															X	X	X		X	X	X					
Offices												X	X	X	X	X	X	X	X	X	X	X[5]	X[5]	X[5]		
Optical Dispensaries												X	X		X	X	X	X	X	X	X	X	X	X		
Pawn Shop																X		X	X	X	X					
Payday Loan, Title Loan, or Check-Cashing Service																X			X	X	X					
Personal Service Establishment														X	X	X	X	X	X	X	X					
Pet Crematory																			S	S	S					
Pet Funeral Home															X	X			X	X	X					
Pet Shops															X	X	X	X	X	X	X					
Pharmacies, Apothecaries												X	X	X	X	X	X	X	X	X	X	X	X	X		
Plasma Donation Center																			X	X	X			X		
Radio, TV, or Recording Studio																X	X	X	X	X	X					
Radio and Television Transmission Towers															S	S		S	S	S	S				S	
Rap Parlor																			X[9]							
Reducing and Weight Control Service												X	X	X	X	X	X	X	X	X	X	X	X	X		
Restaurant and Carry-Out Restaurant														X	X	X	X	X	X	X	X					
Restaurant, Drive-In																X			X	X	X					
Restaurant, Specialty														X	X	X	X	X	X	X	X					
Restaurant, Specialty -Limited												S	S	X	X	X	X	X	X	X	X	S	S	S		
Retail Shop, other than enumerated elsewhere															X	X	X	X	X	X	X					
Salvage and Surplus Merchandise																X			X	X	X					
Sauna																			X[9]							
Sheet Metal Shop																X			X	X	X					
Shopping Center, Community																X	X		X	X	X					
Shopping Center, Neighborhood															X	X	X		X	X	X					
Shopping Center, Regional																X	X		X	X	X					
Specialty Shop												X	X	X	X	X	X	X	X	X	X		X			
Tavern																X		X	X	X	X					
Taxidermy Studio																S			S	S	S					
Veterinary Office												X	X	X	X	X	X		X	X	X		X			
Veterinary Clinic															X	X	X		X	X	X					

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Veterinary Hospital																X	X		X	X	X					
Vehicle Sales, Rental (Non-Motorized)																X	X		X	X	X					
Vehicle Wash														X		X			X	X	X					
Wholesaling, Wholesale Establishments																X		X	X	X	X					
Winery, Artisan[29]														X	X	X		X	X	X	X					
Wireless Telecommunications Towers, Antennas [17]	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Wrecker/Towing Service, Wrecker Storage Yard [12]																			X	X	X					
INDUSTRIAL																										
Manufacture, Storage, Distribution of:																										
Abrasive Products																			X	X						
Asbestos Products																			S							
Automobile Dismantlers and Recyclers[7]																			S[7]							
Automobile Manufacture																			X	X						
Automobile Parts and Components Manufacture																			X	X						
Automobile Seats Manufacture																			X	X						
Bakery Goods, Candy																			X	X	X					
Boat Manufacture																			X	X						
Bottling Works																			X	X	X					
Brewery[20]																			X	X	X					
Canned Goods																			X	X						
Chemicals																			X							
Composting Facility																			S						S	
Contractor's Storage, Indoor																X		X	X	X	X					
Contractor's Yard or Storage, Outdoor																			X	X	X					
Cosmetics																			X	X	X					
Custom Wood Products																		X	X	X	X					
Distillery[20]																			X	X	X					
Electrical or Electronic Equipment, Appliances, and Instruments																			X	X	X					
Fabricated Metal Products and Machinery																			X	X	X					
Fertilizer																			X							
Food and Beverage Products except animal slaughter, stockyards, rendering, and brewery																			X	X	X					
Furniture and Fixtures																			X	X						

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Jewelry																			X	X	X					
Leather and Leather Products except tanning and finishing																			X	X	X					
Leather and Leather Products, Tanning and Finishing																			X							
Lumber and Wood Products																			X	X						
Mobile Home Construction																			X							
Musical Instruments																			X	X	X					
Office/Art Supplies																			X	X	X					
Paints																			X	X						
Paper Mills																			S							
Paper Products excluding paper and pulp mills																			X	X						
Petroleum, Liquified Petroleum Gas and Coal Products except refining																			S							
Pharmaceuticals																			X	X	X					
Photographic Film Manufacture																			X	X						
Pottery, Figurines, and Ceramic Products																			X	X	X					
Primary Metal Distribution and Storage																			X	X						
Primary Metal Manufacturing																			X	X						
Printing and Publishing																X	X	X	X	X	X					
Rubber and Plastic Products except rubber or plastic manufacture																			X	X						
Rubber and Plastic Products, Rubber and Plastic Manufacture																			X	X						
Saw Mills																			X							
Scrap Processing Yard																			S							
Scrap Metal Processors																			S							
Scrap Metal Distribution and Storage																			S							
Secondary Material Dealers																			S							
Silverware and Cutlery																			X	X	X					
Small Moulded Metal Products																			X	X						
Sporting Goods																			X	X	X					
Stone, Clay, Glass, and Concrete Products																			X	X						
Textile, Apparel Products, Cotton--Factoring, Grading																			X	X	X					
Textile, Apparel Products, Cotton Gin																			X	X						
Tire Manufacture																			X	X						
Tobacco Products																			X	X						

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USES PERMITTED[3]	ZONING DISTRICTS																								
	RS 15	RS 12	RS 10	RS 8	RS 6	RS 4	RD	RM 12	RM 16	RS-A	R MO	OG R	OG	CL	CF[14]	CH	MU	CBD	HI	GI	LI	CM-RS-8	CM-R	CM	CU	P
Toiletries																			X	X	X					
Transportation Equipment																			X	X	X					
Warehousing, Transporting/Distributing [18]																			X	X	X					
Winery[20]																			X	X	X					
TRANSPORTATION AND PUBLIC UTILITIES																										
Bus Terminal or Service Facility																X			X	X	X					
Garbage or Refuse Collection Service																			X	X						
Refuse Processing, Treatment, and Storage																			S							
Gas, Electric (Including Solar Farms), Water, Sewerage Production and/or Treatment Facility,																			X	X	S					
Landfill[19]																			S							
Post Office or Postal Facility														X	X	X	X	X	X	X	X					
Telephone or Communication Services															X	X	X	X	X	X	X					
Electric Transmission, Gas Piping, Water/Sanitary Sewer Pumping Station	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Taxicab Dispatch Station																X			X	X	X					
Freight Terminal, Service Facility																X			X	X	X					
OTHER																										
Advertising Sign																X			X	X	X					
Home Occupations	S[11]	S[11]	S[11]	S[11]	S[11]	S[11]	S[11]	S[11]	S[11]	S[11]	S[11]	S[11]		X			X					S[11]	S[11]	S[11]		
Junkyard																			S							
Recycling center																S			X	X	X					
Self-Service Storage Facility [16]														S	S	X	S		X	X	X					
Temporary Mobile Recycling Center															S	S			S	S	S				S	

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COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Schools FY23 Budget Amendment #1

Department: City Schools

Presented by: Trey Duke, Director

Requested Council Action:

Ordinance	☐
Resolution	☒
Motion	☐
Direction	☐
Information	☐

Summary

Schools amendment # 1 to the FY23 General Purpose Schools fund to budget additional State BEP revenue and decrease previously budgeted County property tax revenue, and a new United Way grant.

Staff Recommendation

Approve Resolution 22-R-21 amending the FY23 General Purpose Schools budget as presented.

Background Information

On August 9, 2022, the MCS Board approved budget amendment # 1 to recognize additional State BEP revenues of $2,037,948, decrease previously budgeted County Property taxes by $1,485,000, and a new United Way grant of $40,000.

The net increase of $552,948 in State BEP revenue will fund additional substitute teachers, two new Special Education teachers, one new Certified Occupational Therapist (COTA), one new Payroll/Staff Accountant, a contract with Rutherford County Schools to transport students to the TN School for the Blind, $10,000 to assist schools with unpaid student meal charges, and an additional school crossing light at Erma Siegel Elementary.

Even with the loss of local funding, MCS will meet local Maintenance of Effort due to robust sales tax revenues and the practice of conservatively budgeting local revenues.

The United Way grant of $40,000 provides funding for a new full-time Student Success Coach at Cason Lane Academy, supplies and computer equipment.

- **Council Priorities Served**

  Responsible budgeting

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

Fiscal Impact

The total increase in revenue of $592,948 will be budgeted in the General Purpose Schools fund to recognize new revenues and related expenditures.

Attachments

1. Resolution 22-R-21
2. Exhibit A: MCS Budget Amendment # 1

RESOLUTION 22-R-21 amending the 2022-2023 Murfreesboro City Schools Budget (1st Amendment).

WHEREAS, the City Council adopted Resolution 22-R-16 on June 8, 2022 to implement the 2022-2023 Murfreesboro City Schools Budget; and

WHEREAS, it is now desirable and appropriate to adjust and modify the 2022-2023 Murfreesboro City Schools Budget by this Resolution to incorporate expenditure decisions made by the Murfreesboro City School Board.

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

SECTION 1. The 2022-2023 Murfreesboro City Schools Budget as adopted by the City Council is hereby revised as shown on attached Exhibit A.

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

Passed: _____

_____
Shane McFarland, Mayor

ATTEST:

_____
Jennifer Brown
City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43AF035E51F9J0...

Adam F. Tucker
City Attorney

Murfreesboro City Schools Budget Amendment (#1)

General Purpose Schools Fund 141
Fiscal Year 2022-2023

BOE Approval 8/9/2022

Exhibit A to Resolution No. 22-R-21

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
Revenues			
Donations & Contributions	100,000	140,000	40,000
Total Increase in Revenue	$ 100,000	$ 140,000	$ 40,000
Expenditures			
Other Student Support - Other Salaries	542,500	566,500	24,000
Other Student Support - Social Security	134,070	135,558	1,488
Other Student Support - Retirement	183,170	186,091	2,921
Other Student Support - Medical Insurance	270,000	276,000	6,000
Other Student Support - Dental Insurance	9,000	9,250	250
Other Student Support - Medicare	31,355	31,696	341
Other Student Support - Supplies	27,500	29,000	1,500
Other Student Support - Equipment	18,500	22,000	3,500
Total Increase in Expenditures	$ 1,216,095	$ 1,256,095	$ 40,000

CHANGE IN FUND BALANCE (CASH) $ -

This amendment budgets a new United Way local grant of $40,000 in the general purpose schools fund. The grant covers the cost of a full-time mental health counseling support staff member, supplies and computer equipment.

Murfreesboro City Schools Budget Amendment (# 1)

General Purpose Schools Fund 141
Fiscal Year 2022-2023

BOE Approval 8/9/2022

Exhibit A to Resolution No. 22-R-21

Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)	
Revenues				
Current Property Tax	16,485,000	15,000,000	(1,485,000)	
State of TN BEP	50,813,052	52,851,000	2,037,948	
Total Increase in Revenue	$ 67,298,052	$ 67,851,000	$ 552,948	
Expenditures				
Regular Ed - Substitute Teachers	275,000	465,000	190,000	
Regular Ed - Social Security	2,410,130	2,422,496	12,366	
Regular Ed - Medicare	563,660	566,560	2,900	205,266
Special Ed - Teachers	4,205,500	4,325,500	120,000	
Special Ed - Social Security	483,385	490,825	7,440	
Special Ed - Retirement	716,015	722,015	6,000	
Special Ed - Medical Insurance	1,170,500	1,185,500	15,000	
Special Ed - Dental Insurance	40,000	40,250	250	
Special Ed - Medicare	113,050	114,790	1,740	
Special Ed - Hybrid Retirement	45,000	51,000	6,000	
Special Ed - Contracts with Other LEA's	-	37,500	37,500	193,930
Special Ed Program - Occupation Therap	109,500	141,500	32,000	
Special Ed Program - Social Security	78,695	80,679	1,984	
Special Ed Program - Retirement	99,800	103,694	3,894	
Special Ed Program - Medical Insurance	117,000	124,500	7,500	
Special Ed Program - Dental Insurance	4,200	4,450	250	
Special Ed Program - Medicare	18,405	18,869	464	46,092
Office of Principal - Other Charges	38,180	48,180	10,000	10,000
Fiscal Services - Accountant	174,800	224,800	50,000	
Fiscal Services - Social Security	27,490	30,590	3,100	
Fiscal Services - Retirement	53,960	60,045	6,085	
Fiscal Services - Medical Insurance	61,300	68,800	7,500	
Fiscal Services - Dental Insurance	2,300	2,550	250	
Fiscal Services - Medicare	6,430	7,155	725	67,660
Operation of Plant - Contract Services	395,000	425,000	30,000	30,000
		-		
Total Increase in Expenditures	$ 11,209,300	$ 11,762,248	$ 552,948	$ 552,948

CHANGE IN FUND BALANCE (CASH) $ -

To budget additional State of TN BEP revenues of $2,037,948 and decrease County Property taxes by $1,485,000.

The net increase of $552,948 in Revenue will fund additional substitute teachers, 2 new Special Ed teachers, 1 new COTA, 1 new payroll/GL Accountant, a contract with Rutherford County Schools to transport students to TN School for the Blind, $10,000 to assist with unpaid student meal charges, and an additional crossing light at Erma Siegel Elementary.

Even with the loss of local funding, MCS will meet Local Maintenance of Effort due to robust local sales tax revenues.

COUNCIL COMMUNICATION

Meeting Date: 8/18/2022

Item Title: Ordinance 22-O-21, Amending Procurement Code [First Reading]

Department: Legal Department and Purchasing Department

Presented by: Katie Driver, Staff Attorney

Requested Council Action:

Ordinance	☒
Resolution	☐
Motion	☐
Direction	☐
Information	☐

Summary

Revision of City Code Chapter 2-10 amending the Procurement Code to increase the threshold for competitive bids to $50,000.

Staff Recommendation

Approve Ordinance 22-O-21.

Background Information

Tennessee Public Chapter 1016 became law on May 11, 2022. This act amended T.C.A. 12-3-1212 and increased to $50,000 the threshold above which local governments are required to procure most goods and services through public advertisement and competitive bids or proposals. The City's current Purchasing Ordinance sets that threshold at $25,000, which was the threshold prior to the enactment of Tennessee Public Chapter 1016. Accordingly, Council is requested to extend the threshold under the City's Purchasing Ordinance from $25,000 to $50,000 to be consistent with T.C.A. 12-3-1212, as revised.

Council Priorities Served

Responsible Budgeting

Increasing the threshold for formal bids allows for more flexibility when getting quotes and making purchases, especially considering the volatile marketplace currently being experienced by staff.

Attachments:

Ordinance 22-O-21

ORDINANCE 22-O-21 amending the Murfreesboro City Code, Chapter 2, Administration, Section 2-10, Procurement Code, by increasing the competitive bid threshold to $50,000.

WHEREAS, Tennessee Public Chapter 1016 amended T.C.A. 12-3-1212 relative to thresholds for competitive bids; and,

WHEREAS, Tennessee Public Chapter 1016 was effective May 11, 2022, upon its passage; and

WHEREAS, Murfreesboro City Code, Section 2-10 requires amendment to reflect the increased bid threshold amount from $25,000 to $50,000 consistent with the newly revised T.C.A. 12-3-1212.

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

SECTION 1. Section 2-10(B), *Roles and Responsibilities*, of the Murfreesboro City Code is hereby amended at subsections (1) by substituting the figure of "$25,000.00" for the words and figure of "Fifty Thousand Dollars ($50,000.00)."

SECTION 2. Section 2-10(E), *Purchases based on price competition*, of the Murfreesboro City Code is hereby amended at subsections (1) and (5) by substituting the figure of "$25,000.00" for the words and figure of "Fifty Thousand Dollars ($50,000.00)."

SECTION 3. Section 2-10(H), *Competitive Sealed Proposal Purchases*, of the Murfreesboro City Code is hereby amended at subsection (4) by substituting the figure of "$25,000.00" for the words and figure of "Fifty Thousand Dollars ($50,000.00)."

SECTION 4. That this Ordinance shall take effect immediately after its passage upon second and final reading, as the public welfare and the welfare of the City require its adoption.

Passed:

_____
Shane McFarland, Mayor

1st reading _____

2nd reading _____

ATTEST:

_____
Jennifer Brown
City Recorder

APPROVED AS TO FORM:

_____
Adam F. Tucker
City Attorney

SEAL

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Amendment to Murfreesboro City Code Pertaining to Use of the Parking Garage

Department: Administration

Presented by: Craig Tindall, City Manager

Requested Council Action:

Ordinance	☒
Resolution	☐
Motion	☐
Direction	☐
Information	☐

Summary

Amendment of the City Code to clarify the use of the parking garage

Staff Recommendation

Adopt Ordinance 22-O-34 amending City Code § 21-47(C).

Background Information

Recently the City parking garage has become a place of congregation by individual not intending to use the garage for this intended purpose. This has caused concerns with others who desire to park their vehicles for purposes of patronizing the library, City Hall and the downtown area. The amendment will clarify that the garage structure is solely for use as a parking facility and to improve the safety and comfort of those properly utilizing the facility.

Council Priorities Served

Improve economic development

Enhancement of the downtown area requires the proper use and maintenance of necessary infrastructure supporting the businesses, offices, restaurants, and other uses.

Maintain public safety

Limiting the use of the parking garage will enhance the safety of the area and reduce the requirements imposed on the Police Department.

Fiscal Impact

None

Attachments

Ordinance 22-O-34

ORDINANCE 22-O-34, amending the Murfreesboro City Code, Chapter 21, Offenses and Miscellaneous Provisions, Article I, Section 21-47, regarding closing hours for Civic Plaza, City parks, parking lots, school grounds; trespassing.

WHEREAS, the City has a vested interest in regulating the use of and access to City property in a manner that balances public safety, preserving such property so that it is available and in good condition for its intended use, and facilitating reasonable access to and use of such property by the public; and

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

SECTION 1. Section 21-47 of the Murfreesboro City Code is amended by deleting the existing heading and section in their entirety and substituting in lieu thereof the following:

"**Section 21-47 - Closing hours for Civic Plaza, City parks, parking lots, school grounds; trespassing.**

(A) The purpose of this subsection is to establish reasonable regulations governing access to certain City-owned property that balance public safety, preserving such property so that it is available and in good condition for its intended use, and facilitating reasonable access to and use of such property by the public.

(B) *School Property.* No person is allowed to be on the grounds of any City school between the hours of 10:00 p.m. and 5:00 a.m., except as authorized by the Director of Schools or the Director's designee.

(C) *Parking Lots and Garages.*

(1) For purpose of this subsection, the "Downtown Area" includes an area measuring approximately 0.1 square miles, plus or minus, bordered on the south by the right-of-way of Southeast Broad Street; on the west by the right-of-way of South and North Front Streets; on the north by the right-of-way of West and East Lytle Streets; and on the east by the right-of-way of North and South Academy Streets.

(2) *Downtown parking lots and garages.* City-owned parking lots and garages in the Downtown Area are intended solely for the parking and retrieving of motor vehicles. No person or persons shall loiter, gather, congregate, or hold any event in a City-owned parking lot or garage in the Downtown Area except as otherwise allowed under subsection (F). In addition, persons parking a motor vehicle in a City-owned parking lot or garage in the Downtown Area must exit the parking lot or garage within twenty (20) minutes of parking their vehicle, and persons returning to a City-owned parking lot or garage to retrieve a motor vehicle must exit the parking lot or garage within twenty (20) minutes of returning to their vehicle.

(3) *Other parking lots and garages.* Except as otherwise provided in subsection (F), no person is allowed to be in a City-owned parking lot or garage between the hours of 12:00 midnight and 6:00 a.m. except to park or retrieve a motor vehicle. A person parking or retrieving a motor vehicle may remain in the vehicle for no more than five minutes before exiting the parking lot or garage. There shall be no congregating or loitering in a City parking lot or garage between the hours of 12:00 midnight and 6:00 a.m.

(D) *Park Property.* No person is allowed to be on the grounds of any City park in violation of the hours of operation for that park established by the Parks and Recreation Commission and posted at the park's primary entrances.

These hours may change seasonally and may vary for different areas within a park. In the absence of more restrictive hours, no person is allowed to be on the grounds of any City park between the hours of 11:00 p.m. and 6:00 a.m., provided, however, that any person in a park attending an event authorized by the Parks and Recreation Department is allowed to be on the grounds of that park for one-half hour after the conclusion of the event.

(E) *Civic Plaza.* No person is allowed to be on the grounds of Civic Plaza between the hours of 9:00 p.m. and 7:00 a.m., except as is reasonably necessary to enter or exit City Hall, Linebaugh Library, or the parking garage below Civic Plaza. In addition, no person or persons shall loiter, gather, congregate, or hold any event on Civic Plaza between the hours of 9:00 p.m. and 7:00 a.m., except as otherwise allowed under subsection (F).

(F) *Exceptions.* The provisions of this section shall not be applicable to:

(1) City or other government officials and employees on the premises acting in the course of their official duties or employment;

(2) Persons on designated park property during special events, activities, or programs approved by the City;

(3) Persons participating or attending activities or events conducted pursuant to a written agreement with the City or to a permit issued by the City;

(4) Persons taking shelter in a parking garage in the event of a severe weather warning or watch issued by the National Weather Service for Rutherford County until such time as the warning or watch has been lifted; and

(5) Persons actively tending to a disabled vehicle or awaiting a tow truck to remove the disabled vehicle from a parking lot or garage.

(G) Any person who violates this section shall be a trespasser and subject to punishment as provided in Code §§ 1-8 and 21-46."

SECTION 2. 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:

_____
Adam F. Tucker
City Attorney

SEAL

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Plan of Services, Annexation, and Zoning for property along Emery Road
[Public Hearings Required]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	☒
Resolution	☒
Motion	☐
Direction	☐
Information	☐

Summary

Annexation and zoning of approximately 16.3 acres located along Emery 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 Anne Watkins Family Emery Road Trust and the Samuel Watkins Emery Road Trust have initiated petitions of annexation [2022-504] for approximately 16.3 acres located along Emery Road. The City developed its plan of services for this area. Additionally, Jeramie Taber presented to the City a zoning application [2022-406] for the same 16.3 acres to be zoned RS-10 (Single-Family Residential District 10) simultaneous with annexation. During its regular meeting on June 1, 2022, the Planning Commission conducted public hearings on these matters and then voted to recommend their approval. Approval of the annexation was recommended subject to the following conditions:

1) Install a 20’ wide emergency access drive from Laurelstone Drive to serve the existing house.;
2) Dedicate a temporary emergency access easement in the location of the new driveway (which can be extinguished upon the demolition of the existing house

or upon the construction of an alternative suitable emergency access to the house in conjunction with the adjacent residential development).; and

3) Execute an agreement between the City, the property owners (the Watkins), and the developer prior to the annexation becoming effective that the Laurelstone Drive roadway connection will be recorded as a public right-of-way and constructed as a public street with the first section or phase of the proposed subdivision development.

Council Priorities Served

Expand Infrastructure

The Planning Commission conditioned its recommendation of approval of the annexation on the street connection being made to the existing Laurelstone Drive street stub to the southeast. This will provide additional connectivity eastbound to Lascassas Pike for the adjacent neighborhoods.

Improve Economic Development

This rezoning will enable the development of approximately 35-40 single-family residential lots with a minimum lot size of 10,000 square-feet. Council has previously conveyed the importance of homeownership and of increasing the City's inventory of single-family residential detached homes.

Attachments:

1. Resolution 22-R-PS-22
2. Resolution 22-R-A-22
3. Ordinance 22-OZ-22
4. Maps of the area
5. Planning Commission staff comments from the 06/01/2022 meeting
6. Planning Commission minutes from the 06/01/2022 meeting
7. Plan of services
8. Draft Development Agreement
9. Other miscellaneous exhibits

MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
JUNE 1, 2022
PROJECT PLANNER: HOLLY SMYTH

4.d. Annexation petition and plan of services [2021-504] for approximately 16.28 acres located along Emery Road, The Anne Watkins Family Emery Road Trust and The Samuel Watkins Family Emery Road Trust applicant.

The property owner, trustees Walter C Watkins, Patricia Stallings, Keith Watkins, and Kenisha LaKale Malone of the two trusts noted above, have submitted a petition requesting their properties be annexed into the City of Murfreesboro. The property tax map numbers are:
-Tax Map 68, Parcel 12.601 which is a vacant property of 11.00 acres
-Tax Map 68, Parcel 12.600 which has a home and accessory buildings on 5.28 acres (addressed 2909 Emery Rd)

The annexation study area does not contain any right-of-way.

The 2 subject properties are located along the west side of Emery Road, south of Pebblecreek Lane, west of Oakview Drive and Laurelstone Drive and east of Sandstone Circle.

The 2 subject parcels are located within the City of Murfreesboro's Urban Growth Boundary. The areas are contiguous with the City limits along the north and south property lines as well as most of the westerly property line (with one land locked County parcel at the southwest corner of the project site), and part of the south easterly property line. Simultaneous with annexation is a request to zone the two properties to Residential Single Family 10 (RS-10).

Staff has prepared a Plan of Services for the proposed annexation, which has been provided to the Planning Commission in the agenda packet. It demonstrates how services can be provided to the subject property upon annexation. No significant difficulties in providing services are identified in the plan of services with the exception of fire services, as there is an existing house with an existing driveway that is not suitable for providing access to fire trucks. Alternative emergency access must be provided off of Laurelstone Drive.

In addition, Laurelstone Drive stubs into the southerly study area parcel. Connecting the Laurelstone Drive street stub into this property is important to provide an additional point of access to the proposed development, to disperse traffic, and to provide an access to and from Lascassas Pike for the proposed development, especially because

the proposed residential development will not have a direct connection to Emery Road. The owners of the southerly parcel does not wish for the roadway connection to be made at this time and they have not given any indication as to when they would be amenable to that connection being made. However, the City believes that this roadway connection is integral to any future development on the subject property. Therefore, Staff recommends the execution of an agreement between the City, the property owners (the Watkins), and the developer prior to the annexation becoming effective that the Laurelstone Drive roadway connection will be recorded as a public right-of-way and constructed as a public street with the first section or phase of the proposed subdivision development.

Staff Recommendation:

Staff supports the annexation of these two parcels for the following reasons:

1) Zoning request to RS-10 is consistent with the 2030 Comprehension Future Land Use Plan designation of Suburban Residential (SR)

2) Zoning request to RS-10 is consistent with the proposed Future Land Use Plan designation of SR and is located within the proposed Infill Service Line.

If the Planning Commission votes to recommend approval of the annexation and plan of services, staff recommends that approval be made subject to the following items being completed prior to the effective date of annexation:

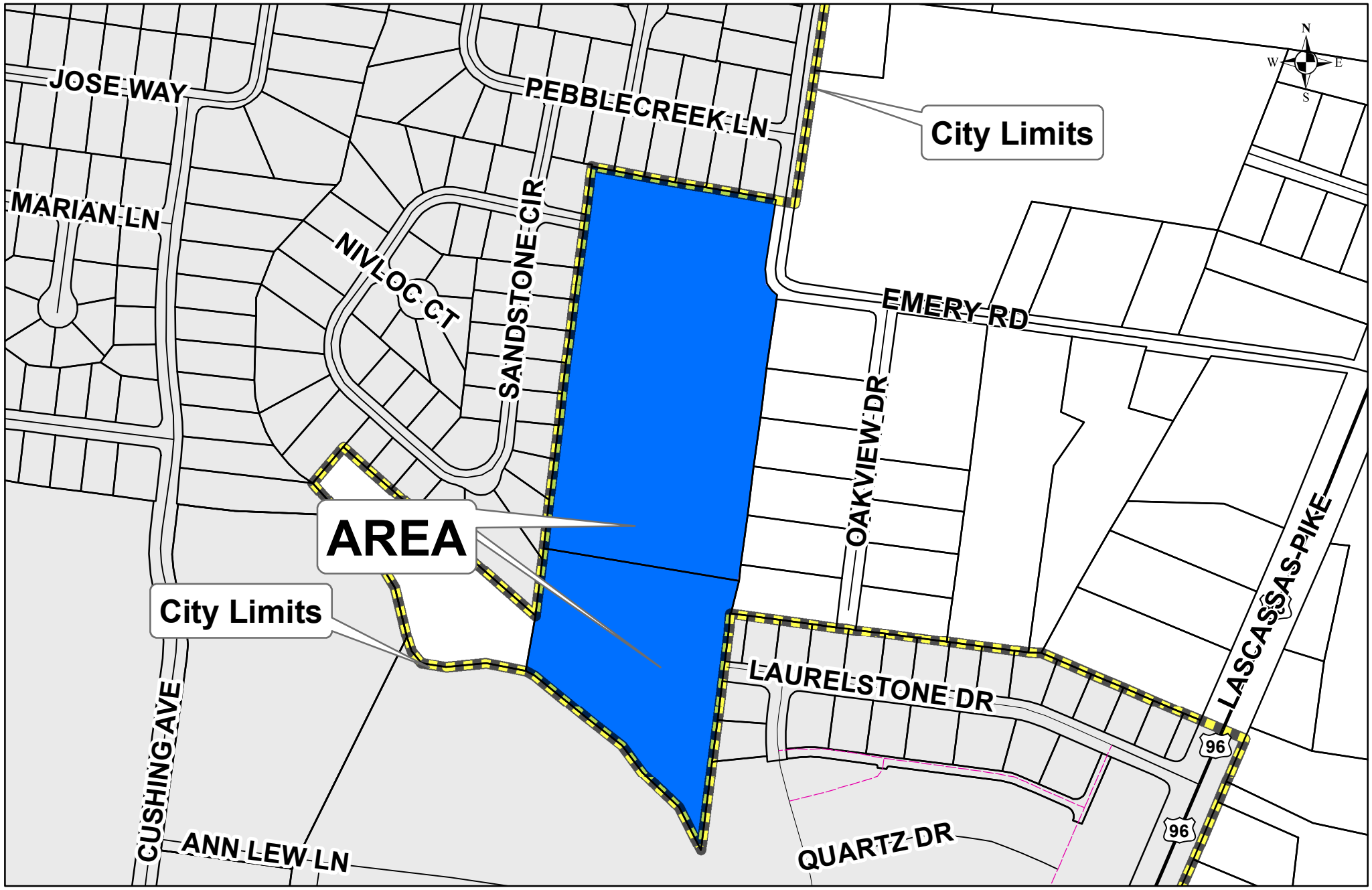
1) Install a 20' wide emergency access drive from Laurelstone Drive to serve the existing house
2) Dedicate a temporary emergency access easement in the location of the new driveway (which can be extinguished upon the demolition of the existing house)
3) Execute an agreement between the City, the property owners (the Watkins), and the developer prior to the annexation becoming effective that the Laurelstone Drive roadway connection will be recorded as a public right-of-way and constructed as a public street with the first section or phase of the proposed subdivision development.

Action Needed:

The applicant will be available at the Planning Commission meeting to discuss this proposed annexation petition and plan of services. The Planning Commission will need to conduct a public hearing, after which it will need to discuss this matter and then formulate a recommendation to City Council.

Attachments:

Plan of Services



Annexation Request for Property located along Emery Road

670 335 0 670 Feet

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

Annexation Request for Property located along Emery Road

670 335 0 670 Feet

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

HUDDLESTON-STEELE
ENGINEERING, INC.
2115 N.W. Broad Street • Murfreesboro, TN 37129 • Engineering 615-893-4084 • Surveying 615-890-0372 • FAX: 615-893-0080

4.13.2022

Greg McKnight, Planning Director
111 W. Vine Street, P.O. Box 1139
Murfreesboro, TN 37133-1139

Re: Annexation and Rezoning Request

Described as Tax Map 68 Parcel 126.00 7 126.01 consisting of 16.28 +/- ac. to be rezoned PRD.

Dear Mr. Greg,

On behalf of our client, Jeramie Taber, we hereby request the annexation and rezoning of the property identified by tax map 68 and parcel 126.00 & 126.01, consisting of approximately 16.28+/- acres from RM to RS-10. The property is located 2909 Emery Road. The purpose for this rezoning is to construct a 35 lot subdivision with single family detached homes.

Please let me know if you need any additional information and thank you for your assistance with this request.

Sincerely,

Clyde Rountree, RLA

dotloop signature verification: dtlp.us/I4W0-3toZ-gKWh

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. The Anne Watkins Family Emery Road Trust
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signatu Walter C Watkins dotloop verified 04/13/22 8:31 PM CDT X5IL-YGM9-6HGC-PVLG s:_____ Date: 04/13/2022

Mailing Address (if not address of property to be annexed)

2. The Samuel Watkins Family Emery Road Trust
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Keith Watkins dotloop verified 04/21/22 6:20 PM CDT V9SJ-51K5-JMON-J2ZD

Signatu Patricia Stallings dotloop verified 04/13/22 9:21 PM CDT DYMA-GJSY-VCF9-OSOD s:_____ Date:_____

Mailing Address (if not address of property to be annexed)

Kenisha LaKale Malone dotloop verified 04/21/22 7:18 PM EDT C3AG-AHBV-AYHH-XVWC

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. _____
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

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the City of Murfreesboro, a Tennessee Municipal Corporation (the "City"); Walter C. Watkins Jr., Trustee of the Annie Watkins Family Emery Road Trust dated April 21, 2021; Patricia Watkins Stallings, Kenisha LaKale Malone, and Keith D. Watkins, Trustees of The Samuel Watkins Family Emery Road Trust dated May 25, 2021 (collectively, "Owners"); and Jeramie Taber ("Developer").

WITNESSETH:

WHEREAS, Owners currently own two tracts of property located along Emery Road in Rutherford County, Tennessee, being identified as Tax Map and Parcel 068-126.00 (the "Southern Tract") and 068-126.01 (the "Northern Tract"; collectively the "Property"); and

WHEREAS, Owners and Developer have petitioned the City to annex the Property into the City limits and to simultaneously zone the Property for residential development; and

WHEREAS, as a condition to annexation, the City requires Owners to install an emergency access drive connecting the Southern Tract with Laurelstone Drive in order to provide emergency services to the residence located on the Southern Tract; and

WHEREAS, as a further condition to annexation, the City requires Developer to construct certain public street improvements on the Southern Tract which will provide connectivity for the Property via a public street between the Southern and Northern Tract out to Laurelstone Drive on a permanent basis prior to the commencement of vertical construction on the Northern Tract;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The above Recitals are hereby incorporated into and made a part of this Agreement, each and every Recital being an essential element of the mutual understanding of the parties.
2. Prior to, and as a condition of, annexation of the Property, Owners and/or Developer shall have installed, or caused to be installed, a twenty-foot wide emergency access drive from the existing terminus of Laurelstone Drive to the existing residence on the Southern Tract. Said

DRAFT

access drive shall be kept clear of overgrowth, debris, and/or other obstructions. Owners may install a gate or other access control; provided that said gate or access control shall be accessible to all emergency service vehicles by way of remote control to the same extent as provided in Tenn. Code Ann. § 13-8-101, et seq.

3. Simultaneously with the construction of the above-referenced emergency access drive, Owners and/or Developer shall have dedicated a temporary access easement to the City for the area comprising the emergency access drive. Said easement dedication shall be in a form approved by the City Attorney. Costs for preparation of said easement and recording of the same shall be the responsibility of Owners and Developer.
4. As part of the first section or phase of the development of the Northern Tract and/or the Property as a residential subdivision, Owners and Developer shall dedicate and construct a permanent public street right-of-way connecting the contemplated development on the Northern Tract with the existing terminus of Laurelstone Drive (the "Connector ROW"). Said construction shall in all respects conform to the City's Street Design Specifications in effect at the time of construction and shall be ready to accept public traffic prior to the signing of the final plat for the first section or phase of the development of the Northern Tract and/or Property.
5. Prior to the permitting or commencement of any work contemplated by this Agreement, Developer shall provide surety for the estimated cost of Developer's roadway and drainage work for the Connector ROW as detailed in this Agreement to ensure proper completion in a form and amount satisfactory to the City. This surety is separate from any surety required by the City from Developer as a part of the subdivision process and any final plat. This surety may be reduced by up to 75% of the estimated construction cost of the Connector ROW upon acceptance of Developer's work by the City Engineer. The remaining 25% surety balance shall remain in effect for a period of 3 years following acceptance by the City Engineer as a maintenance and warranty surety. Following this 3-year period and upon final acceptance of Developer's work by the City Engineer, including any identified maintenance and warranty repairs, the surety shall be released by the City and Developer's construction obligations under this Agreement shall be complete.
6. Developer shall obtain any and all necessary local and state and federal permits including Land Disturbance Permit and Construction General Permit for Stormwater prior to

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commencement of construction. Any further obligation of the City hereunder is made specifically contingent upon the performance of this provision prior to construction.

7. Prior to the recording of any final plat of any development that connects to the Connector ROW, Developer shall ensure and certify to the City that the Connector ROW is substantially complete and ready to receive traffic.

8. All notices and communications regarding the project shall be delivered as follows:

If to the City: Craig Tindall, City Manager
111 W. Vine Street, Murfreesboro TN 37130
Email: ctindall@murfreesborotn.gov

With a copy to: David A. Ives, Deputy City Attorney
111 W. Vine Street, Murfreesboro TN 37130
Email: dives@murfreesborotn.gov

If to Owners:

If to Developer:

With a copy to:

9. This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
10. 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 is liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.
11. 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.

DRAFT

12. The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of Developer hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer will not release Developer from its obligations hereunder.
13. In the event of a dispute, the parties agree to negotiate in good faith to attempt to resolve the matter. In the event of litigation, the laws of the State of Tennessee shall apply, and venue shall be in the Courts of Rutherford County, Tennessee. In such event, the substantially prevailing party shall be entitled to recover, in addition to any other monetary or equitable recovery, its reasonable attorney fees.
14. 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.
15. **This Agreement shall not be effective as to the City unless and until it is expressly approved by the Murfreesboro City Council**.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date of the last party to sign.

[*Signatures appear on the following page.*]

DRAFT

CITY OF MURFREESBORO:

By:_____
Shane McFarland, Mayor

Date: _____

ATTEST:

_____
Jennifer Brown, City Recorder

APPROVED AS TO FORM:

_____
Adam F. Tucker, City Attorney

ANNIE WATKINS FAMILY EMERY ROAD TRUST DATED APRIL 21, 2021

By:_____
Walter C. Watkins Jr., Trustee

Date: _____

SAMUEL WATKINS FAMILY EMERY ROAD TRUST DATED MAY 25, 2021

By:_____
Patricia Watkins Stallings, Trustee

Date: _____

By:_____
Kenisha LaKale Malone, Trustee

Date: _____

By:_____
Keith D. Watkins, Trustee

Date: _____

_____
Jeramie Taber

Date: _____

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MINUTES OF THE MURFREESBORO PLANNING COMMISSION JUNE 1, 2022

6:00 PM **CITY HALL**

MEMBERS PRESENT
Kathy Jones, Chair
Ken Halliburton, Vice-Chairman
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

STAFF PRESENT
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Margaret Ann Green, Principal Planner
Marina Rush, Principal Planner
Amelia Kerr, Planner
Joel Aguilera, Planner
Carolyn Jaco, Recording Assistant
David Ives, Deputy City Attorney
Roman Hankins, Assistant City Attorney
Sam Huddleston, Executive Dir. Dev't Services

1. Call to order.

Chair Kathy Jones called the meeting to order at 6:00 p.m.

2. Determination of a quorum.

Chair Kathy Jones determined that a quorum was present.

3. Approve minutes of the May 4, 2022, Planning Commission meeting.

Ms. Jami Averwater moved to approve the minutes of the May 4, 2022 Planning Commission meeting; the motion was seconded by Vice-Chairman Ken Halliburton and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

Mr. David Ives made known HOA covenants could not preclude the City from rezoning property.

The Planning Commission began discussing the request and items such as lighting and buffering.

Mr. Skeeter Beaulieu agreed to continue working on the proposal and requested a deferral.

There being no further discussion, Mr. Rick LaLance moved to defer the zoning application; 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
Shawn Wright

Nay: None

Annexation petition and plan of services [2021-504] for approximately 16.3 acres located along Emery Road, The Anne Watkins Family Emery Road Trust and The Samuel Watkins Family Emery Road Trust applicant. Mr. Matthew Blomeley presented the Staff Comments regarding this item, a copy of which is maintained in the permanent files of the Planning Department and is incorporated into these Minutes by reference. Mr. Matthew Blomeley stated, if the Planning Commission votes to recommend approval of the annexation and plan of services, staff recommends that approval be made subject to the following items being completed prior to the effective date of annexation:

1) Install a 20’ wide emergency access drive from Laurelstone Drive to serve the existing house;

2) Dedicate a temporary emergency access easement in the location of the new driveway (which can be extinguished upon the demolition of the existing house);

3) Execute an agreement between the City, the property owners (the Watkins), and the developer prior to the annexation becoming effective that the Laurelstone Drive roadway connection will be recorded as a public right-of-way and constructed as a public street with the first section or phase of the proposed subdivision development.

Mr. Blomeley made known a neighborhood meeting had been conducted on Tuesday, May 24, 2022.

Mr. Bennie Pandorf of Huddleston-Steele Engineering and Mr. Jeramie Taber (developer) were in attendance representing the application. Mr. Jeramie Taber came forward stating he has spoken with the Watkins Family for an access connection on their property and would continue to work with them on the access connection.

Chair Kathy Jones opened the public hearing.

1. **Mr. J.T. Sherrell, 2538 Sandstone Circle** – was in agreement for the road connections and emergency access that was presented by Staff.

2. **Ms. Daphne Davis, 2516 Pebblecreek Lane** – requested for road connection be constructed first at Laurelstone Drive for construction truck use with this proposal.

3. **Mr. Bobby Houston, 2859 Oakview Drive** – expressed concerns regarding blasting and traffic.

Chair Kathy Jones closed the public hearing.

Mr. David Ives made known the State of Tennessee has complete control over blasting. The City does not have the ability to place any additional restrictions towards blasting.

There being no further discussion, Mr. Rick LaLance moved to approve the annexation petition and plan of services subject to all staff comments; the motion was seconded by Mr. Shawn Wright and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

Zoning application [2022-406] for approximately 16.3 acres located along Emery Road to be zoned RS-10 simultaneous with annexation, Jeramie Taber applicant. Mr. Matthew Blomeley 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. Bennie Pandorf of Huddleston-Steele Engineering and Mr. Jeramie Taber (developer) were in attendance representing the application.

Mr. Shawn Wright asked Mr. Jeramie Taber (applicant) if he would be willing to place any rental stipulations on this proposed neighborhood. Mr. Jeramie Taber came forward stating he would place two-year rental restrictions on the homes. Continuing, Mr. Taber stated there was no intention in selling the development to be all rental property.

Chair Kathy Jones opened the public hearing.

1. **Mr. J.T. Sherrell, 2538 Sandstone Circle** – requested for some type of buffer be placed between Pebblecreek subdivision and this proposal to distinguish the two separate subdivisions.

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RESOLUTION 22-R-PS-22 to adopt a Plan of Services for approximately 16.3 acres located along Emery Road The Anne Watkins Family Emery Road Trust and The Samuel Watkins Family Emery Road Trust, applicants [2022-504].

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 June 1, 2022 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 August 18, 2022, pursuant to a Resolution passed and adopted by the City Council on June 23, 2022, and notice thereof published in The Murfreesboro Post, a newspaper of general circulation in said City, on August 2, 2022; 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 22-R-A-22**, the public welfare and the welfare of the City requiring it.

Passed: _____

_____
Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2035E51F0401...

_____
Jennifer Brown
City Recorder

_____
Adam F. Tucker
City Attorney

SEAL

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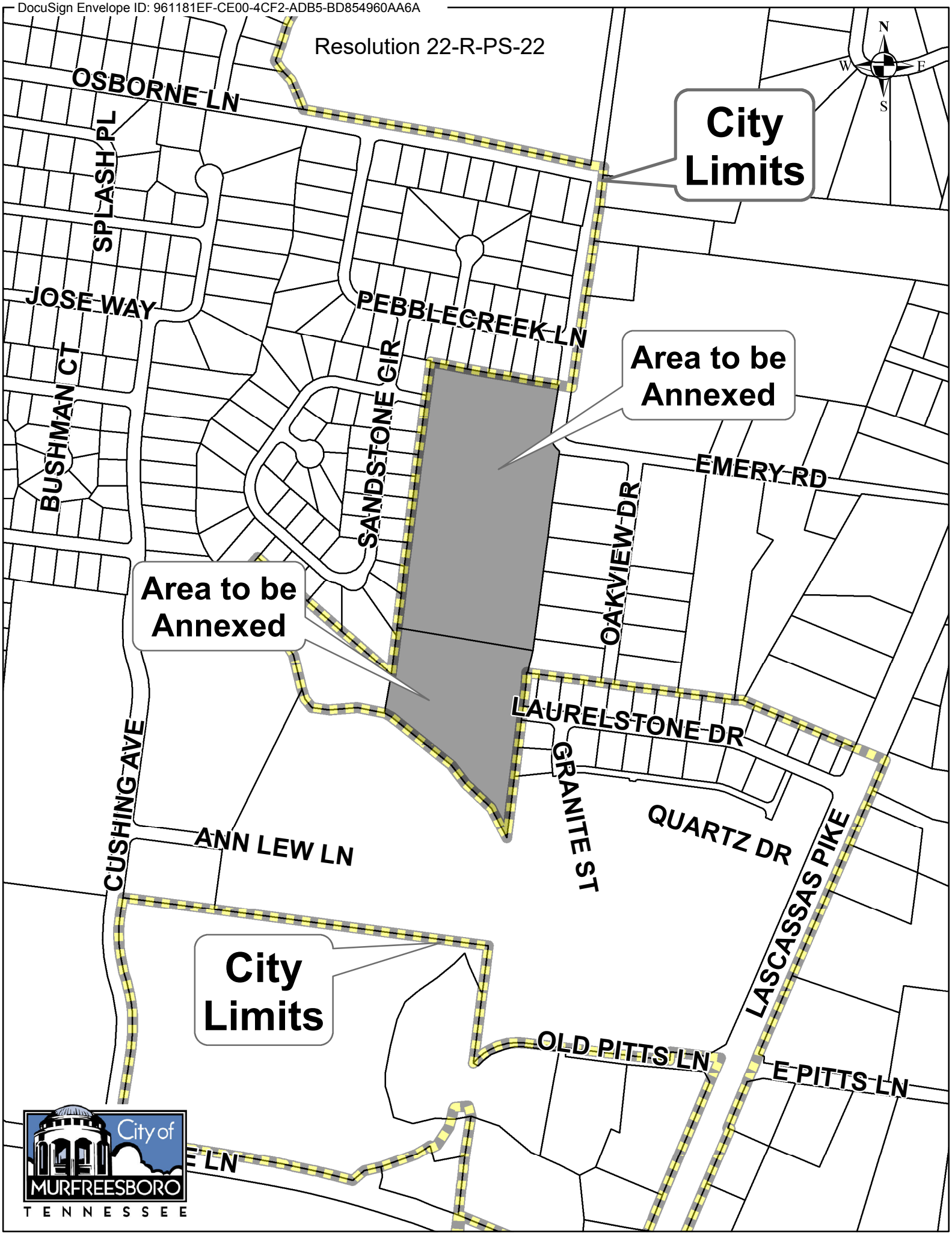
Resolution 22-R-PS-22



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Resolution 22-R-PS-22

ANNEXATION REPORT FOR PROPERTY LOCATED ALONG EMERY ROAD INCLUDING PLAN OF SERVICES (FILE 2022-504)

PREPARED FOR THE
MURFREESBORO PLANNING COMMISSION – June 1, 2022

DocuSign Envelope ID: 961181EF-CE00-4CF2-ADB5-BD854960AA6A

City of MURFREESBORO TENNESSEE

Annexation Request for Property located along Emery Road

670 335 0 670 Feet

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

DocuSign Envelope ID: 961181EF-CE00-4CF2-ADB5-BD854960AA6A

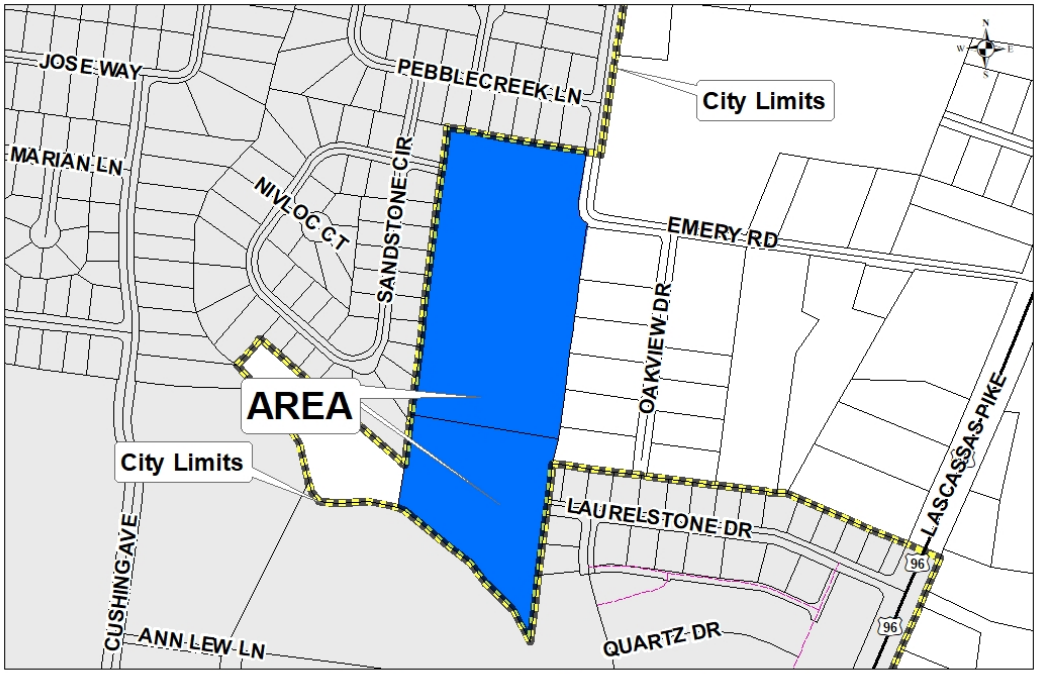
INTRODUCTION

DocuSign Envelope ID: 961181EF-CE00-4CF2-ADB5-BD854960AA6A

OVERVIEW

The trustee property owners of The Anne Watkins Family Emery Road Trust and The Samuel Watkins Family Emery Road Trust have submitted a petition requesting annexation by the City of Murfreesboro. The requested area is made up of 2 parcels, one containing 11.00 acres while the other contains approximately 5.28 acres. The properties are located south of Pebblecreek Lane and west of Emery Road and includes 2909 Emery Road. The property tax map numbers are: Tax Map 068, Parcels 126.01. and 126.00. The northerly property is currently undeveloped while the southerly property has one single family residence. Simultaneous with this application is a request to zone both properties to Residential Single Family 10 (RS-10).

The study area is located within the City of Murfreesboro's Urban Growth Boundary and is contiguous with the City limits along the majority of all property lines.



Annexation Request for Property located along Emery Road

670 335 0 670 Feet

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

GENERAL PLAN LAND USE

The existing adopted Murfreesboro 2035 Comprehensive Plan Future Land Use Map on the next page indicates that Suburban Residential (SR) is the most appropriate land use character for the project area. This classification recommends development of 2.0 – 3.54 single family homes per acre.

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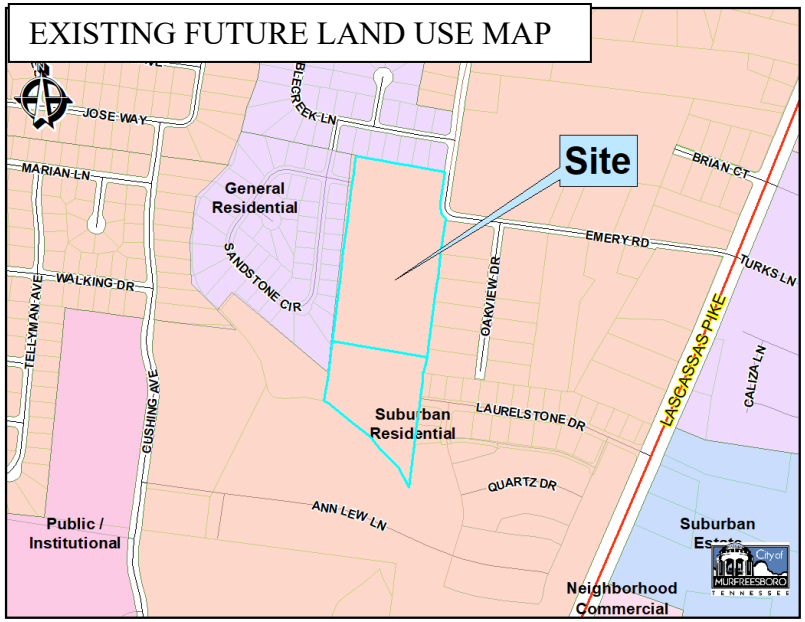
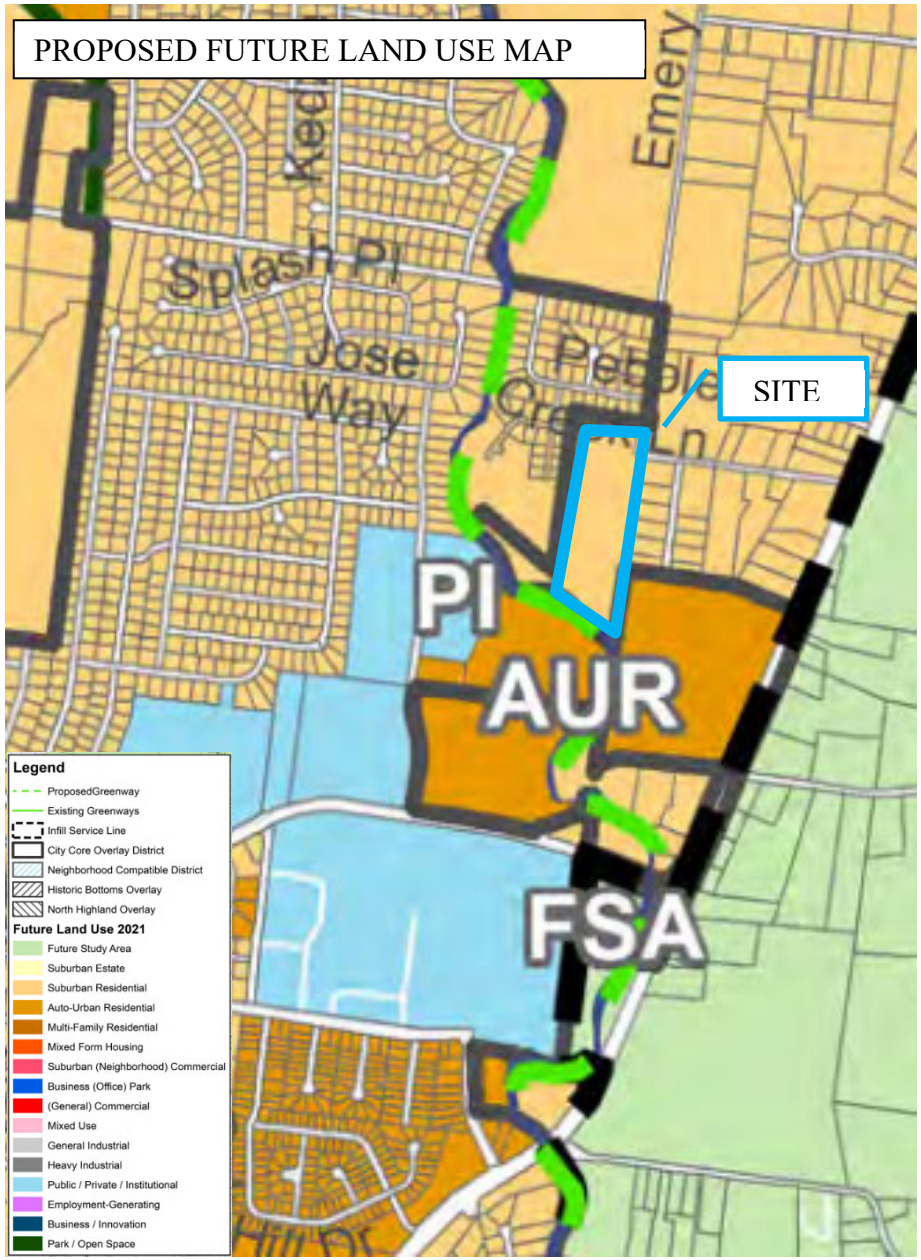
EXISTING FUTURE LAND USE MAP



The Planning Commission is currently considering proposed future land use map (shown to the right), which also identifies this property as Suburban Residential (SR) like the existing adopted map does. Additionally, the proposed updated map identifies an Infill Service Line. The purpose of the proposed Infill Service Line is to help facilitate growth and development in an orderly, planned, and sustainable manner.

This proposal lies within the Infill Service Line and the simultaneous zoning to RS-10 is consistent with the SR land use category.

PROPOSED FUTURE LAND USE MAP



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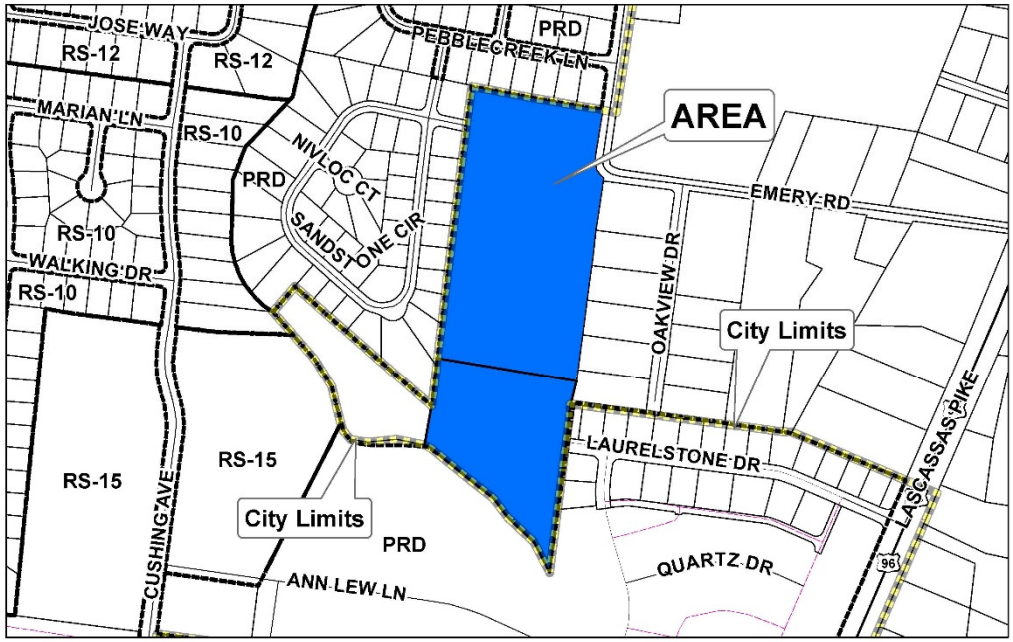
CITY ZONING

An application has been submitted by Jeramie Taber requesting Residential Single Family 10 (RS-10) zoning for the 16.28-acre study area simultaneous with annexation. The parcels requested for annexation are shown in blue and are currently zoned Residential Medium-Density (RM) in the unincorporated County.

The zoning on the adjacent properties to the north, west, south, and southeast are PRD, and to the east and one parcel to the southwest is zoned RM in the County.



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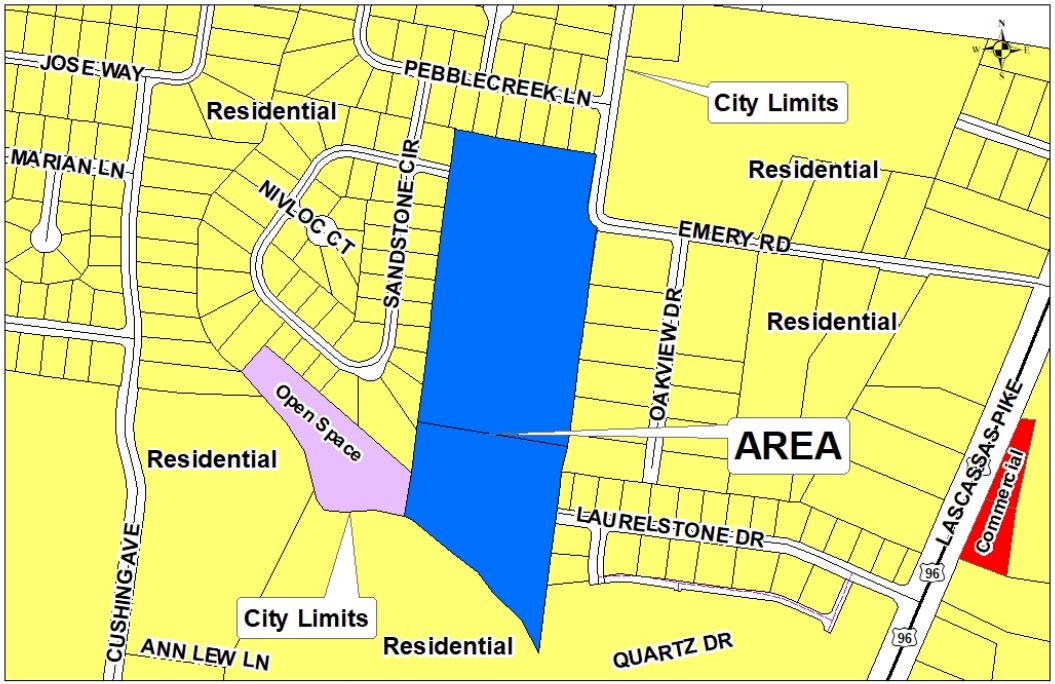
PRESENT AND SURROUNDING LAND USE

The study area shown in blue is undeveloped land on the northerly parcel and one single-family residential home on the southerly parcel. The surrounding land uses are primarily single-family residential lots and undeveloped land. However, there are existing commercial uses on the east side of Lascassas Pike east of the study area as well.



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TAXES AND REVENUE

The first City tax bill for all property annexed during the calendar year of 2022 will be due on December 31, 2023. 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 1
Estimated Taxes from Site

Owner of Record	Acres	Land Mkt Value	Improvement Value	Assessment Value	Estimated City Taxes
Annie Watkins Family Emery Road Trust	11.0	$199,700	$0.00	$49,925	$644
Samuel Watkins Family Emery Road Trust	5.28	$130,000	$95,100	$58,525	$755

These figures are for the property in its current state and are subject to change upon development.

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PLAN OF SERVICES

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POLICE PROTECTION

At present, the study area receives police services through the Rutherford County Sheriff's Department. If annexed, the Murfreesboro Police Department will begin providing services which include patrol, traffic, and criminal investigations. Other services such as community crime prevention programs are also available. Services will be provided upon the effective date of annexation.

The Murfreesboro Police Department can immediately provide police services to the property as it currently exists. The current police zone that borders the property is Zone 3.

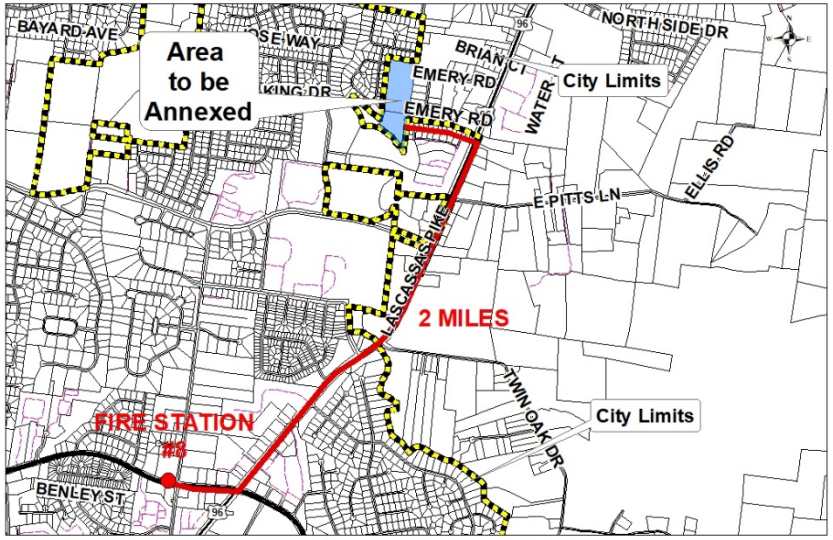
Police staffing numbers are assessed based upon cumulative residential population numbers. This development should be assessed with future population projections for the city for staffing considerations in the future.

FIRE AND EMERGENCY SERVICE

The study area contains a vacant parcel and a parcel with one single family residence with ancillary buildings at 2909 Emery Road. Because of access and water limitations, the Murfreesboro Fire and Rescue Department (MFRD) cannot provide fire protection to the existing house in the property's current state and can only provide limited emergency service response. In order for MFRD to provide fire protection to the existing house, the following steps must be taken <u>prior to the effective date of annexation</u>:

-Install a 20' wide emergency access drive from Laurelstone Drive to serve the existing house. (There is an existing fire hydrant on Laurelstone Drive that can serve the existing house if access is provided.)
-Record a temporary emergency access easement in the location of the new driveway (which can be extinguished upon the demolition of the existing house)

Once these steps are completed, MFRD can provide its standard complement of emergency services as well as ISO Class 1 fire protection to the existing house immediately upon annexation at no additional expense to the department. Emergency services and fire protection can also be provided to any future subdivision development. Additional fire protection measures will need to be extended to the site when it develops. Currently the study area is located 2 miles from Fire Station #8 (1730 E Northfield Blvd). The red line on the adjacent map represents the linear distance range from the nearest fire station.



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SOLID WASTE COLLECTION

The Solid Waste Department can provide weekly solid waste collection service to the existing residence immediately upon the effective date of annexation. The resident will need to bring the solid waste cart to either the Emery Road curve, which is approximately 1,200 feet from the house, or at Laurelstone Drive which is approximately 350 feet from the house. Day of service is on Tuesdays. The cost of the cart is $65.85. Brush and debris removal will also be provided. The monthly service fee is currently $7.50. This bill will be on either the CUD or Water Resources monthly billing statement. However, if the site does not have water or sewer, then the City will need to determine another billing mechanism.

Once developed, the cost to the City for carts for 36 proposed homes would be $2,478.60.

RECREATION

Murfreesboro's Parks and Recreation facilities will be immediately available to any existing and future occupants of the study area. These facilities and programs are funded by the Murfreesboro taxpayers and include approximately 1,300 acres throughout a parks system that includes 8 recreational and cultural facilities, a 15-mile greenway system located mostly along the Stones River, and 23 additional park sites. Murfreesboro Parks and Recreation develops programs and events to provide safe recreational and cultural activities for all demographics. Residents of the City of Murfreesboro may qualify for financial assistance for 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 is located outside of the John Pittard Elementary school zone, and they would become part of this school's zoned area upon annexation.

In its current state with one single family residential home, the annexation of the study area will have little to no impact on MCS. Any children living in the home would be eligible to attend John Pittard Elementary, but the number would be minimal.

Should the property be developed with 36 single family homes, it would add approximately 6 to 11 new students to the MCS school population.

As of the 2021-2022 school year, enrollment at John Pittard is 699 students with an ideal maximum student capacity for 975 students.

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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.

ELECTRIC SERVICE

Middle Tennessee Electric Membership Corporation (MTE) currently provides service to the existing house on the subject property. MTE has existing facilities adjacent to the property that will serve any future development.

STREET LIGHTING

The subject property only has street frontage along Emery Road, which does not have any streetlights. Streetlights will be installed throughout any future development if public streets are constructed.

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STREETS AND ACCESS

The annexation study area has access to Emery Road; however, it is anticipated that future development would not connect Emery Road with Sandstone Circle. Emery Road is a 2-lane ditch section roadway and contains a curve that does not meet the minimum centerline radius requirements, contains fencing within the County right-of-way, and is considered a substandard road.

There are not any public rights-of-way within the annexation area and therefore no costs would be experienced by the City street maintenance in its existing state.

Any new connections to public roadways must be approved by the City Engineer. It is anticipated that a private emergency egress drive will need to be constructed from Laurelstone Drive to the existing house driveway in the alignment of the future Laurelstone Drive connection as discussed in the Fire section.

The future development may need to participate in improvements to upgrade the existing adjacent substandard street. Any new public roadways to serve the Study Area must be constructed to City Standards and dedicate right-of-way. Additionally, Sandstone Circle and Laurelstone Drive stub into the Study Area and will need to connect through any future subdivision, and it is anticipated that no connection to Emery Road would exist given the street constraints.

Laurelstone Drive stubs into the southerly study area parcel. Connecting the Laurelstone Drive street stub into this property is important to provide an additional point of access to the proposed development, to disperse traffic, and to provide an access to and from Lascassas Pike for the proposed development. Staff recommends the execution of an agreement between the City, the property owners (the Watkins), and the developer prior to the annexation becoming effective that the Laurelstone Drive roadway connection will be recorded as a public right-of-way and constructed as a public street with the first section or phase of the proposed subdivision development.

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REGIONAL TRAFFIC & TRANSPORTION

The study area is served by Lascassas Pike and Osborne Lane as the major roadway facilities. The 2014 Level of Service Model in the 2040 Major Transportation Plan shows Lascassas Pike to be operating at a Level of Service D in the vicinity of the study area using average daily traffic (ADT) counts. Without the recommended improvements in the 2040 Major Transportation Plan, Lascassas Pike will be operating at a Level of Service F. The 2014 Level of Service Model in the 2040 Major Transportation Plan shows Osborne Lane to be operating at a Level of Service A in the vicinity of the study area using average daily traffic (ADT) counts. Without the recommended improvements in the 2040 Major Transportation Plan, Osborne Lane will be operating at a Level of Service B.

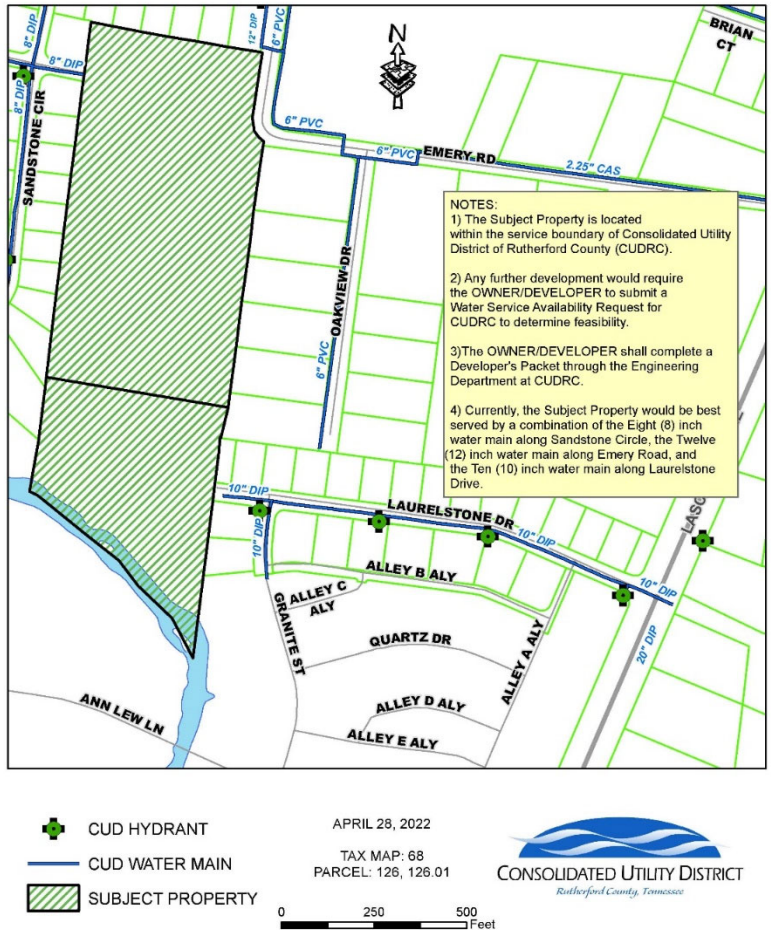
WATER SERVICE

The study area is located within Consolidated Utility District of Rutherford County's (CUDRC) service area. CUDRC's current infrastructure is sufficient to serve any existing structures; however, it does not provide any water services to the existing home at this time and the home is most likely currently using a well for its water supply.

CUDRC has an existing eight (8) inch water main along Sandstone Circle, twelve (12) and six (6) inch water mains along Emery Road, and a ten (10) inch water main along Laurelstone Drive to serve the study area as illustrated in the attached exhibit.

Any further development would be subject to the property owner(s) submitting a Water Service Availability Request to CUDRC for feasibility study and approval. Any water service provided to future structures would be dependent of the results of the Water Service Availability Request feasibility study in accordance with CUDRC's development policies and procedures.

2909 Emery Road Plan of Service/Annex/Rezone



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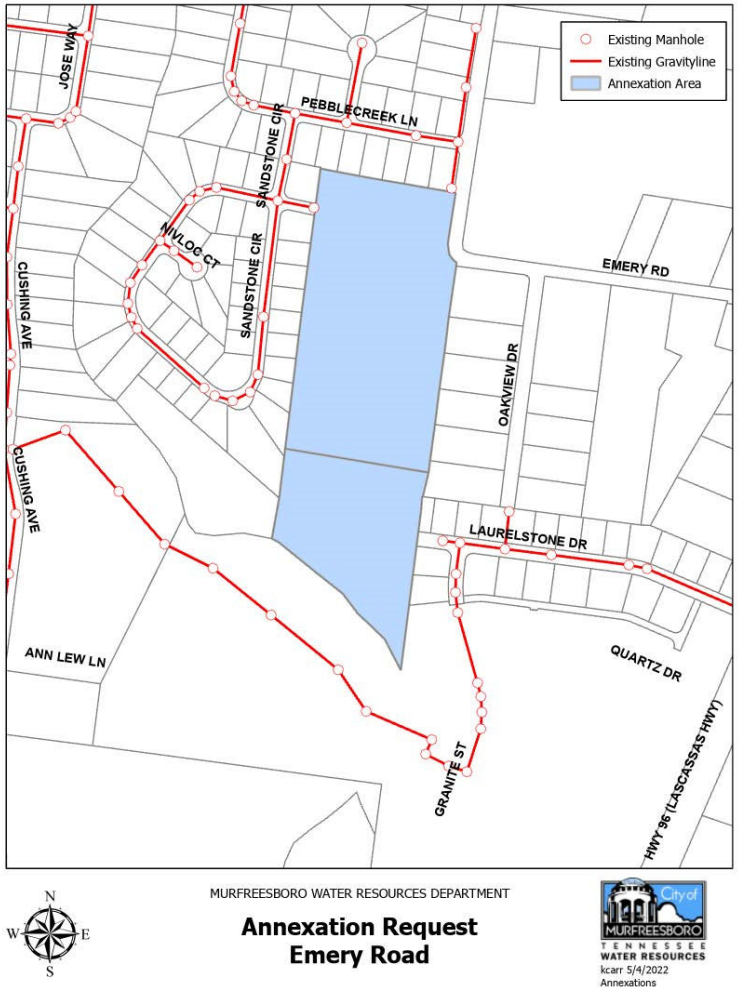
SANITARY SEWER SERVICE

The Water Resources Department (MWRD) would not be affected by this annexation if it remains in its existing state. The existing house would continue to be served with a private septic system as it is now.

With regard to any redevelopment, per the Department's definition of available, sanitary sewer is available to the northern property requesting annexation. Sewer is available at both the western and northern property lines. As the northern property develops, per MWRD policies and procedures, sewer must be extended to the southern property requesting annexation as well as to Emery Road. Sewer is also within the Laurelstone subdivision but may not be deep enough to extend by gravity.

With regard to redevelopment and the City's Sewer Allocation Ordinance, with the proposed zoning request of RS-10, the property would be allotted 3 single family units per acre (sfu's/acre) if approved. The total acreage is 16.8 total. Therefore, the Department would not have any issues with the development of 36 single-family homes, as proposed.

All main line extensions are the financial responsibility of the developer and must be extended in accordance with the Development Policies and Procedures of the Murfreesboro Water Resources Department.



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DRAINAGE

Public Drainage System

The drainage systems along and within Emery Road right-of-way (ROW) and the study area has access to the roadway drainage systems. No additional public drainage systems are within the annexation study area. Funding for public drainage system operation and maintenance is anticipated from Stormwater Utility Fee. Any new public drainage facilities proposed to serve the study area in the future must meet City standards.

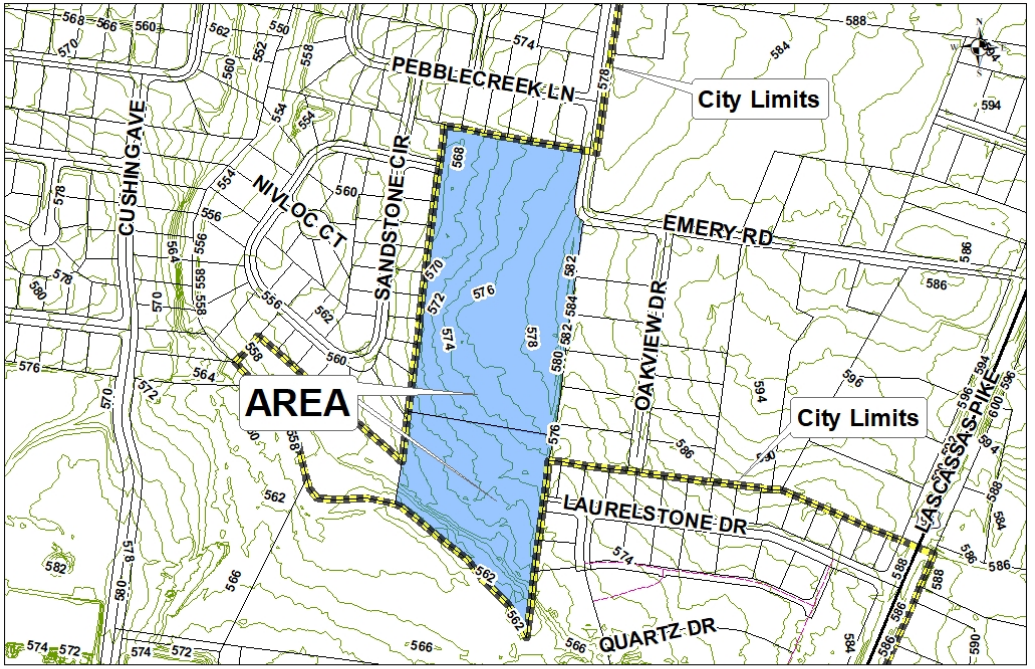
Regional Drainage Conditions

The study area drains to the West to the Pebblecreek development and on to Bushman Creek. Bushman Creek is located along the southerly boundary of the southerly parcel. The green lines on the adjacent map represent two-foot contour intervals.

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. There is an existing single-family residence in the study area that will generate approximately $39 per year in revenue for the Stormwater Utility Fee. The subject property is proposed to be developed with 36 residential units on the northerly 11-acre parcel with no near-term plans for the southerly 5.28-acre parcel. Based on this development scenario, it is anticipated that the site will generate approximately $1404 annually in revenue for the Stormwater Utility Fund upon full buildout.

New development in the study area must meet overall City of Murfreesboro Stormwater Quality requirements.



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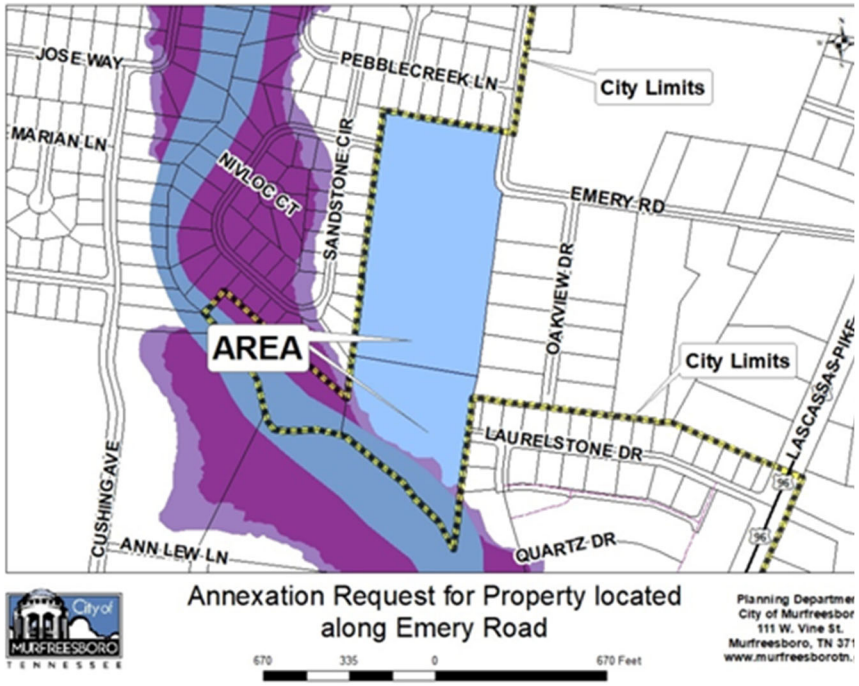
FLOODWAY

Approximately 1.1 acres of the study area is located within the regulatory floodway, approximately 0.06 acres is in the 100-year floodplain and approximately 0.41 acres is in the 500-year floodplain as delineated on the Flood Insurance Rate Maps (FIRM) developed by the Federal Emergency Management Agency (FEMA). The adjacent map shows the floodplain layers in and around the subject property along the Bushman Creek Branch. The adjacent map shows the location of the 100-year floodplain in blue and the regulatory floodway in the purple areas.



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.

DocuSign Envelope ID: 961181EF-CE00-4CF2-ADB5-BD854960AA6A

RESOLUTION 22-R-A-22 to annex approximately 16.3 acres located along Emery Road (Tax Map 068, Parcel 12601 and Tax Map 068, Parcel 12600), and to incorporate the same within the corporate boundaries of the City of Murfreesboro, Tennessee, The Anne Watkins Family Emery Road Trust and The Samuel Watkins Family Emery Road Trust, applicants [2022-504].

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 22-R-PS-22** on August 18, 2022; and

WHEREAS, the Planning Commission held a public hearing on the proposed annexation of such territory on June 1, 2022 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 the effective date of the Zoning Ordinance with respect to the annexed territory, **Ordinance 22-OZ-22,** 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
43A2035E51F9401...

Adam F. Tucker
City Attorney

SEAL

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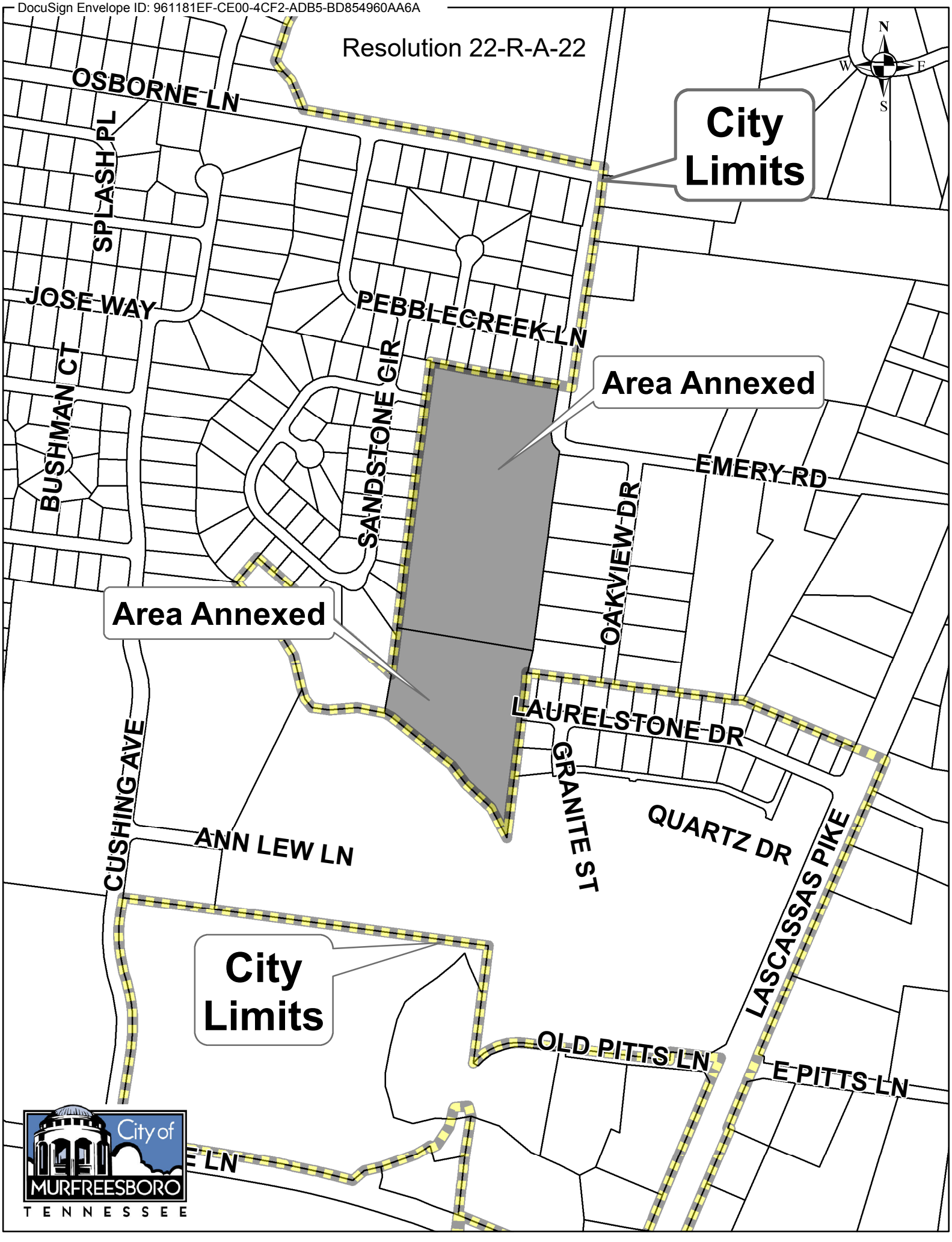
Resolution 22-R-A-22



City of MURFREESBORO TENNESSEE

MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS
JUNE 1, 2022
PROJECT PLANNER: HOLLY SMYTH

4.e. Zoning application [2022-406] for approximately 16.28 acres located along Emery Road to be zoned RS-10 simultaneous with annexation, Jeramie Taber applicant.

The subject area includes two (2) properties containing 11.0 and 5.8 acres, respectively, located along the west side of Emery Road, south of Pebblecreek Lane, west of Oakview Drive and east of Sandstone Circle (Tax Map 068, Parcels 126.01 and 126.00). The subject properties are located within the unincorporated area of Rutherford County and are zoned RM (Medium Density Residential) in the County. The larger northerly parcel is vacant and the smaller southerly parcel is developed with one single-family residence and several accessory structures. A small portion of the southerly property includes 100-year and 500- year flood zones.

The surrounding properties are mostly developed or developing with single-family detached subdivisions, with the exception of a portion of Laurelstone that includes duplex and four plex townhome type units. Properties within the City are zoned PRD or RS-15 while those in the County are RM (Residential Medium Density). Surrounding single family home lot sizes range from approximately 11,000-30,000 square feet in Pebble Creek I PRD and 8,000-12,000 square feet in Pebble Creek II PRD and Laurelstone PRD has a mixture of duplex, fourplex with the single family lots being 6,500 square feet in the City Limits. Adjacent county properties have large suburban estate lot sizes.

The applicant, Jeramie Taber, is requesting to zone the subject property to RS-10 (Single-Family Residential District) simultaneous with annexation. The proposed zoning has the potential for approximately 36 residential lots on the northerly vacant parcel and an unknown amount on the southerly property. It is anticipated that the existing homestead on the southerly parcel will remain for the foreseeable future.

Local designated stub streets of Sandstone Circle and Laurelstone Drive will provide access into the subject parcels in the future subdivision, so long as an easement for future right-of-way dedication on the southerly parcel is recorded prior to the effective annexation. The City does not envision proposed development on the subject property having a direct roadway connection to Emery Road. The City's Major Transportation Plan (MTP) shows Emery Road classified as a Community Collector. The MTP also shows a future 3-lane recommended improvement to extend nearby Osborne Lane from Emery Road to Lascassas Pike to provide improved connectivity to the highway sometime in the future.

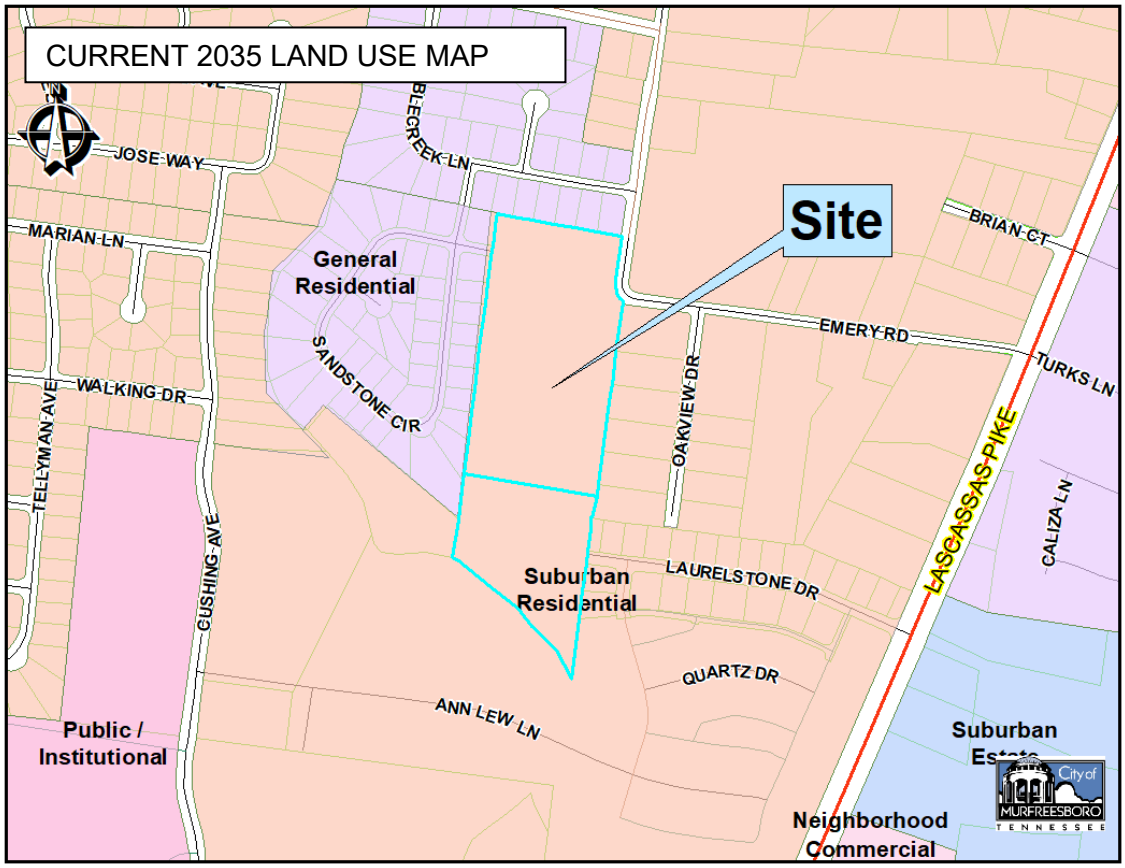
A neighborhood meeting was held on May 24, 2022 with approximately 15 neighbors. Concerns that were shared included:

- Preserving trees along the perimeter property lines
- The exacerbation of the current blasting problems being experienced by nearby subdivision that has caused sink holes
- Could construction traffic be accessed off Emery Road rather than via the Pebblecreek Subdivision
- Constructing the public street connection to Laurelstone Drive with the initial subdivision

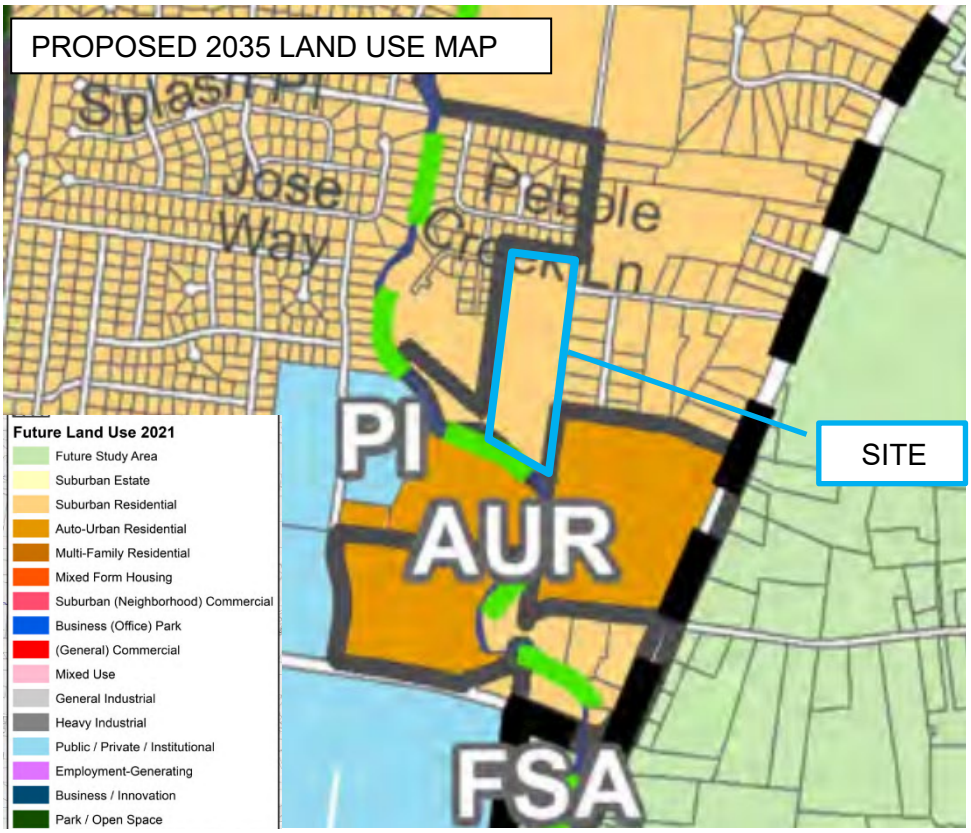
In the RS-10 district, lots are required to have a minimum lot size of 10,000 square feet and a minimum lot width of 65'. Setbacks for each lot are required to be 35' for front yards, 10' side yard, and 25' rear yard. The maximum allowed height is 35' and the maximum lot coverage is 25% within this district. Parking for four cars in each driveway is also required. There are no City standards in regards to design or building materials for single family homes in a bulk RS-10 district.

General Plan:

The existing Murfreesboro 2035 Comprehensive Plan Future Land Use Map and proposed future land use map (excerpts below) indicate that Suburban Residential (SR) is the most appropriate land use character for the project area. As new development continues around the City's periphery, a lower density *Suburban Residential (SR)* development will help to transition rural and urban development. This classification intends to serve as a transition from rural to urban residential development and is predominantly located along the periphery of the City. This character type includes small acreages or large lot estate development, or may also be smaller lots clustered around common open space. The comprehensive plan calls out residential single family homes with RS-15, RS-12, and RS-10 as existing zoning districts that are compatible with this designation with 2.0-3.54 dwelling units per acre as the recommended density. The attached General Plan description page provides more detailed information about this land use designation. The proposed future land use map pending before Planning Commission also recommends that the subject properties develop with a Suburban Residential land use character.



The requested RS-10 zone development type proposed is consistent with the Future Land Use Map's and the proposed future land use map's *Suburban Residential (SR)* character area. Additionally, the property is located within the Infill Service Line of the proposed land use map consideration under by the City.



Recommendation:

Staff is supportive of this zoning request for the following reasons:

1) Zoning request to RS-10 is consistent with the 2035 Comprehensive Future Land Use Plan designation of Suburban Residential (SR);

2) Zoning request to RS-10 is consistent with the proposed Future Land Use Plan designation of SR and is located within the proposed Infill Service Line.

3) RS-10 district allows for single family residential uses which are compatible with surrounding single family residential .

The applicant will be available at the Planning Commission meeting to discuss this proposed zoning request. The Planning Commission will need to conduct a public hearing prior to making a recommendation to the City Council.

SUBURBAN RESIDENTIAL CHARACTER (SR)

This community character classification is very different from the Urban and Auto-Urban (General) residential character categories. As new development continues around the City's periphery, a lower density Suburban Residential (SR) development will help to transition rural and urban development. This character type includes small acreages or large lot estate development, or may also be smaller lots clustered around common open space.

As in the case of many neighborhoods in Murfreesboro, particularly those in West Murfreesboro, or those that currently abut vacant land, the adjacent views that contribute to a semi-rural character are temporary, rather than permanent. The natural open space and views of the landscape are "borrowed" from the adjoining land. Consequently, as additional development occurs abutting these existing neighborhoods, the character will change. This is an important consideration as to the design of new subdivisions and whether they use the adjacent land or incorporate permanent open space into the development to sustain its original character. One means of achieving this character is by clustering development, thereby maintaining an equal or higher density while preserving permanent open space.

Development Types:

- Detached residential dwellings.
- Planned developments to provide other housing types (e.g., Auto-Urban attached residential) but with increased open space to preserve a suburban character setting.

Characteristics:

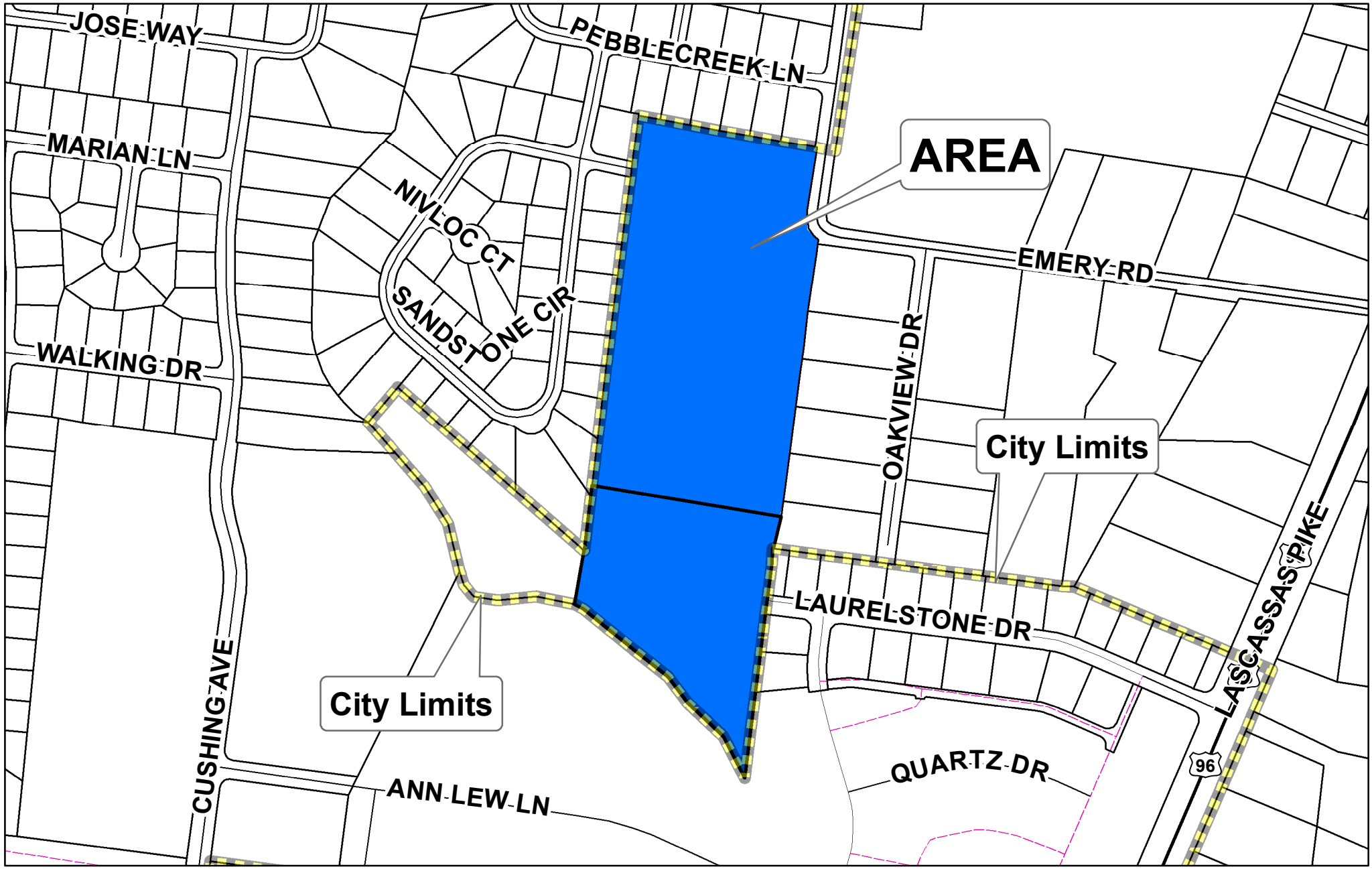
- Similar to Auto-Urban (General) Residential category, there is noticeable accommodation of the automobile on sites. Garages are typically integrated into the front facade of the dwelling with driveways on the side of homes or occupying a portion of the front yard space.
- Development options can be established which allow for smaller lot sizes in exchange for greater open space, with the additional open space devoted to maintaining the Suburban character and buffering adjacent properties and roads.

Density / Height Guidelines:

- 2.0 to 3.54 dwelling units per acre (DU/ac).

City Zoning Districts:

- Single Family Residential Districts:
  - RS-15
  - RS-12
  - RS-10



City of MURFREESBORO TENNESSEE

Zoning Request for Property located along Emery Road
RS-10 Simultaneous with Annexation

640 320 0 640 Feet

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

City of MURFREESBORO TENNESSEE

Zoning Request for Property located along Emery Road
RS-10 Simultaneous with Annexation

640 320 0 640 Feet

Planning Department
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37130
www.murfreesborotn.gov

City of Murfreesboro
Planning and Engineering Department
111 W. Vine Street, P.O. Box 1139
Murfreesboro, TN 37133-1139
(615) 893-6441 Fax (615) 849-2606
www.murfreesborotn.gov

Creating a better quality of life

Zoning & Rezoning Applications – other than rezoning to planned unit development	**$700.00**
Zoning & Rezoning Applications – Planned Unit Development, initial or amended	**$950.00**

Procedure for applicant:
The applicant must submit the following information to initiate a rezoning:

1. **A completed rezoning application (below).**
2. **A plot plan, property tax map, survey, and/or a legal description of the property proposed for rezoning. (Please attach to application.)**
3. **A non-refundable application fee (prices listed above).**

For assistance or questions, please contact a planner at 615-893-6441.

To be completed by applicant:

APPLICANT: CLYDE ROUNTREE, HUDDLESTON - STEELE ENG.

Address: 2115 NW BROAD ST. City/State/Zip: MURFREESBORO, TN 37129

Phone: 615-893-4084 E-mail address: rountree.associates@yahoo.com

PROPERTY OWNER: SAM WATKINS

Street Address or property description: 2909 EMERY RD MURFREESBORO, TN 37130

and/or Tax map #: 68 Group: Parcel (s): 126.00 & 126.01

Existing zoning classification: RM

Proposed zoning classification: RS-10 Acreage: 16.28

Contact name & phone number for publication and notifications to the public (if different from the applicant):

E-mail:

APPLICANT'S SIGNATURE (required):

DATE: 4-13-22

*******For Office Use Only**********

Date received: **MPC YR.:** **MPC #:**

Amount paid: **Receipt #:**

HUDDLESTON-STEELE
ENGINEERING, INC.
2115 N.W. Broad Street • Murfreesboro, TN 37129 • Engineering 615-893-4084 • Surveying 615-890-0372 • FAX: 615-893-0080

4.13.2022

Greg McKnight, Planning Director
111 W. Vine Street, P.O. Box 1139
Murfreesboro, TN 37133-1139

Re: Annexation and Rezoning Request

Described as Tax Map 68 Parcel 126.00 7 126.01 consisting of 16.28 +/- ac. to be rezoned PRD.

Dear Mr. Greg,

On behalf of our client, Jeramie Taber, we hereby request the annexation and rezoning of the property identified by tax map 68 and parcel 126.00 & 126.01, consisting of approximately 16.28+/- acres from RM to RS-10. The property is located 2909 Emery Road. The purpose for this rezoning is to construct a 35 lot subdivision with single family detached homes.

Please let me know if you need any additional information and thank you for your assistance with this request.

Sincerely,

Clyde Rountree, RLA

MINUTES OF THE MURFREESBORO PLANNING COMMISSION JUNE 1, 2022

6:00 PM **CITY HALL**

MEMBERS PRESENT
Kathy Jones, Chair
Ken Halliburton, Vice-Chairman
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

STAFF PRESENT
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Margaret Ann Green, Principal Planner
Marina Rush, Principal Planner
Amelia Kerr, Planner
Joel Aguilera, Planner
Carolyn Jaco, Recording Assistant
David Ives, Deputy City Attorney
Roman Hankins, Assistant City Attorney
Sam Huddleston, Executive Dir. Dev't Services

1. Call to order.

Chair Kathy Jones called the meeting to order at 6:00 p.m.

2. Determination of a quorum.

Chair Kathy Jones determined that a quorum was present.

3. Approve minutes of the May 4, 2022, Planning Commission meeting.

Ms. Jami Averwater moved to approve the minutes of the May 4, 2022 Planning Commission meeting; the motion was seconded by Vice-Chairman Ken Halliburton and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

There being no further discussion, Mr. Rick LaLance moved to approve the annexation petition and plan of services subject to all staff comments; the motion was seconded by Mr. Shawn Wright and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

Zoning application [2022-406] for approximately 16.3 acres located along Emery Road to be zoned RS-10 simultaneous with annexation, Jeramie Taber applicant. Mr. Matthew Blomeley 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. Bennie Pandorf of Huddleston-Steele Engineering and Mr. Jeramie Taber (developer) were in attendance representing the application.

Mr. Shawn Wright asked Mr. Jeramie Taber (applicant) if he would be willing to place any rental stipulations on this proposed neighborhood. Mr. Jeramie Taber came forward stating he would place two-year rental restrictions on the homes. Continuing, Mr. Taber stated there was no intention in selling the development to be all rental property.

Chair Kathy Jones opened the public hearing.

1. **Mr. J.T. Sherrell, 2538 Sandstone Circle** – requested for some type of buffer be placed between Pebblecreek subdivision and this proposal to distinguish the two separate subdivisions.

There being no one else to speak, Chair Kathy Jones closed the public hearing.

Vice-Chairman Ken Halliburton wanted clarification if the applicant would be required to place buffering between this property and the adjoining subdivision, Pebblecreek. Mr. Blomeley answered that it is not required per the Zoning Ordinance. However, the applicant could include a tree preservation easement with tree protection measures with this proposal.

Mr. Bennie Pandorf stated the applicant has agreed to provide a tree preservation easement with tree protection measures and additional buffering where needed.

Mr. Rick LaLance stated that City Council has designated and funded widening of Lascassas Pike from Middle Tennessee Boulevard to Dejarnette Lane.

There being no further discussion, Mr. Rick LaLance moved to approve the zoning application subject to specific information being provided to City Council regarding the tree preservation and landscape buffering and all other staff comments; the motion was seconded by Mr. Shawn Wright and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

Annexation petition and plan of services [2022-503] for approximately 11.4 acres located along Lascassas Pike and East Pitts Lane, Betty Taylor, Elizabeth Taylor, and Terry Taylor applicants. Mr. Matthew Blomeley presented the Staff Comments regarding this item, a copy of which is maintained in the permanent files of the Planning Department

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ORDINANCE 22-OZ-22 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 16.3 acres along Emery Road as Single-Family Residential Ten (RS-10) District, simultaneous with annexation; Jeramie Taber, applicant [2022-406].

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 Single-Family Residential Ten (RS-10) 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

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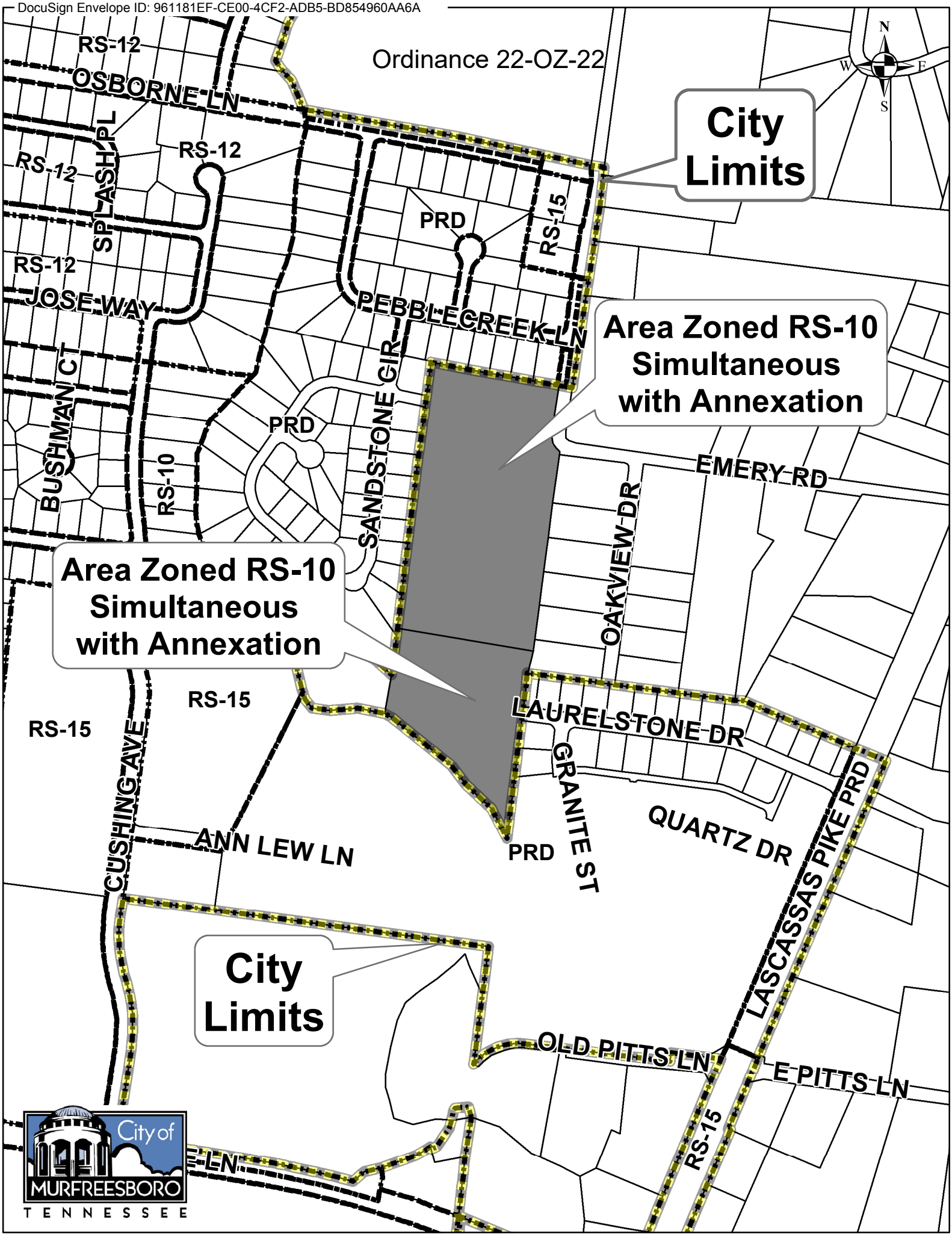


COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Plan of Services, Annexation, and Zoning for property along Lascassas Pike
[Public Hearings Required]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	☒
Resolution	☒
Motion	☐
Direction	☐
Information	☐

Summary

Annexation and zoning of approximately 11.4 acres located along Lascassas Pike.

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

Betty, Terry, and Elizabeth Taylor have initiated petitions of annexation [2022-503] for approximately 11.4 acres located along Lascassas Pike. The City developed its plan of services for this area. Additionally, Murfreesboro Medical Clinic presented to the City a zoning application [2022-407] for the same 11.4 acres to be zoned CF (Commercial Fringe District) simultaneous with annexation. During its regular meeting on June 1, 2022, the Planning Commission conducted public hearings on these matters and then voted to recommend their approval.

Council Priorities Served

Improve Economic Development

This rezoning will enable commercial uses, including a new satellite medical office for Murfreesboro Medical Clinic and several commercial outparcels, which, upon development, could create jobs for the community and generate tax revenue for the City.

Attachments:

1. Resolution 22-R-PS-23

2. Resolution 22-R-A-23
3. Ordinance 22-OZ-23
4. Maps of the area
5. Planning Commission staff comments from the 06/01/2022 meeting
6. Planning Commission minutes from 06/01/2022 meeting
7. Plan of services
8. Other miscellaneous exhibits

MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
JUNE 1, 2022
PROJECT PLANNER: HOLLY SMYTH

4.f. Annexation petition and plan of services [2022-503] for approximately 11.4 acres located along Lascassas Pike and East Pitts Lane, Betty Taylor, Elizabeth Taylor, and Terry Taylor applicants.

The property owners listed above, represented by SEC Engineering, have submitted a petition requesting their properties be annexed into the City of Murfreesboro with a simultaneous request to zone the properties CF (Commercial Fringe District). The subject area includes two properties fronting along the east side of Lascassas Pike (aka State Route 96) and one fronting the north side of East Pitts Lane. The two parcels along Lascassas Pike each contain one single family residence with accessory structures while the parcel fronting on East Pitts Lane is vacant. The property tax map numbers are:

- Tax Map 68, Parcel 117.01 (addressed 2684 Lascassas Pike with 1.5 acres)
- Tax Map 68, Parcel 106.01 (addressed 2664 Lascassas Pike with 5.71 acres)
- Tax Map 68, Parcel 113.00 (vacant 4.2 acre parcel)

The annexation study area does not contain any right-of-way (ROW) because Lascassas Pike fronting the subject property is within the current City limits. The ROW of East Pitts Lane was not included as part of the annexation study area given its substandard nature. The requested parcels are located within the City's Urban Growth Boundary.

The subject parcels are located within the existing adopted Murfreesboro 2035 Comprehensive Plan Future Land Use Map shown on page 5 of the Plan of Services and it indicates a Suburban Estate (SE) land use for the project area. However, the subject parcels are located outside of the proposed Infill Service Line on the proposed update to the Future Land Use Map, which is currently being considered by the Planning Commission, also as shown on page 5 of the Plan of Services. The purpose of the proposed Infill Service Line is to help facilitate growth and development in an orderly, planned, and sustainable manner and to minimize strain on City services. City growth beyond the line could occur if the area undergoes a study and it is determined that it would be beneficial to the City to include it within the City limits.

The proposed Infill Service Line is limited to only the west side Lascassas Pike from Compton Road to Bushman Creek just south of Twin Oak Drive (an approximately 2 mile-long segment of Lascassas Pike). The City's proposed Infill Service Line only crosses to the easterly side of Lascassas Pike south of Bushman Creek in an already developed area as shown in the excerpted map of page 5 of the Plan of Services.

Plan of Services:

Staff has prepared a Plan of Services for the proposed annexation, which is attached to this report for the public hearing. It details how all services will be provided to the subject property if the property were to be annexed.

The properties currently are served with a private septic system to the existing homes. Per the Water Resources Department's definition sanitary sewer is not currently "available" to the site. Sewer is located in the entrance of the Laurelstone Subdivision on the western side of Lascassas Pike, and the extension of sewer to the properties would require two off-site sewer easements to be dedicated to the City.

The adjoining two streets are ditch section roadways with no sidewalks. Traffic along Lascassas Pike is at LOS D with the current average daily traffic that is anticipated to fall to LOS F without the improvements as shown in the Major Transportation Plan to widen to 5-lanes.

Recommendation:

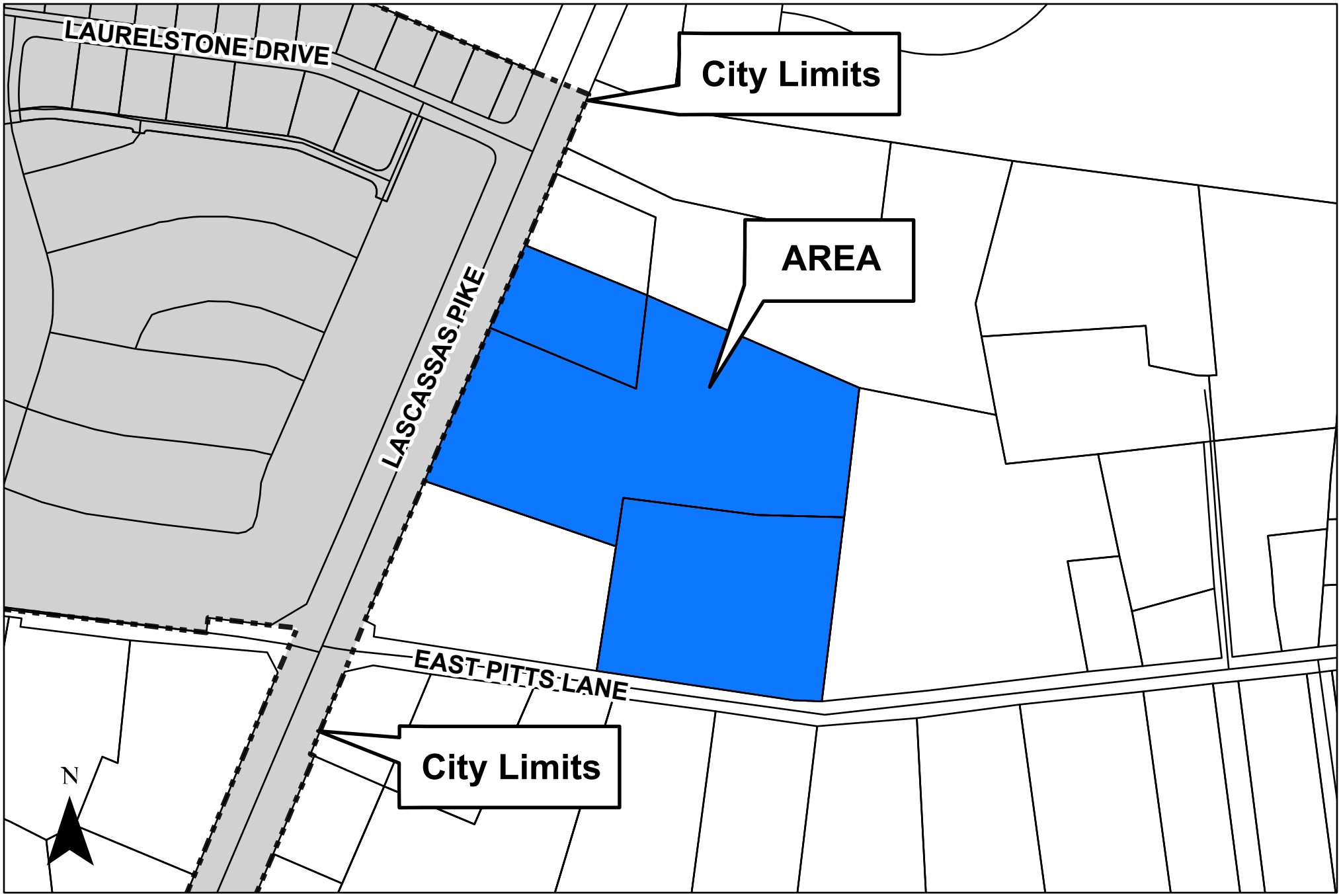
Staff Recommends the Planning Commission deny annexation and zoning of the subject properties (Tax Map 68 Parcels 117.01, 106.01, & 113.00) because:

1. The requested zone change to CF is in direct conflict with both the existing "Suburban Estate" General Plan Land Use designation and the proposed "Future Study Area" designation.
2. Per the Water Resources Department's definition of available, sanitary sewer is not available to the area.
3. It is Staff's position that infill occurring within the proposed Infill Service Line should occur first before considering annexing beyond the line to maximize the use of existing road and utility infrastructure.
4. Lascassas Pike is currently experiencing high peak hour traffic volumes that should not be further exacerbated by potentially more intense City development due to the provision of City sewer. Improvements to widen Lascassas Pike from 2 to 5 lanes, which are expected to exceed one million dollars in cost, are not planned anywhere in the near term to help offset the impact of further development in this area.
5. Any annexation beyond the proposed Infill Service Line may unduly trigger additional annexation requests on the easterly side of Lascassas Pike which have the above issues.
6. Staff is not supportive of bulk zoning requests on the fringe of the City where established development patterns do not exist and potential conflicting uses could occur and negatively impact surrounding uses.

Action Needed:

The applicant has been advised of staff's position and has chosen to still pursue annexation and zoning of the subject properties.

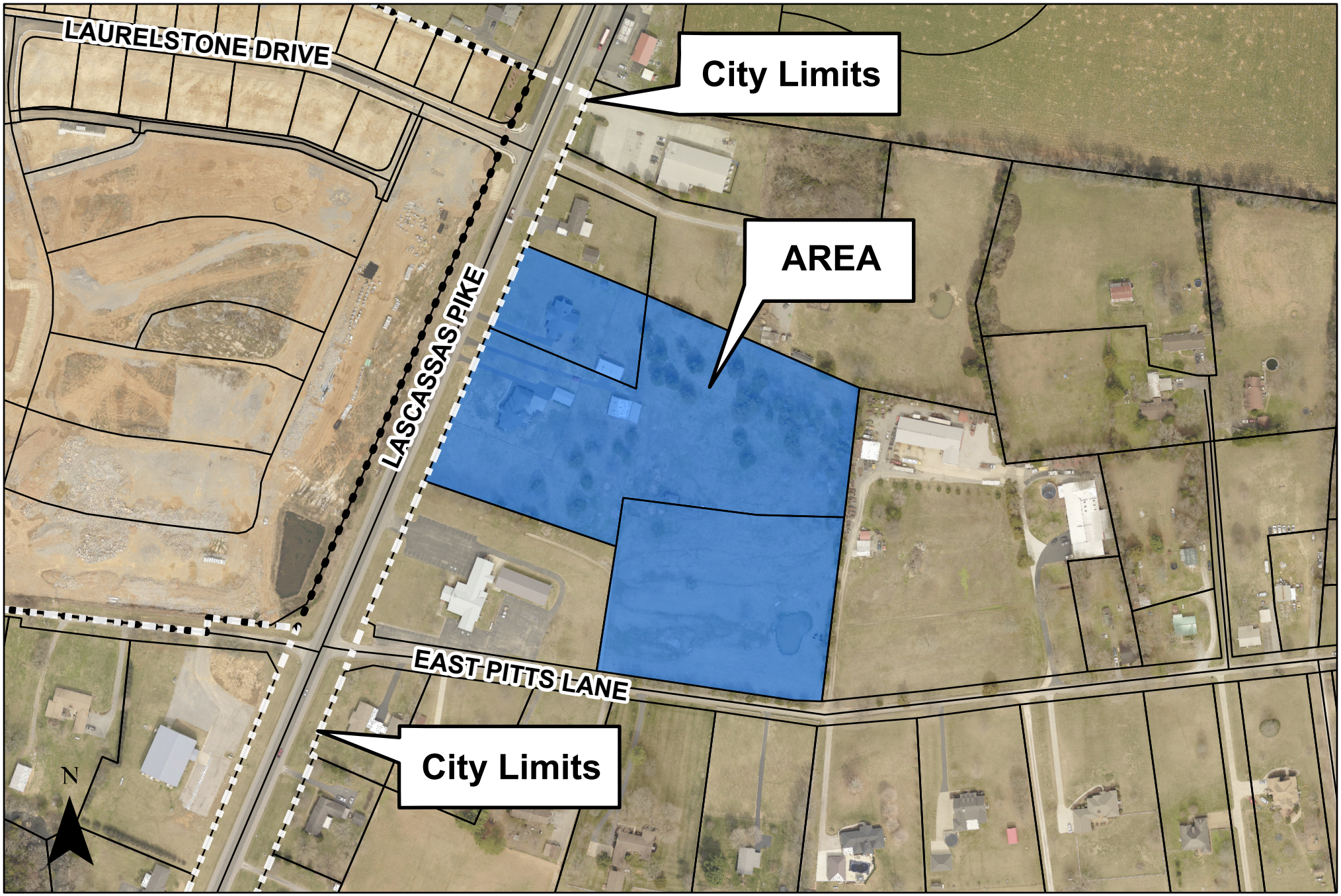
The applicant will be available at the Planning Commission meeting to discuss this proposed annexation petition and plan of services. The Planning Commission will need to conduct a public hearing, after which it will need to discuss this matter and then formulate a recommendation to City Council.



Annexation request for property along
Lascassas Pike and East Pitts Lane

0 230 460 920 1,380
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov



Annexation request for property along
Lascassas Pike and East Pitts Lane

0 230 460 920 1,380
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

2684 Lascassas Pike

Tax Map 68 Parcel 117.00

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. Betty Stacey Taylor
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signature: Betty Stacey Taylor Status: OWNER Date: 4-12-2022

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. _____
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. _____
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

E. Pitts Ln

Tax Map 68 Parcel 113.00

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. Betty Stacey Taylor
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Betty Stacey Taylor
Signature: _____ Status: OWNER Date: 4-12-2022

2684 Lascassas Pike Murfreesboro, TN 37130
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. _____
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. _____
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

2664 Lascassas Pike

Tax Map 68 Parcel 106.01

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. Terry L. Taylor
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signature: Terry L. Taylor Status: owner Date: 4/12/2022

Mailing Address (if not address of property to be annexed)

2. Elisabeth Ann Taylor
Printed Name of Owner (and Owner's Representative, if Owner is an entity)

Signature: Elisabeth Ann Taylor Status: owner Date: 4-12-2022

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. _____
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

Murfreesboro GIS Data

4/14/2022, 5:15:20 AM

ORTHO_2021

Red: Band_1

Green: Band_2

Blue: Band_3

Schools

Parcels

Streets

Private

Stream Lines

1:9,028

0 0.05 0.1 0.2 mi

0 0.1 0.2 0.4 km

City Of Murfreesboro IT Department

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MINUTES OF THE MURFREESBORO PLANNING COMMISSION JUNE 1, 2022

6:00 PM **CITY HALL**

MEMBERS PRESENT
Kathy Jones, Chair
Ken Halliburton, Vice-Chairman
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

STAFF PRESENT
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Margaret Ann Green, Principal Planner
Marina Rush, Principal Planner
Amelia Kerr, Planner
Joel Aguilera, Planner
Carolyn Jaco, Recording Assistant
David Ives, Deputy City Attorney
Roman Hankins, Assistant City Attorney
Sam Huddleston, Executive Dir. Dev't Services

1. Call to order.

Chair Kathy Jones called the meeting to order at 6:00 p.m.

2. Determination of a quorum.

Chair Kathy Jones determined that a quorum was present.

3. Approve minutes of the May 4, 2022, Planning Commission meeting.

Ms. Jami Averwater moved to approve the minutes of the May 4, 2022 Planning Commission meeting; the motion was seconded by Vice-Chairman Ken Halliburton and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

There being no one else to speak, Chair Kathy Jones closed the public hearing.

Vice-Chairman Ken Halliburton wanted clarification if the applicant would be required to place buffering between this property and the adjoining subdivision, Pebblecreek. Mr. Blomeley answered that it is not required per the Zoning Ordinance. However, the applicant could include a tree preservation easement with tree protection measures with this proposal.

Mr. Bennie Pandorf stated the applicant has agreed to provide a tree preservation easement with tree protection measures and additional buffering where needed.

Mr. Rick LaLance stated that City Council has designated and funded widening of Lascassas Pike from Middle Tennessee Boulevard to Dejarnette Lane.

There being no further discussion, Mr. Rick LaLance moved to approve the zoning application subject to specific information being provided to City Council regarding the tree preservation and landscape buffering and all other staff comments; the motion was seconded by Mr. Shawn Wright and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

Annexation petition and plan of services [2022-503] for approximately 11.4 acres located along Lascassas Pike and East Pitts Lane, Betty Taylor, Elizabeth Taylor, and Terry Taylor applicants. Mr. Matthew Blomeley presented the Staff Comments regarding this item, a copy of which is maintained in the permanent files of the Planning Department

and is incorporated into these Minutes by reference. Mr. Matthew Blomeley explained Staff Recommends the Planning Commission deny annexation and zoning of the subject properties for the reasons noted in the Staff comments.

The Planning Commission began discussing the City's proposed Infill Service Line. Mr. Greg McKnight explained it has not been adopted; it is a tool to be used when reviewing annexation requests. Mr. Shawn Wright stated it was difficult to make a decision when the Infill Service Line has not been adopted. Continuing, Mr. Wright asked if sewer capacity was available for this proposal. Mr. Blomeley answered yes, sewer was available from Laurelstone if the applicant obtains sewer easements.

Mr. John Harney (representative), Mr. Joey Peay (CEO, Murfreesboro Medical Clinic), Ms. Betty Taylor, Ms. Elizabeth Taylor, and Mr. Terry Taylor (applicants) were in attendance representing the application.

Chair Kathy Jones opened the public hearing.

1. **Mr. John Harney, 6748 West Gum Road** – requested for the annexation petition to be approved. He also noted that the applicant has already acquired sewer easements.

2. **Mr. Joey Peay, 1501 Cripple Creek Road** – requested for Planning Commission's support for the annexation petition and rezoning application.

Chair Kathy Jones closed the public hearing.

Vice-Chairman Ken Halliburton asked for additional information regarding road improvements along Lascassas Pike. Mr. Shawn Wright explained City Council had approved four road projects and Lascassas Pike is one of the approved projects.

There being no further discussion, Mr. Shawn Wright moved to approve the annexation petition and plan of services; the motion was seconded by Vice-Chairman Ken Halliburton and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Warren Russell
Shawn Wright

Abstain: Rick LaLance

Nay: None

Zoning application [2022-407] for approximately 11.4 acres located along Lascassas Pike and East Pitts Lane to be zoned CF simultaneous with annexation, Murfreesboro Medical Clinic applicant. Mr. Matthew Blomeley presented the Staff Comments regarding this item, a copy of which is maintained in the permanent files of the Planning Department and is incorporated into these Minutes by reference. Mr. Matthew Blomeley explained Staff Recommends the Planning Commission deny annexation and zoning of the subject properties for the reasons outlined in the Staff Comments.

Mr. Rob Molchan (landscape architect), Mr. John Harney (representative), Mr. Joey Peay (CEO, Murfreesboro Medical Clinic), Ms. Betty Taylor, Ms. Elizabeth Taylor, and Terry Taylor (property owners) were in attendance representing the application. Mr. Rob Molchan began a PowerPoint presentation of the proposed development.

The Planning Commission began discussing the zoning application with questions concerning future access and road improvements to East Pitts Lane. Mr. Rob Molchan explained that it is currently a substandard road. When a site plan is submitted, road improvements would be addressed at that time.

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RESOLUTION 22-R-PS-23 to adopt a Plan of Services for approximately 11.4 acres located along Lascassas Pike and East Pitts Lane, Betty Taylor, Elizabeth Taylor and Terry Taylor, applicants [2022-503].

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 June 1, 2022 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 August 18, 2022, pursuant to a Resolution passed and adopted by the City Council on June 23, 2022, and notice thereof published in The Murfreesboro Post, a newspaper of general circulation in said City, on August 2, 2022; 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 22-R-A-23**, 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
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_____
Adam F. Tucker
City Attorney

SEAL

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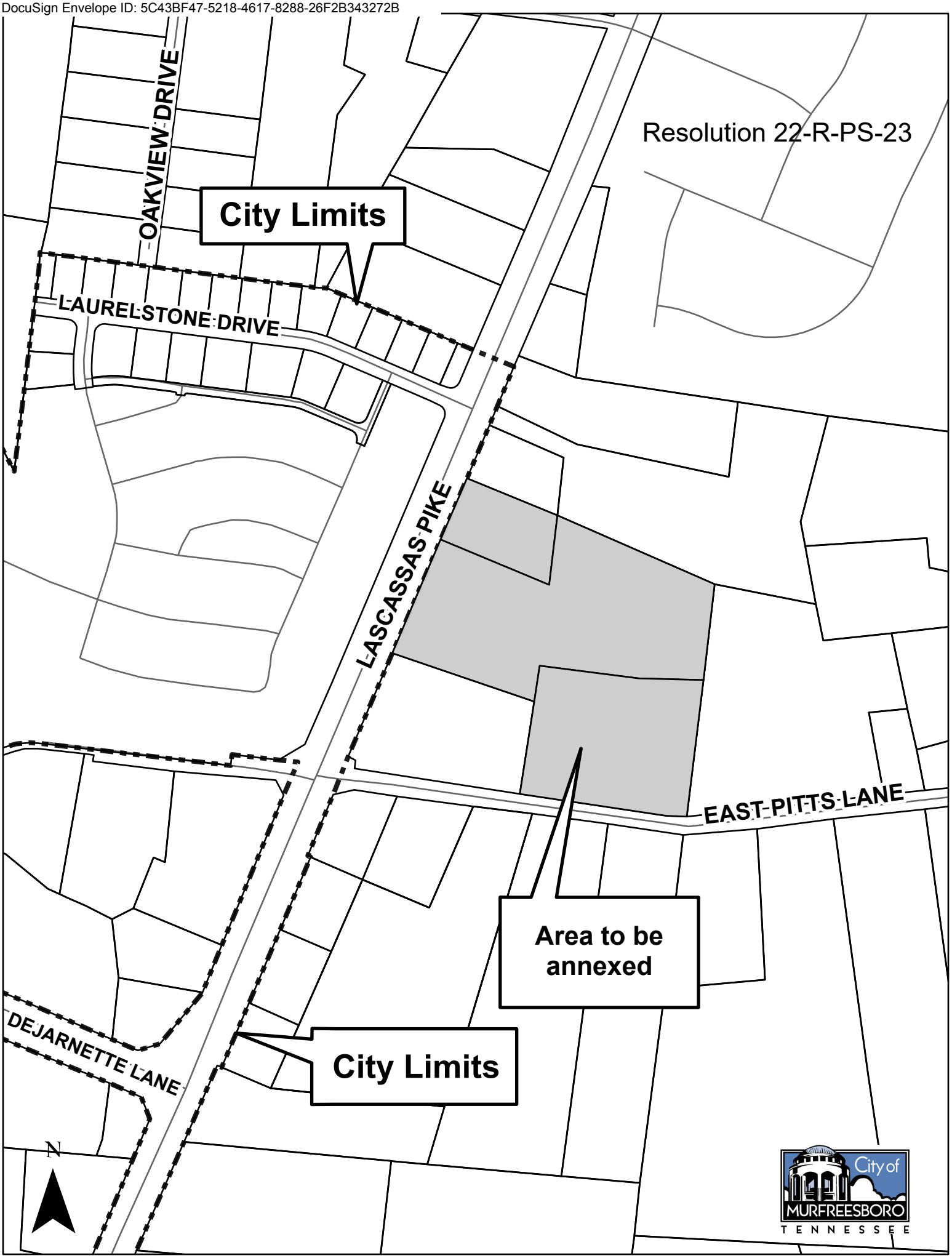

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Resolution 22-R-PS-23

ANNEXATION REPORT FOR PROPERTY LOCATED ALONG LASSCASSAS PIKE NORTH OF EAST PITTS LANE INCLUDING PLAN OF SERVICES (FILE 2022-503)

PREPARED FOR THE
MURFREESBORO PLANNING COMMISSION – June 1, 2022

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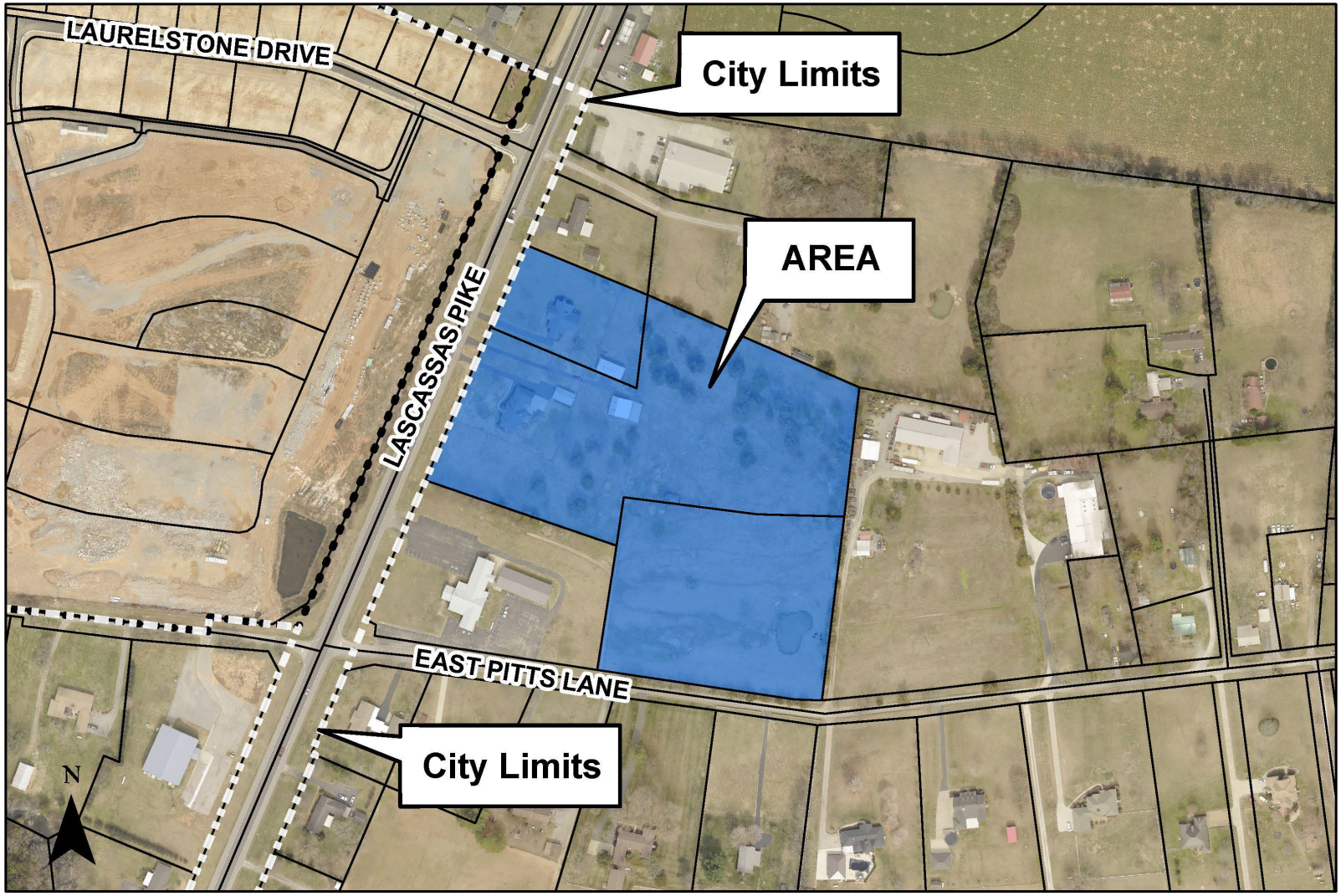

Annexation request for property along
Lascassas Pike and East Pitts Lane

0 230 460 920 1,380
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

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INTRODUCTION

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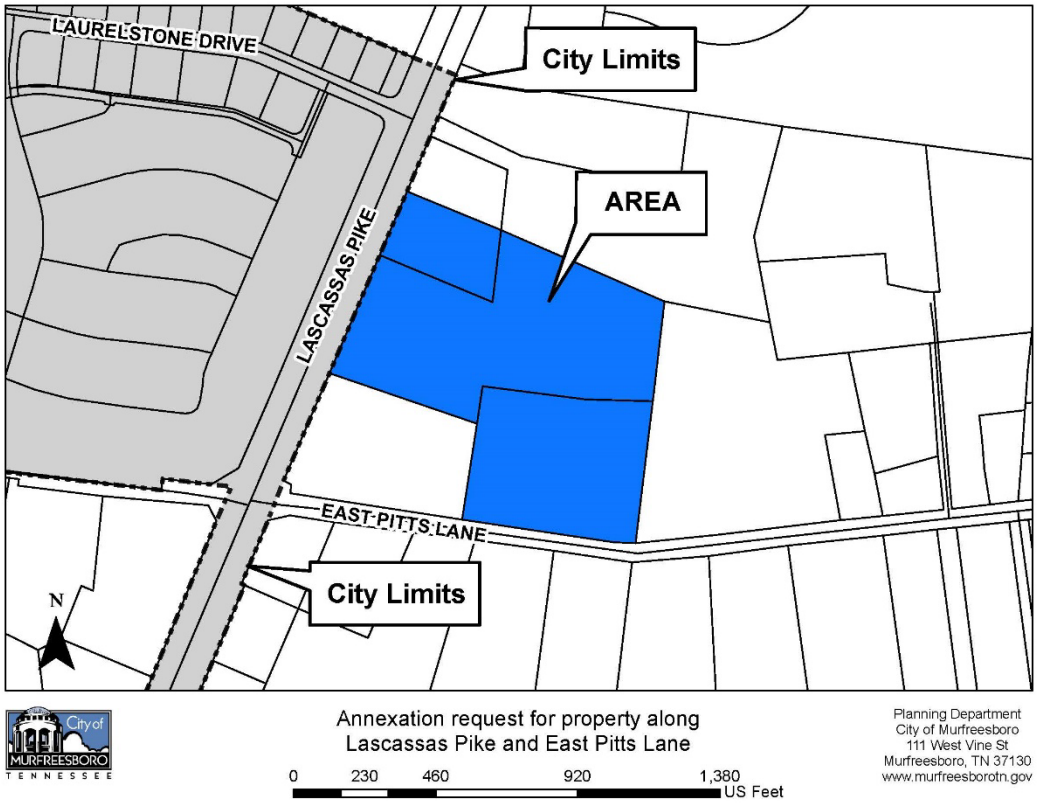
OVERVIEW

The property owners, Betty Taylor, Elizabeth Taylor, and Terry Taylor, have submitted a petition requesting annexation by the City. The subject area includes two properties fronting along the east side of Lascassas Pike (aka State Route 96) and one fronting the north side of East Pitts Lane. The two parcels along Lascassas Pike each contain one single family residence with accessory structures while the parcel fronting on East Pitts Lane is vacant. The property tax map numbers are:

-Tax Map 68, Parcel 117.01 with 1.5 acres (addressed 2684 Lascassas Pike)
-Tax Map 68, Parcel 106.01 with 5.71 acres (addressed 2664 Lascassas Pike)
-Tax Map 68, Parcel 113.00 (vacant 4.2 acre parcel)

Simultaneous with this application is a request to zone the property to Commercial Fringe (CF).



GENERAL PLAN LAND USE

The study area is located within the City of Murfreesboro's existing Urban Growth Boundary and is only contiguous with the City limits along its western edge.

The existing adopted Murfreesboro 2035 Comprehensive Plan Future Land Use Map on the next page indicates that Suburban Estate (SE) is the most appropriate land use character for the project area if in the City limits. This classification recommends development of 1 to 0.35 single family homes per acre.

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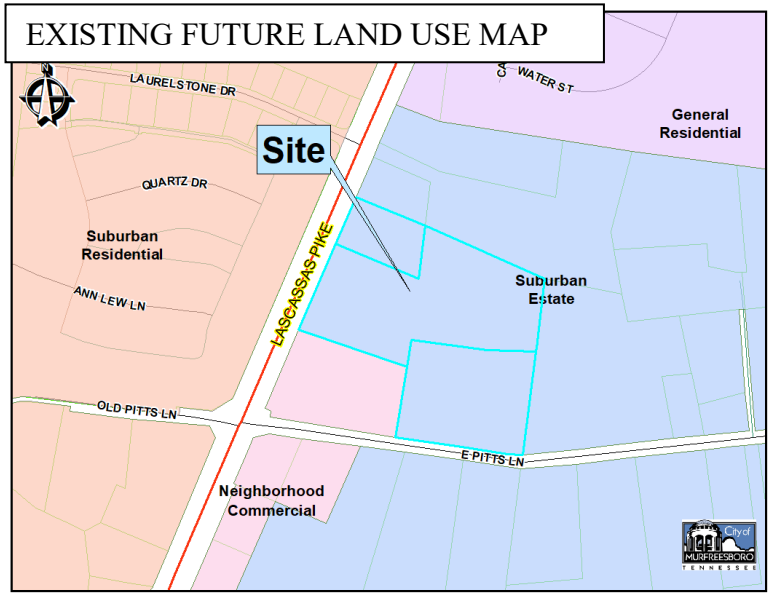
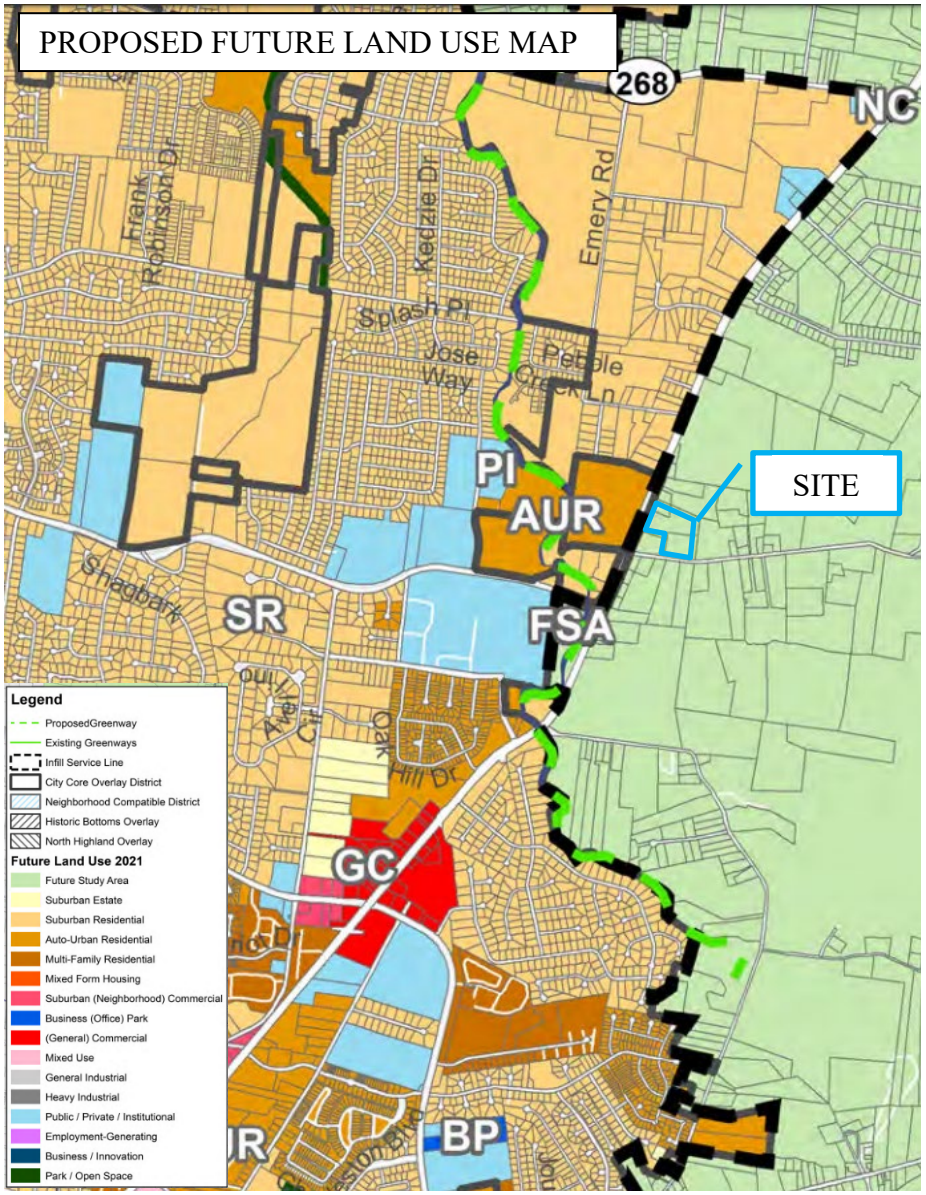
EXISTING FUTURE LAND USE MAP



The Planning Commission is currently considering a proposed future land use map (shown to the right), which identifies a proposed Infill Service Line. The purpose of the proposed Infill Service Line is to help facilitate growth and development in an orderly, planned, and sustainable manner. The study area lies outside of the proposed Infill Service Line as does everything on the east side of Lascassas Pike for approximately 2 miles.

Areas outside the proposed Infill Service Line are classified as Future Study Area (FSA) because they are areas not anticipated to be annexed and developed within the next 14 years within the City. Also the FSA defined areas typically have limited sewer availability, roads are typically substandard with ditch-sections, no sidewalks, and no streetlights. Development in the County is not precluded.

PROPOSED FUTURE LAND USE MAP



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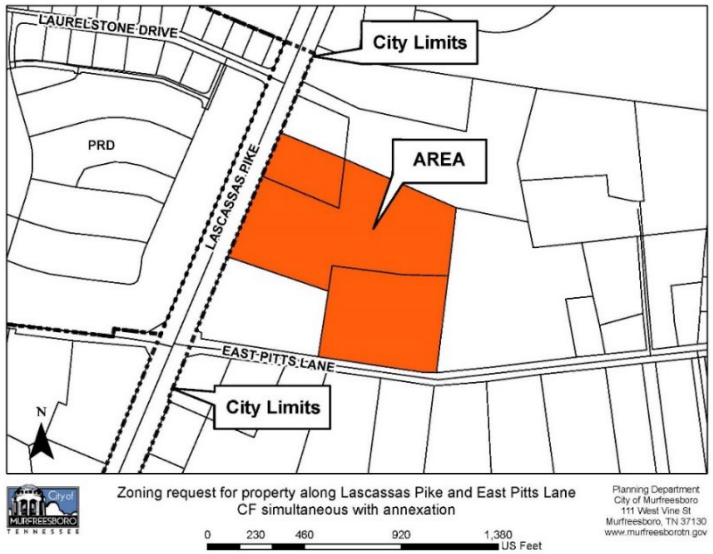
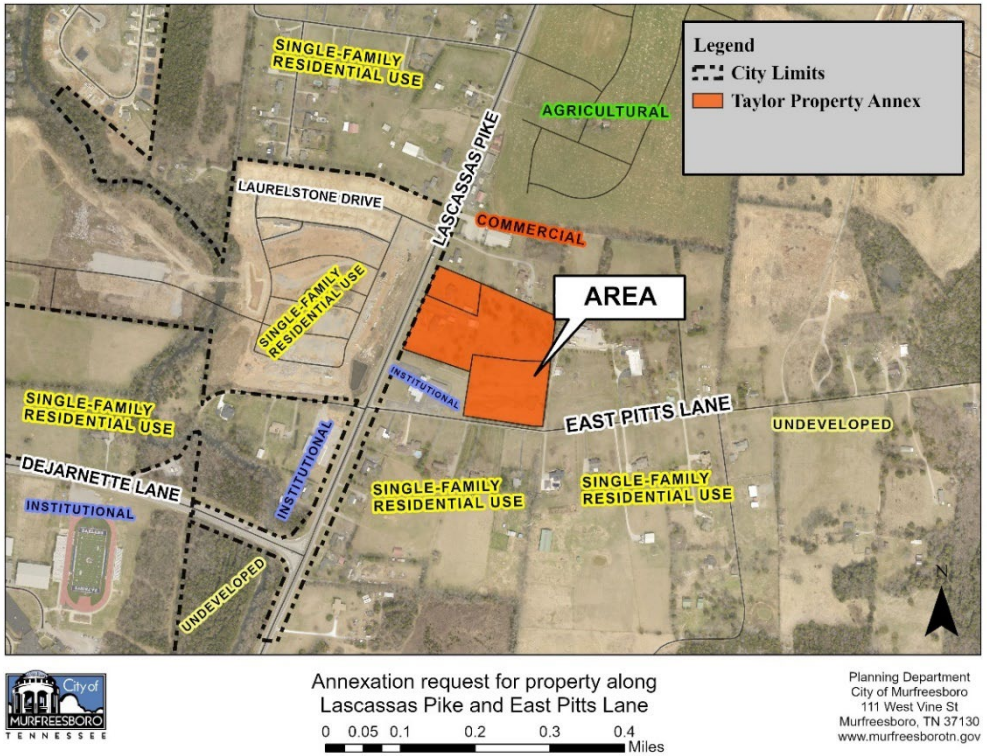
CITY ZONING

A separate application has been submitted by Murfreesboro Medical Clinic, requesting Commercial Fringe (CF) zoning for the study area simultaneous with annexation. The parcels requested for annexation are shown in red in the adjacent drawing and are currently zoned Residential Medium-Density (RM) in the County of Rutherford as shown in the adjacent drawing.

The zoning on the adjacent properties to the west across Lascassas Pike are PRD (Planned Residential District) in the City. To the south and the east is RM in the County and to the north is RM, CS (Commercial Services), and PUD (Planned Unit Development) (for 108 unit single family residential subdivision) in the County.





PRESENT AND SURROUNDING LAND USE

The study area consists of two single family residential uses and an unimproved property. The properties on the west side of Lascassas Pike are in the City limits and are mostly developed or developing single-family residential subdivisions. Properties on the east side of Lascassas Pike are all in the unincorporated County and include a Dollar General, gas station, churches, single family detached homes, and a recently approved Planned Unit Development for 108 single family homes on a STEP sewer system in the area currently labeled Agricultural on the above map.

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TAXES AND REVENUE

The first City tax bill for all property annexed during the calendar year of 2022 will be due on December 31, 2023. 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 1
Estimated Taxes from Rutherford Co Assessor's Site

Owner of Record	Acres	Land Mkt Value	Improvement Value	Assessment Value	Estimated City Taxes
Betty S Taylor	1.5	$114,200	$267,700	$99,475	$1,283
Terry L Taylor	5.71	$135,200	$372,700	$134,575	$1,735
Betty S Taylor	4.2	$70,100	$0	$17,525	$226

These figures are for the property in its current state and are subject to change upon development.

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PLAN OF SERVICES

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POLICE PROTECTION

At present, the study area receives police services through the Rutherford County Sheriff's Department. If annexed, the Murfreesboro Police Department will begin providing services which include patrol, traffic, and criminal investigations. Other services such as community crime prevention programs are also available. Services will be provided upon the effective date of annexation.

The Murfreesboro Police Department can immediately provide police services to the property as it currently exists. The current police zone that borders the property is Zone 3.

Police staffing numbers are assessed based upon cumulative residential population numbers.

FIRE AND EMERGENCY SERVICE

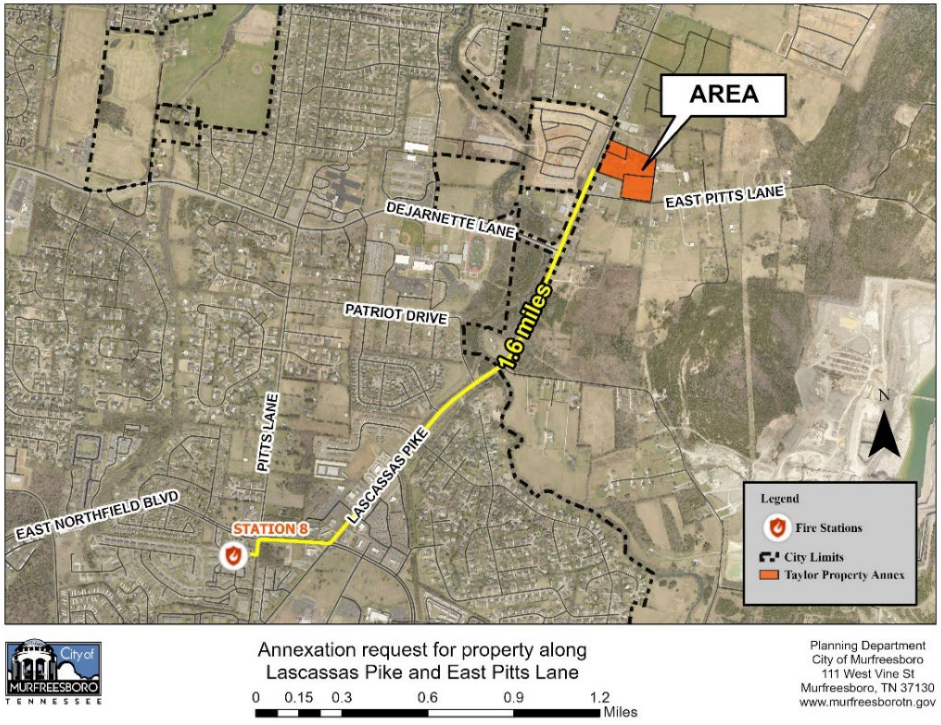
The study area includes two single family homes located at 2684 and 2664 Lascassas Pike and a vacant parcel.

The Murfreesboro Fire and Rescue Department (MFRD) can provide emergency services to the study area's existing structures immediately upon the effective date of annexation at no additional expense. Distance to station is within acceptable norms for response. Fire trucks carry 1,000 feet of hose to connect to existing hydrants to allow service to the homes.

The nearest fire hydrant to the north of the study area is on the nearby gas station property which is 670' north of 2684 Lascassas Pike home structure and 740' north of 2664 Lascassas Pike home structure as the truck drives. The nearest fire hydrant to the south of the study area is on the church property near the corner of Lascassas Pike and East Pitts Lane which is 810' south of 2664 Lascassas Pike home structure and 909' south of 2684 Lascassas Pike home structure.

Emergency services and fire protection can be provided upon development, as additional fire hydrants would be required when the site develops.

Currently the study area is located 1.6 miles from Fire Station #8 (1730 E Northfield Blvd). The yellow line on the adjacent map represents the linear distance range from the nearest fire station.



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ELECTRIC SERVICE

Middle Tennessee Electric Membership Corporation (MTEMC) currently has service to the existing 2 homes.

Any new electrical infrastructure installed to serve new development will be required to adhere to MTEMC standards. Overhead power lines exists along the easterly side of Lascassas Pike and along the northerly side of East Pitts Lane which may be required to be undergrounded in the future when development occurs

STREET LIGHTING

The subject properties have street frontage along Lascassas Pike and East Pitts Lane, with no street lights along the frontages. At the southwest corner of East Pitts Lane and Lascassas Pike there is one light on the wooden power pole at the intersection.

Streetlights will be installed within the development if public streets are constructed.

SOLID WASTE COLLECTION

The Solid Waste Department will provide residential trash service upon the effective date of annexation to the 2 homes at 2684 and 2664 Lascassas Pike. Their service day would be on Tuesdays. Brush and debris removal will also be provided. The cost to service these addresses is $7.50 per month. The bill will be either on the CUD or Water Resources monthly billing statement.

Any future commercial development on the subject properties would require a private contractor to provide waste services.

RECREATION

Murfreesboro's Parks and Recreation facilities will be immediately available to any existing and future occupants of the study area. These facilities and programs are funded by the Murfreesboro taxpayers and include approximately 1,300 acres throughout a parks system that includes 8 recreational and cultural facilities, a 15-mile greenway system located mostly along the Stones River, and 23 additional park sites. Murfreesboro Parks and Recreation develops programs and events to provide safe recreational and cultural activities for all demographics. Residents of the City of Murfreesboro may qualify for financial assistance for 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 is located outside of the John Pittard Elementary school zone, and it would become part of this school's zoned area upon annexation.

In its current state with two single family residential homes, the annexation of the study area will have little to no impact on MCS. Any children living in these homes would be eligible to attend John Pittard Elementary, but the number would be minimal.

The companion zoning change request to Commercial Fringe would result in the area having no impact on the city school system in terms of new students being added, as it would remove the existing residential homes.

As of the 2021-2022 school year, enrollment at John Pittard is 699 students with an "ideal" student capacity at 975 students.

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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.

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

No additional public roadways are included in the study area. Access to a public roadway system is available through Lascassas Pike for 2 parcels and East Pitts Lane for 1 parcel.

The existing adjacent roadway are ditch sections with no sidewalks. Any new public roadways to serve the study area must be constructed or upgraded to City Standards.

REGIONAL TRAFFIC & TRANSPORTION

The study area is served by Lascassas Pike as the major roadway facility. The 2014 Level of Service Model in the 2040 Major Transportation Plan shows Lascassas Pike to be operating at a Level of Service D in the study area using average daily traffic (ADT) counts. Without the recommended improvements in the 2040 Major Transportation Plan (MTP), the regional transportation facilities fall to a Level of Service F on Lascassas Pike.

Both the City's 2040 MTP and the County's Long Range Transportation Plan recommend that Lascassas Pike be widened to 5 lanes sometime in the future.

The future development must address the City's Major Transportation Plan for Lascassas Pike as well as providing proper turning lanes for proposed new accesses onto Lascassas Pike.

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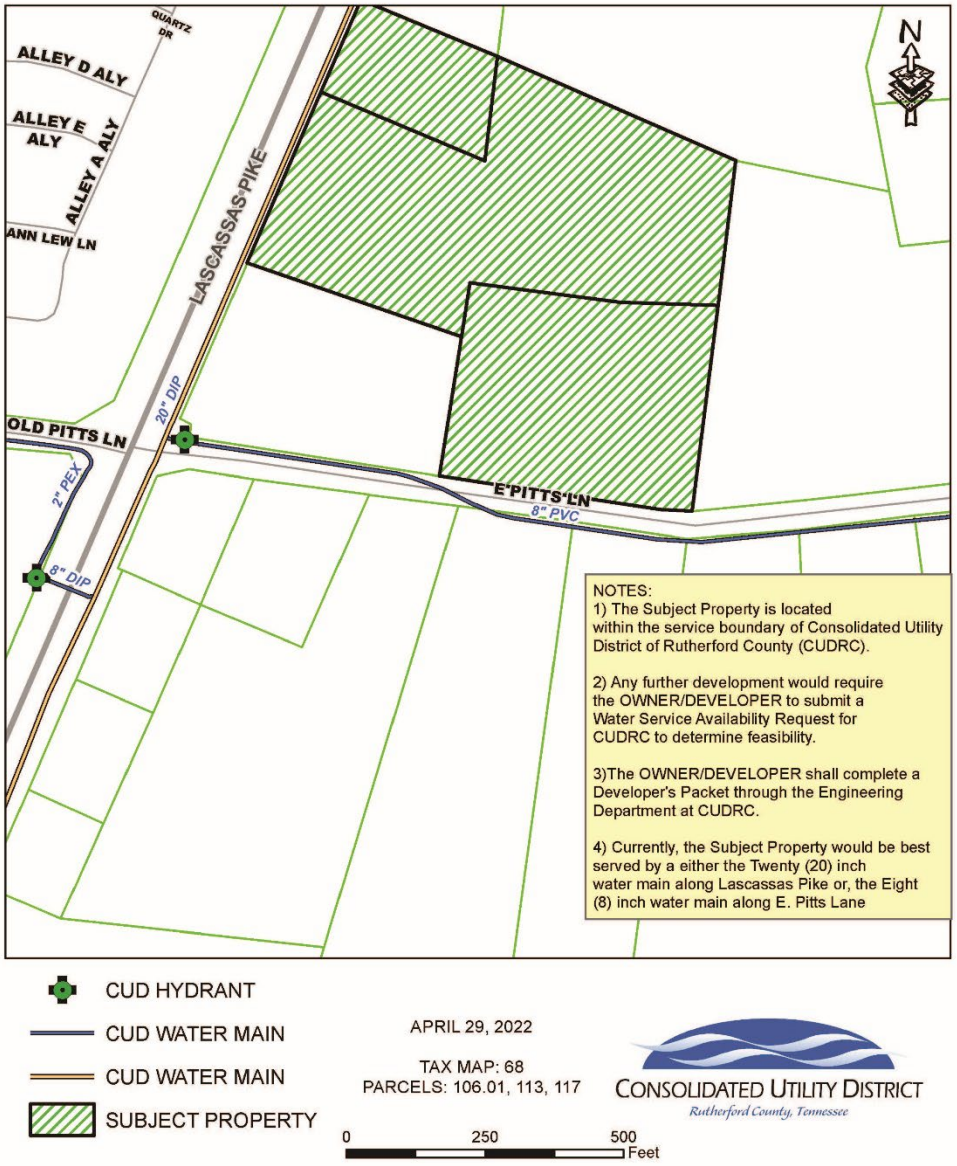
WATER SERVICE

The study area is located within Consolidated Utility District of Rutherford County's (CUDRC) service area. CUDRC is providing water services to the existing homes at this time which will continue in the property's existing state.

CUDRC has an existing twenty (20) inch water main along Lascassas Pike and an eight (8) inch water main along East Pitts Lane to serve the study area, as illustrated in the attached exhibit.

Any further development would be subject to the property owner(s) submitting a Water Service Availability Request to CUDRC for feasibility study and approval. Any water service provided to future structures would be dependent of the results of the Water Service Availability Request feasibility study in accordance with CUD's development policies and procedures.

2664 and 2684 Lascassas Pike Plan of Service/Annex/Rezone



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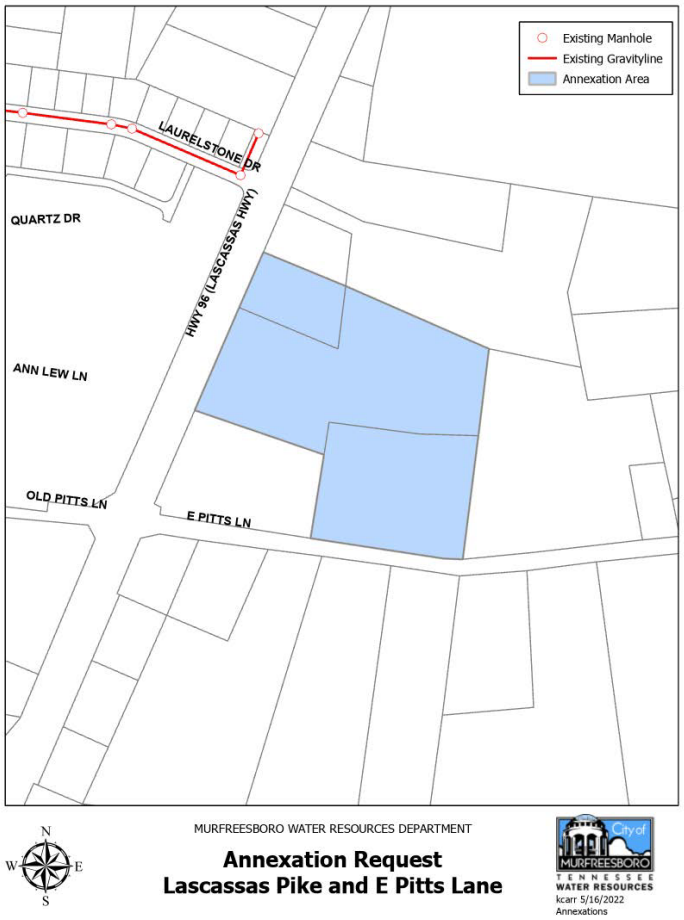

SANITARY SEWER SERVICE

The Water Resources Department (MWRD) would not be affected by this annexation if it remains in its existing state. The properties would continue to be served with a private septic system as they are now.

With regard to any redevelopment, per MWRD's definition of available, sanitary sewer is not available. Sewer is located in the entrance of the Laurelstone Subdivision on the western side of Lascassas Pike, and the extension of sewer to the properties would require two off-site sewer easements to be dedicated to the City.

With regard to redevelopment, to the City's Sewer Allocation Ordinance and the proposed zoning request of Commercial Fringe (CF), the property would be allotted 2.5 single family units per acre (sfu's/acre) if approved. The total acreage is 11.41 total. Therefore, the total allotted flow would be 28.5 sfu's (or 260*28.5 = 2,966 gpd).

All main line extensions are the financial responsibility of the developer and must be extended in accordance with the Development Policies and Procedures of the Murfreesboro Water Resources Department.

DRAINAGE

Public Drainage System

The study area has access to public drainage facilities in Lascassas Pike and East Pitts Lane. Drainage facilities within these public roadways are integral to the roadway, and drainage facility maintenance activities are included within the annualized maintenance costs. Funding for public drainage system maintenance is anticipated from Stormwater Utility Fee and General Fund sources.

Any new public drainage facilities proposed to serve the study area in the future must meet City standards.

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Regional Drainage Conditions

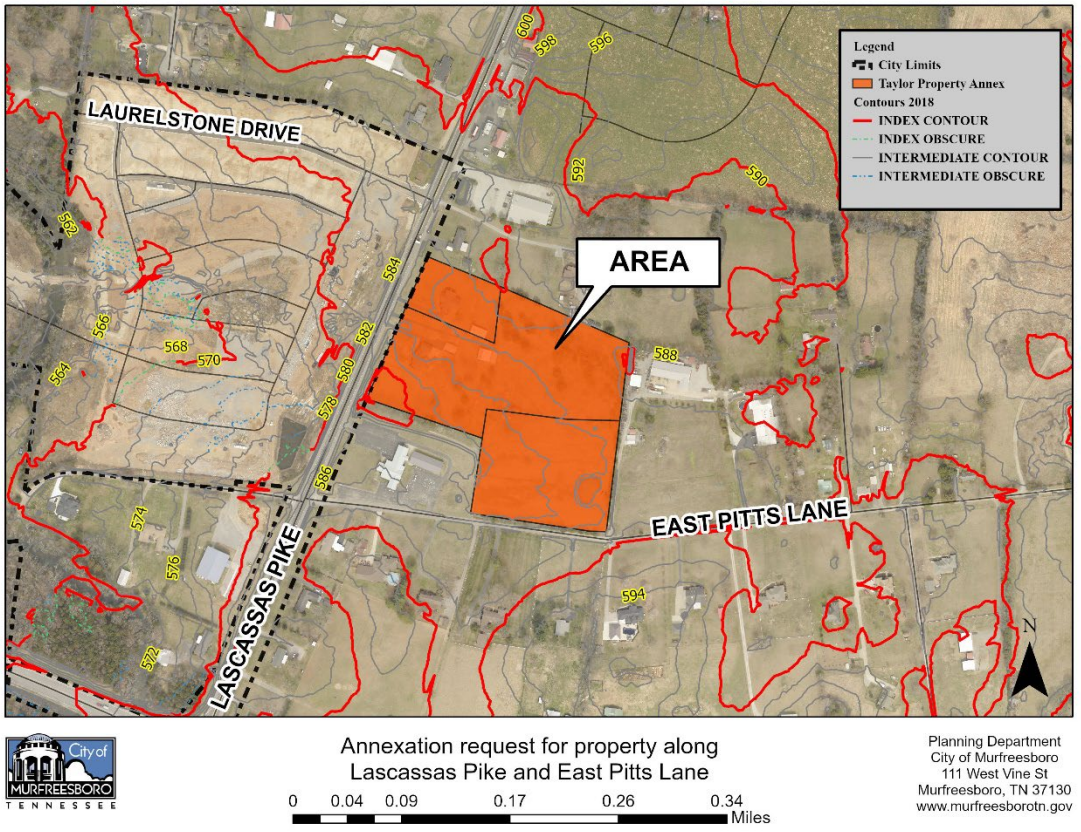
A review of the 2010 aerial photography following the significant rainfall events of May 1 and 2 confirms the presence of closed depressions and sinkholes with standing water 2 days after the rainfall stopped.

The constructed drainage facility within Lascassas Pike provides drainage outlets to Bushman Creek which is located approximately 0.2 miles to the west.

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. There are two existing single family residences in the study area that will generate approximately $78 per year in revenue for the Stormwater Utility Fee.

The study area is approximately 11.41 acres and is proposed to be developed as CF (Commercial Fringe). Based on this development scenario, it is anticipated that the site will generate approximately $2500 annually in revenue for the Stormwater Utility Fund upon full buildout.



New development in the study area must meet overall City of Murfreesboro Stormwater Quality requirements.

The red lines on the adjacent map represent ten-foot contours. The grey lines represent two-foot intervals.

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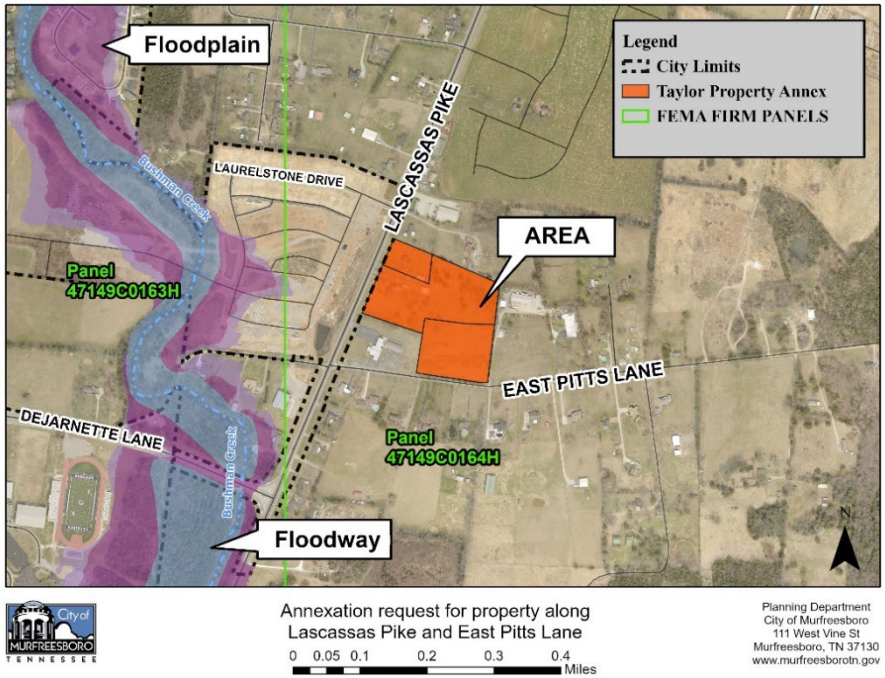
FLOODWAY

The study area is not located within the floodway or 100-year or 500-year floodplains as delineated on the Flood Insurance Rate Maps (FIRM) developed by the Federal Emergency Management Agency (FEMA). The adjacent map shows the closest floodplain approximately 850' southeast of the subject property along the Bushman Creek.

The adjacent map shows the floodway boundary in light blue pattern, the 100-year floodplain boundary in dark purple, and the 500-year boundary in light purple.



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.

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RESOLUTION 22-R-A-23 to annex approximately 11.4 acres located along Lascassas Pike and East Pitts Lane (Tax Map 068, Parcel 11700; Tax Map 068, Parcel 10601; and Tax Map 068, Parcel 11300) and to incorporate the same within the corporate boundaries of the City of Murfreesboro, Tennessee, Betty Taylor, Elizabeth Taylor and Terry Taylor, applicants [2022-503].

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 22-R-PS-23** on August 18, 2022; and

WHEREAS, the Planning Commission held a public hearing on the proposed annexation of such territory on June 1, 2022 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 the effective date of the Zoning Ordinance with respect to the annexed territory, **Ordinance 22-OZ-23,** the public welfare and the welfare of the City requiring it.

Passed: _____

_____
Shane McFarland, Mayor

ATTEST:

_____
Jennifer Brown
City Recorder

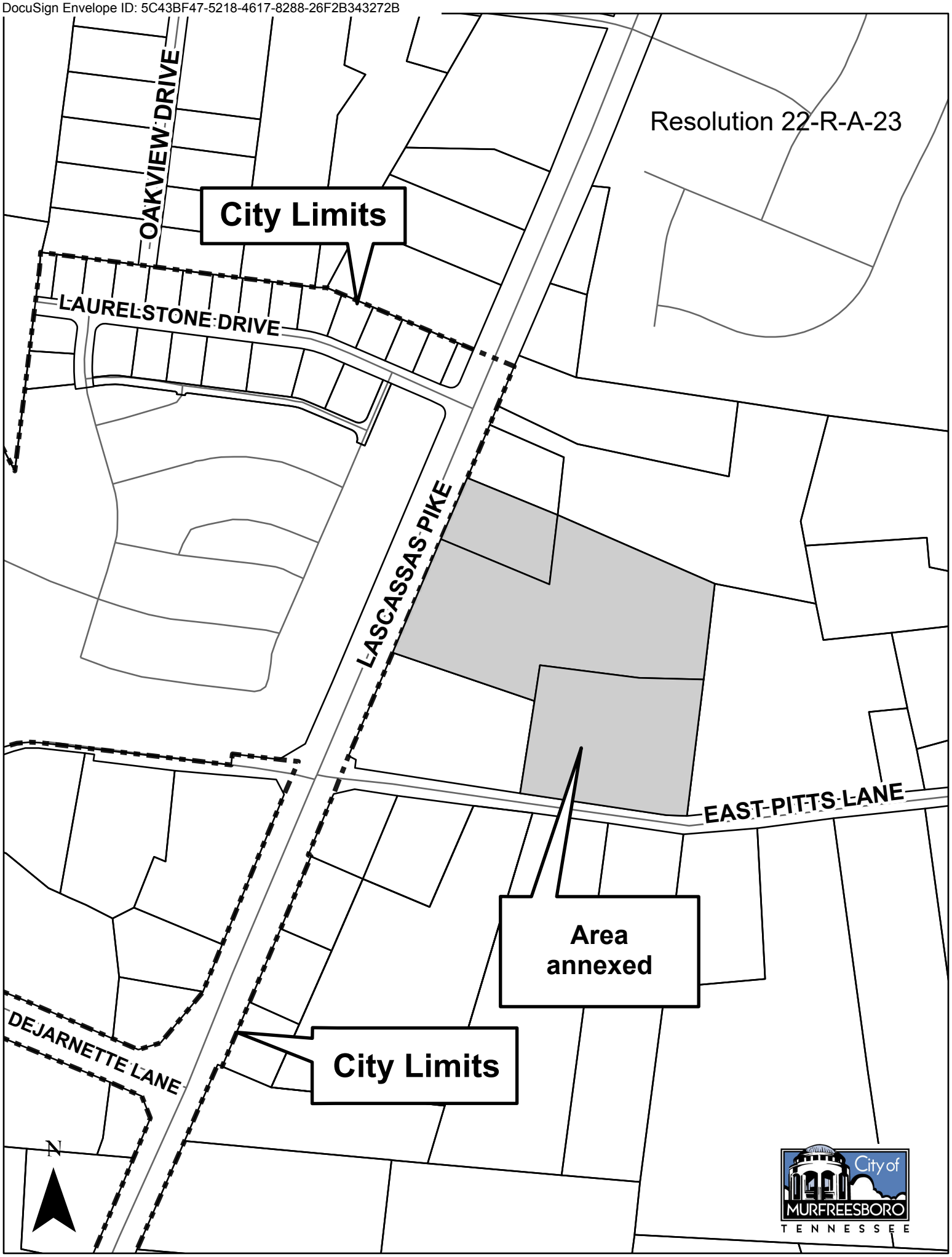
APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2035E51F9401...

_____
Adam F. Tucker
City Attorney

SEAL

DocuSign Envelope ID: 5C43BF47-5218-4617-8288-26F2B343272B



MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS
JUNE 1, 2022
PROJECT PLANNER: HOLLY SMYTH

4.g. Zoning application [2022-407] for approximately 11.4 acres located along Lascassas Pike and East Pitts Lane to be zoned CF simultaneous with annexation, Murfreesboro Medical Clinic applicant.

The subject area includes two (2) properties fronting the east side of Lascassas Pike (aka State Route 96) and one (1) property fronting the north side of East Pitts Lane (Tax Map 068, Parcels 117.01, 106.01, and 113.00, respectively). The Lascassas Pike parcels each contain one single family residence with accessory structures on 1.5 and 5.71 acres sized lots, respectively, while the parcel fronting on East Pitts Lane is vacant containing 4.2 acres.

The subject properties are located within the unincorporated area of Rutherford County and are zoned RM (Medium Density Residential). The surrounding properties that are in the City limits are all located on the west side of Lascassas Pike and are mostly developed or developing single-family residential subdivisions. Properties on the east side of Lascassas Pike are all in the unincorporated County and include a Dollar General, a gas station, churches, single family detached homes, and a recently approved Planned Unit Development for 108 single family homes on a STEP sewer system.

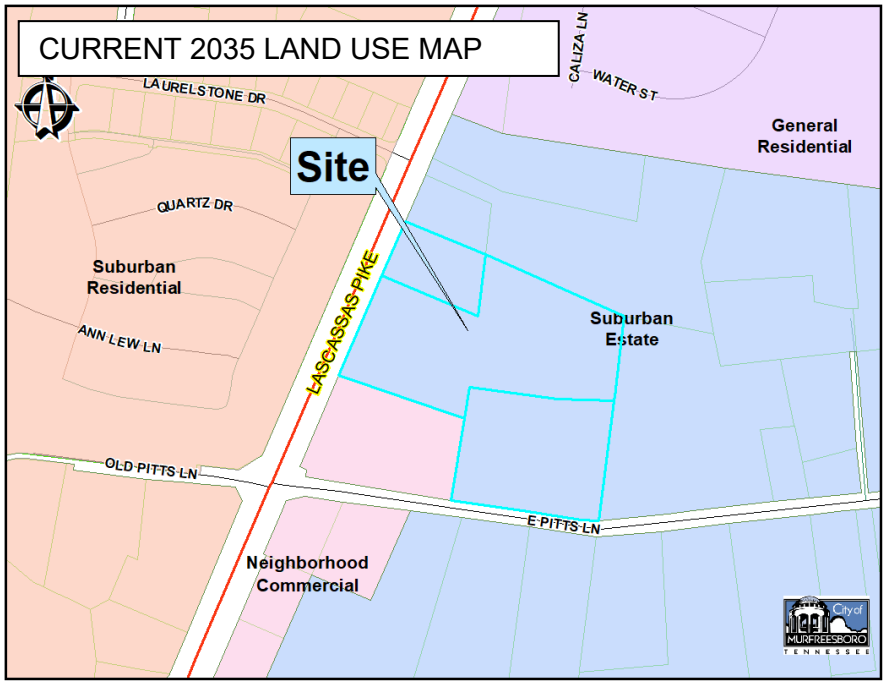
Zoning:

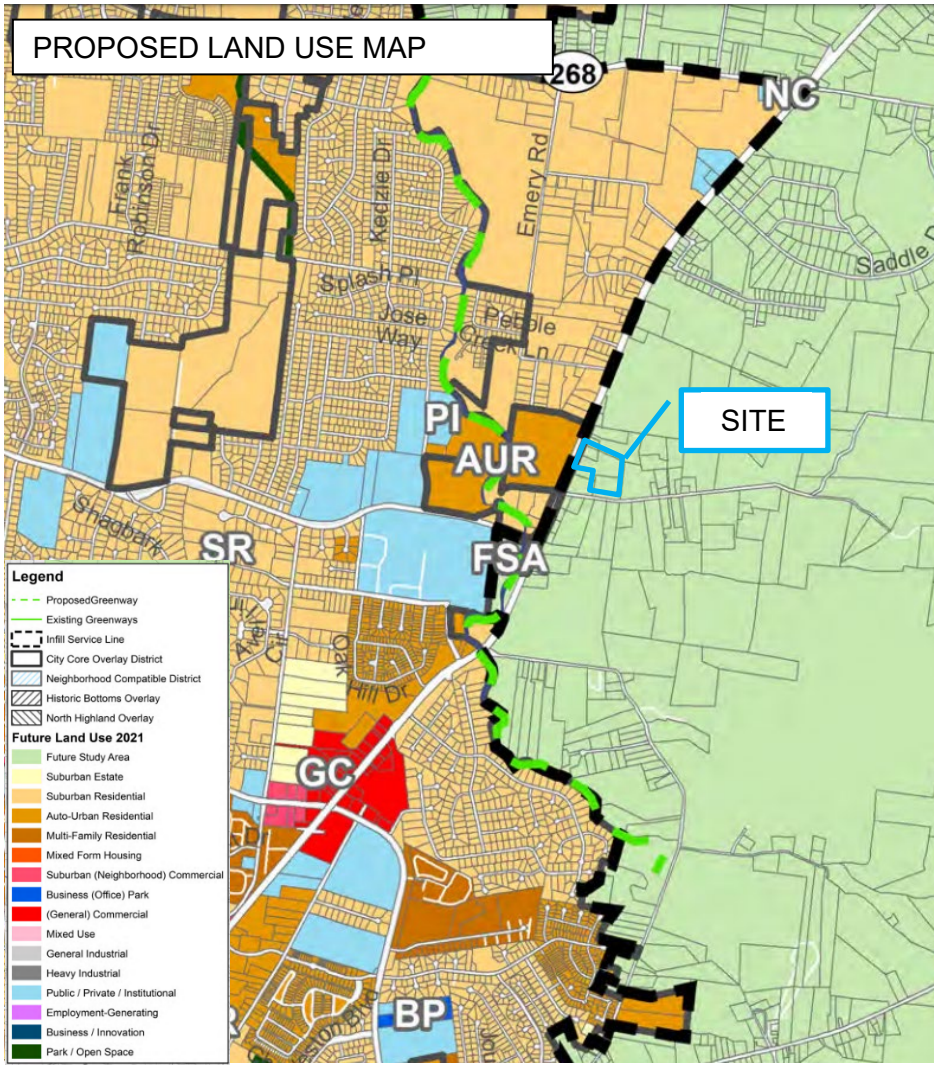
The applicant, Murfreesboro Medical Clinic, is requesting a zoning classification of CF (Commercial Fringe) simultaneous with annexation. Potentially the applicant wants to develop 6.3 acres of the site with a new 39,000 square foot medical clinic. This would leave 5.1 acres of developable outparcels remaining with no known use. Should a bulk rezone be granted, there are no guarantees that any particular use, including a proposed medical clinic, would actually be developed on some or all of the land.

General Plan:

The existing adopted Murfreesboro 2035 Comprehensive Plan Future Land Use Map shown below indicates that *Suburban Estate (SE)* is the most appropriate land use character for the project area. This classification recommends development of 1 to 0.35 single family homes per acre. The Suburban Estate Character is attached to this staff report for a more detailed description of the land use designation. The requested zone change is in direct conflict with the existing Suburban Estate General Plan Land Use designation.

The proposed future land use map update being review by the City (excerpted below) identifies the property as FSA (Future Study Area) and is outside a new proposed Infill Service Line that stops along Lascassas Pike adjacent to the subject property creating a hard line for approximately 2 miles. The purpose of the proposed Infill Service Line is to help facilitate growth and development in an orderly, planned, and sustainable manner and to minimize strain on City services. City growth beyond the line could occur if the area undergoes a study and it is determined that it would be beneficial to the City to include it within the City limits.


CURRENT 2035 LAND USE MAP
LAURELSTONE DR
CALIZA LN
WATER ST
Site
General Residential
QUARTZ DR
Suburban Residential
LASCASSAS PIKE
ANN LEW LN
Suburban Estate
OLD PITTS LN
E PITTS LN
Neighborhood Commercial


PROPOSED LAND USE MAP
268
NC
Frank Robinson Dr
Keelzie Dr
Emery Rd
Splash Pl
Jose Way
Pebble Creek Ln
SITE
PI
AUR
SR
FSA
Shagbark
Oak Hill Dr
GC
BP
Legend
ProposedGreenway
Existing Greenways
Infill Service Line
City Core Overlay District
Neighborhood Compatible District
Historic Bottoms Overlay
North Highland Overlay
Future Land Use 2021
Future Study Area
Suburban Estate
Suburban Residential
Auto-Urban Residential
Multi-Family Residential
Mixed Form Housing
Suburban (Neighborhood) Commercial
Business (Office) Park
(General) Commercial
Mixed Use
General Industrial
Heavy Industrial
Public / Private / Institutional
Employment-Generating
Business / Innovation
Park / Open Space

The requested CF zoning development type proposed is not consistent with the 2035 Future Land Use Map's *Suburban Estate (SE)* land use character designation nor the proposed future land use map's *Future Study Area (FSA)* designation. Additionally, the property is located outside of the proposed Infill Service Line of the proposed land use map under consideration by the City.

Transportation

Both the City's Major Transportation Plan and the County's Long Range Transportation Plan show Lascassas Pike being widened to 5-lanes sometime in the future. Nothing has been scheduled in the near term for these improvements which are anticipated to easily exceed $1 million in costs. Lascassas Pike is currently experiencing high peak hour traffic volumes on the existing 2-lane roadway. Therefore, development on the eastern side of the highway should not be facilitated by the City at this time, as it could lead to more intense development due to the provision of City sewer. Additionally, East Pitts Lane is a substandard local County road that should not be used for any access into the site without improvements from the intersection of Lascassas Pike eastward to the subject property.

Recommendation:

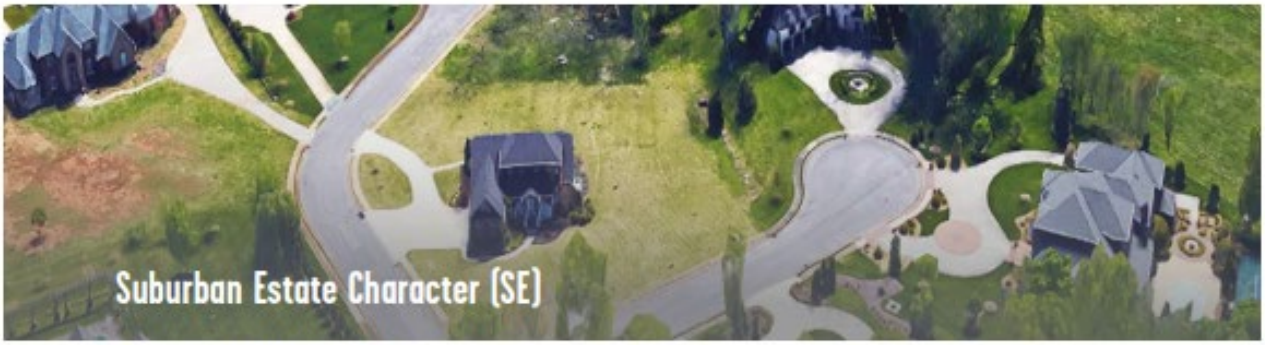
Staff Recommends the Planning Commission deny annexation and zoning of the subject properties (Tax Map 68 Parcels 117.01, 106.01, & 113.00) because:

1) The requested zone change to CF is in direct conflict with both the existing "Suburban Estate" General Plan Land Use designation and the proposed "Future Study Area" designation.
2) Per the Water Resources Department's definition of available, sanitary sewer is not available to the area.
3) It is Staff's position that infill occurring within the proposed Infill Service Line should occur first before considering annexing beyond the line to maximize the use of existing road and utility infrastructure.
4) Lascassas Pike is currently experiencing high peak hour traffic volumes that should not be further exacerbated by potentially more intense City development due to the provision of City sewer. Improvements to widen Lascassas Pike from 2 to 5 lanes, which are expected to exceed one million dollars in cost, are not planned anywhere in the near term to help offset the impact of further development in this area.
5) Any annexation beyond the proposed Infill Service Line may unduly trigger additional annexation requests on the easterly side of Lascassas Pike which have the above issues.
6) Staff is not supportive of bulk zoning requests on the fringe of the City where established development patterns do not exist and potential conflicting uses could occur and negatively impact surrounding uses.

Action Needed:

The applicant has been advised of staff's position and has chosen to still pursue annexation and zoning of the subject properties.

The applicant will be available at the Planning Commission meeting to discuss this proposed zoning request. The Planning Commission will need to conduct a public hearing prior to making a recommendation to the City Council.



SUBURBAN ESTATE CHARACTER (SE)

Development of suburban character can be found throughout Murfreesboro, and within the Urban Growth Boundary. A Suburban Estate (SE) character exhibits low-density development on larger properties, thereby producing a visual openness. As a result of larger lot sizes, open space and vegetation are intended to be the more dominant views. The buildings remain the most apparent, dominant forms, with the landscape assuming a designed and apparent, yet secondary role. Depending on the size of the home and its percent of coverage and location on the lot, the Suburban Estate character category may more closely resemble a larger version of the typical suburban character. To achieve a Suburban Estate character, the design of these subdivisions must actively seek to imitate more rural areas through the use of rural street cross sections without sidewalks, significant open space throughout the development, the use of rural fence types and/or hedgerows to divide properties, the preservation or planting of native vegetation along property boundaries, and generous building setbacks on all sides.

As in other cities, Murfreesboro has fringe areas that have developed with residential intensities that are not appropriate to the location or level of public services available, which is why these areas still fall within the Suburban Estate character classification on the *Future Land Use Map*.

Development Types:

- Palatial residential dwellings set back from rural roads;
- Outbuildings are for leisure activities (e.g., pool houses, cabanas, recreational vehicle and boats storage) and landscape maintenance (lawn mowers).
- Ornamental landscape enhancements and manicured lawn areas;

Characteristics:

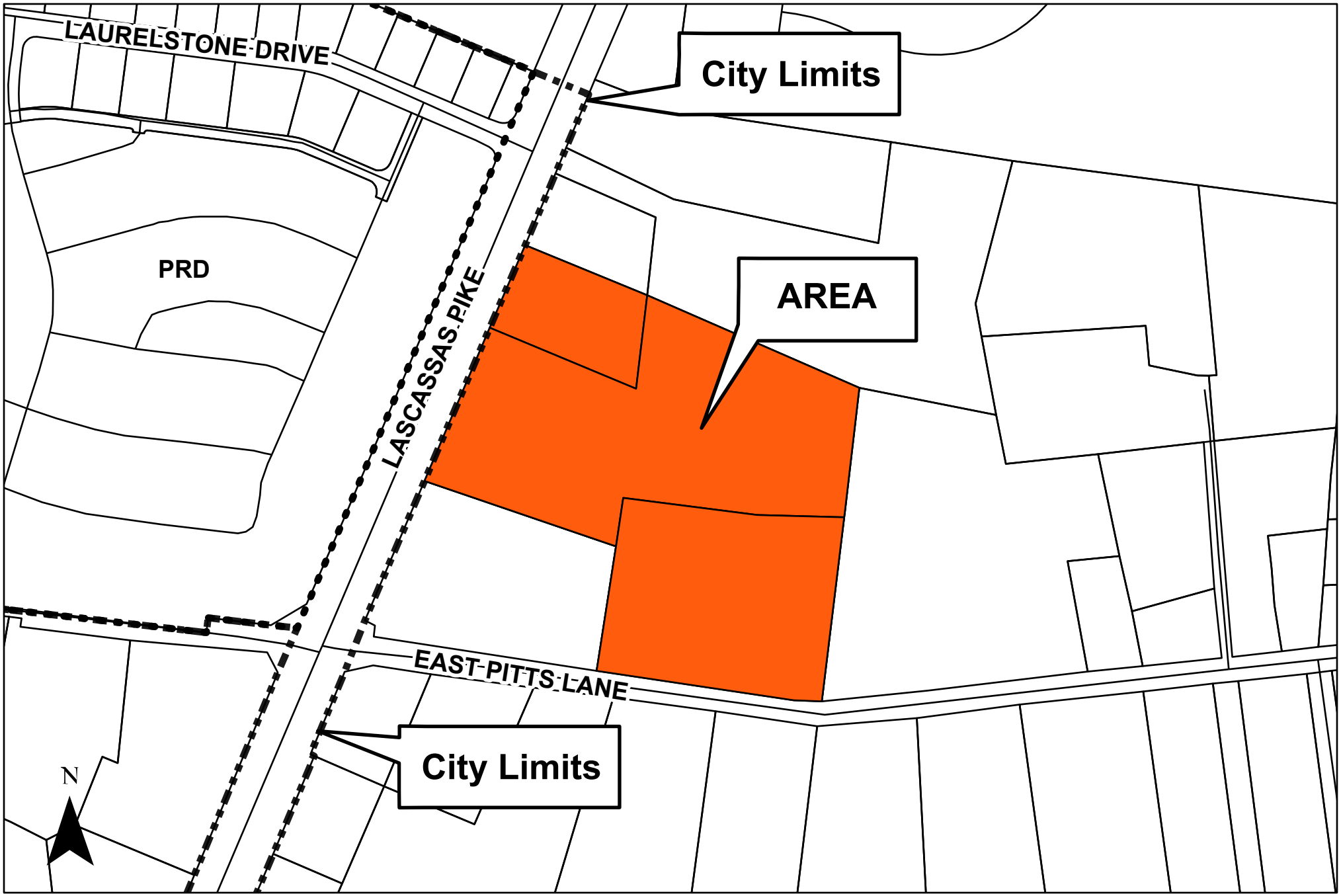
- Planned and coherent residential development on relatively large acreages, resulting in very high open space ratios and very low site coverage (sometimes with residential "estate" areas providing a transition from rural to suburban densities, with estate lots typically being one to three acres).
- The automobile is often celebrated as the driveway is a dominant element in the composition of the manicured landscape. Garages are often free-standing and situated to the side or rear of the main dwelling.

Density / Height Guidelines:

- 1.0 to .35 dwelling units per acre (DU/ac).

City Zoning Districts:

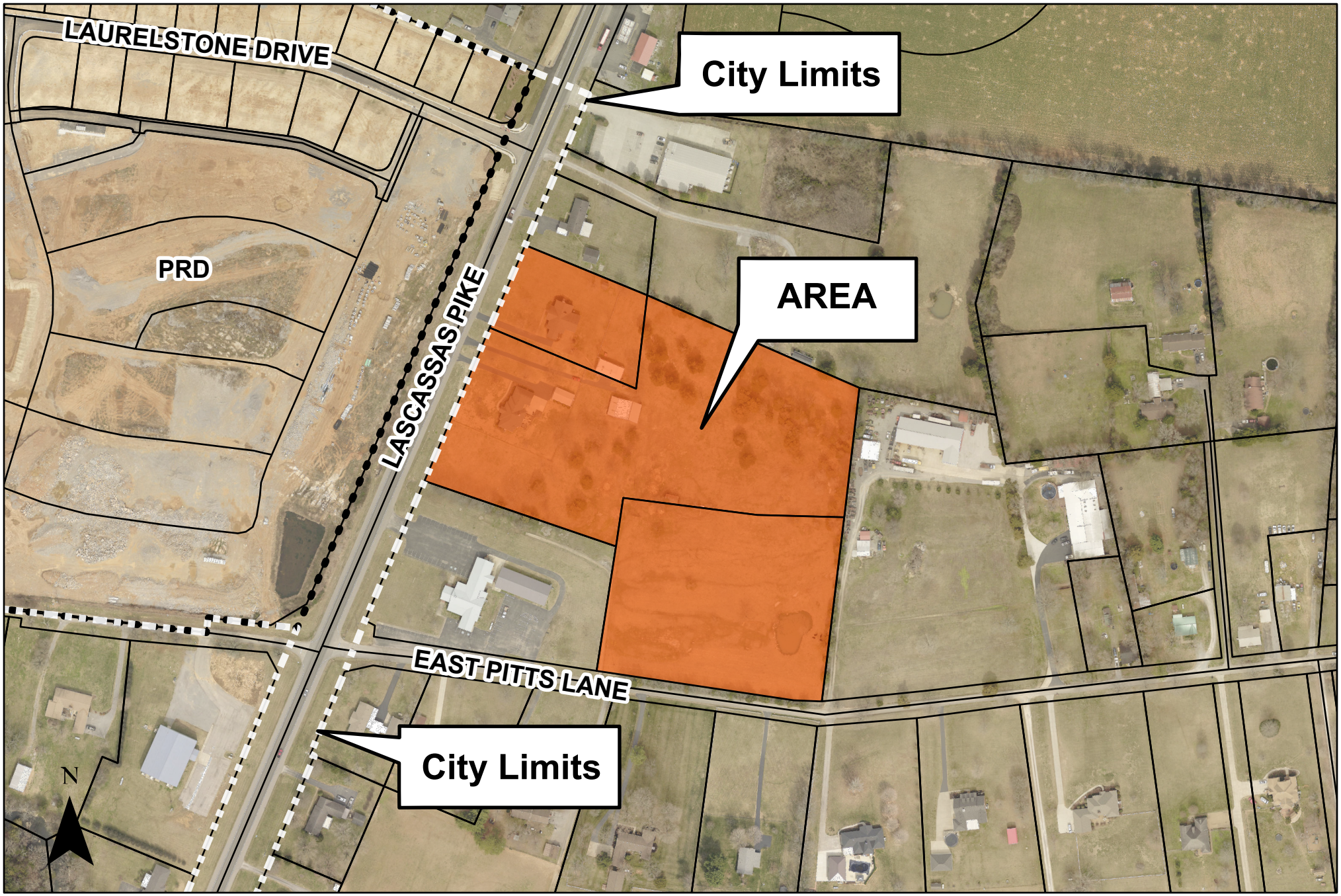
- Not Applicable



Zoning request for property along Lascassas Pike and East Pitts Lane
CF simultaneous with annexation

0 230 460 920 1,380
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov



Zoning request for property along Lascassas Pike and East Pitts Lane
CF simultaneous with annexation

0 230 460 920 1,380
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

City of Murfreesboro
Planning and Engineering Department
111 W. Vine Street, P.O. Box 1139
Murfreesboro, TN 37133-1139
(615) 893-6441 Fax (615) 849-2606
www.murfreesborotn.gov

Creating a better quality of life

Zoning & Rezoning Applications – other than rezoning to planned unit development	**$700.00**
Zoning & Rezoning Applications – Planned Unit Development, initial or amended	**$950.00**

Procedure for applicant:
The applicant must submit the following information to initiate a rezoning:

1. **A completed rezoning application (below).**
2. **A plot plan, property tax map, survey, and/or a legal description of the property proposed for rezoning. (Please attach to application.)**
3. **A non-refundable application fee (prices listed above).**

For assistance or questions, please contact a planner at 615-893-6441.

To be completed by applicant:

APPLICANT: Murfreesboro Medical Clinic c/o Joey Peay

Address: 1272 Garrison Drive City/State/Zip: Murfreesboro, TN 37129

Phone: 615-893-4480 E-mail address: JPeay@mmclinic.com

PROPERTY OWNER: Terry, Lisa & Betty Taylor

Street Address or property description: 2664 & 2684 Lascassas Pike

and/or Tax map #: 68 Group: Parcel (s): 113.00,106.01,117.00

Existing zoning classification: RM (COUNTY)

Proposed zoning classification: CF Acreage: 11.2

Contact name & phone number for publication and notifications to the public (if different from the applicant): Matt Taylor 615-890-7901

E-mail: mtaylor@sec-civil.com

APPLICANT'S SIGNATURE (required):

DATE: 4/14/2022

*******For Office Use Only**********

Date received: **MPC YR.:** **MPC #:**

Amount paid: **Receipt #:**

Revised 7/20/2018

MINUTES OF THE MURFREESBORO PLANNING COMMISSION JUNE 1, 2022

6:00 PM **CITY HALL**

MEMBERS PRESENT
Kathy Jones, Chair
Ken Halliburton, Vice-Chairman
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

STAFF PRESENT
Greg McKnight, Planning Director
Matthew Blomeley, Assistant Planning Director
Margaret Ann Green, Principal Planner
Marina Rush, Principal Planner
Amelia Kerr, Planner
Joel Aguilera, Planner
Carolyn Jaco, Recording Assistant
David Ives, Deputy City Attorney
Roman Hankins, Assistant City Attorney
Sam Huddleston, Executive Dir. Dev't Services

1. Call to order.

Chair Kathy Jones called the meeting to order at 6:00 p.m.

2. Determination of a quorum.

Chair Kathy Jones determined that a quorum was present.

3. Approve minutes of the May 4, 2022, Planning Commission meeting.

Ms. Jami Averwater moved to approve the minutes of the May 4, 2022 Planning Commission meeting; the motion was seconded by Vice-Chairman Ken Halliburton and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Rick LaLance
Warren Russell
Shawn Wright

Nay: None

There being no further discussion, Mr. Shawn Wright moved to approve the annexation petition and plan of services; the motion was seconded by Vice-Chairman Ken Halliburton and carried by the following vote:

Aye: Kathy Jones
Ken Halliburton
Jami Averwater
Warren Russell
Shawn Wright

Abstain: Rick LaLance

Nay: None

Zoning application [2022-407] for approximately 11.4 acres located along Lascassas Pike and East Pitts Lane to be zoned CF simultaneous with annexation, Murfreesboro Medical Clinic applicant. Mr. Matthew Blomeley presented the Staff Comments regarding this item, a copy of which is maintained in the permanent files of the Planning Department and is incorporated into these Minutes by reference. Mr. Matthew Blomeley explained Staff Recommends the Planning Commission deny annexation and zoning of the subject properties for the reasons outlined in the Staff Comments.

Mr. Rob Molchan (landscape architect), Mr. John Harney (representative), Mr. Joey Peay (CEO, Murfreesboro Medical Clinic), Ms. Betty Taylor, Ms. Elizabeth Taylor, and Terry Taylor (property owners) were in attendance representing the application. Mr. Rob Molchan began a PowerPoint presentation of the proposed development.

The Planning Commission began discussing the zoning application with questions concerning future access and road improvements to East Pitts Lane. Mr. Rob Molchan explained that it is currently a substandard road. When a site plan is submitted, road improvements would be addressed at that time.

MINUTES OF THE MURFREESBORO PLANNING COMMISSION JUNE 1, 2022

Chair Kathy Jones opened the public hearing.

1. **Mr. Joey Peay, 1501 Cripple Creek Road** – stated that the CF zone being requested is the same as their Shelbyville Pike location. Also, the two existing houses on the property would remain until construction begins. The timeline for this development to be completed would be around 2024.

There being no one else to speak, Chair Kathy Jones closed the public hearing.

The Planning Commission made known they would prefer the proposed back lot to have direct access onto Lascassas Pike not off of East Pitts Lane. Mr. Joey Peay stated they would address the back lot facing East Pitts Lane before a site plan was submitted.

Mr. Warren Russell asked if a neighborhood meeting had been conducted. Mr. Peay said no.

Mr. Terry Taylor, 2664 Lascassas Pike – commented that a public meeting had not been conducted. However, he has spoken with neighbors, and no one has had any objections.

There being no further discussion, Mr. Warren Russell moved to approve the zoning application 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
Warren Russell
Shawn Wright

Abstain: Rick LaLance

Nay: None

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ORDINANCE 22-OZ-23 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 11.4 acres along Lascassas Pike and East Pitts Lane as Commercial Fringe (CF) District, simultaneous with annexation; Murfreesboro Medical Clinic, applicant [2022-407].

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 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

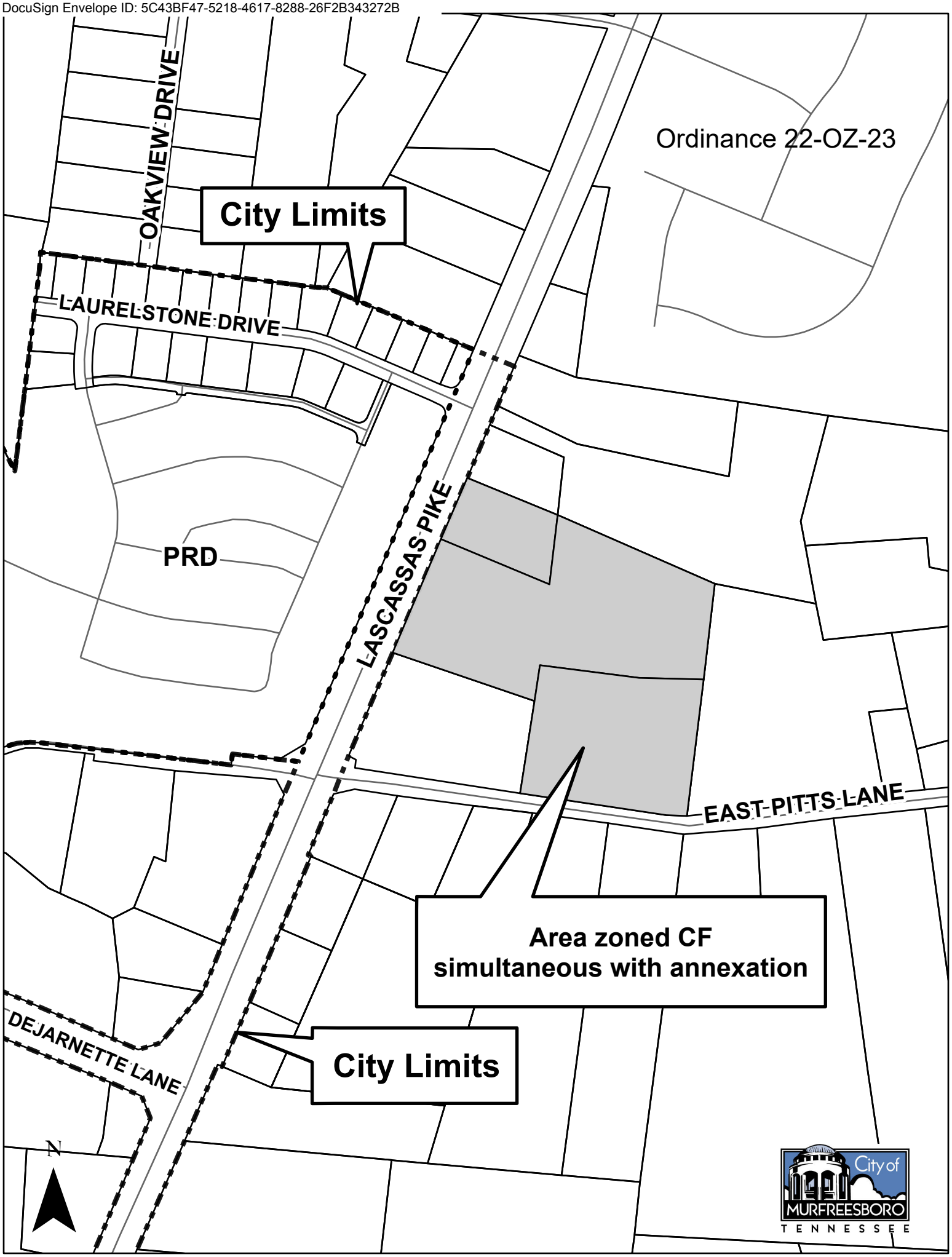
APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2035E61F9401...

Adam F. Tucker
City Attorney

SEAL

DocuSign Envelope ID: 5C43BF47-5218-4617-8288-26F2B343272B



COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Canceling Public Hearings

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	☐
Resolution	☒
Motion	☐
Direction	☐
Information	☐

Summary

Cancel previously-scheduled public hearings.

Staff Recommendation

Cancel public hearings for the items below currently scheduled on September 22, 2022.

Background Information

During its regular meeting on April 6, 2022, 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 defer action. Both items were considered under Old Business by the Planning Commission on May 18, 2022 and were recommended for approval, including a non-contiguous annexation.

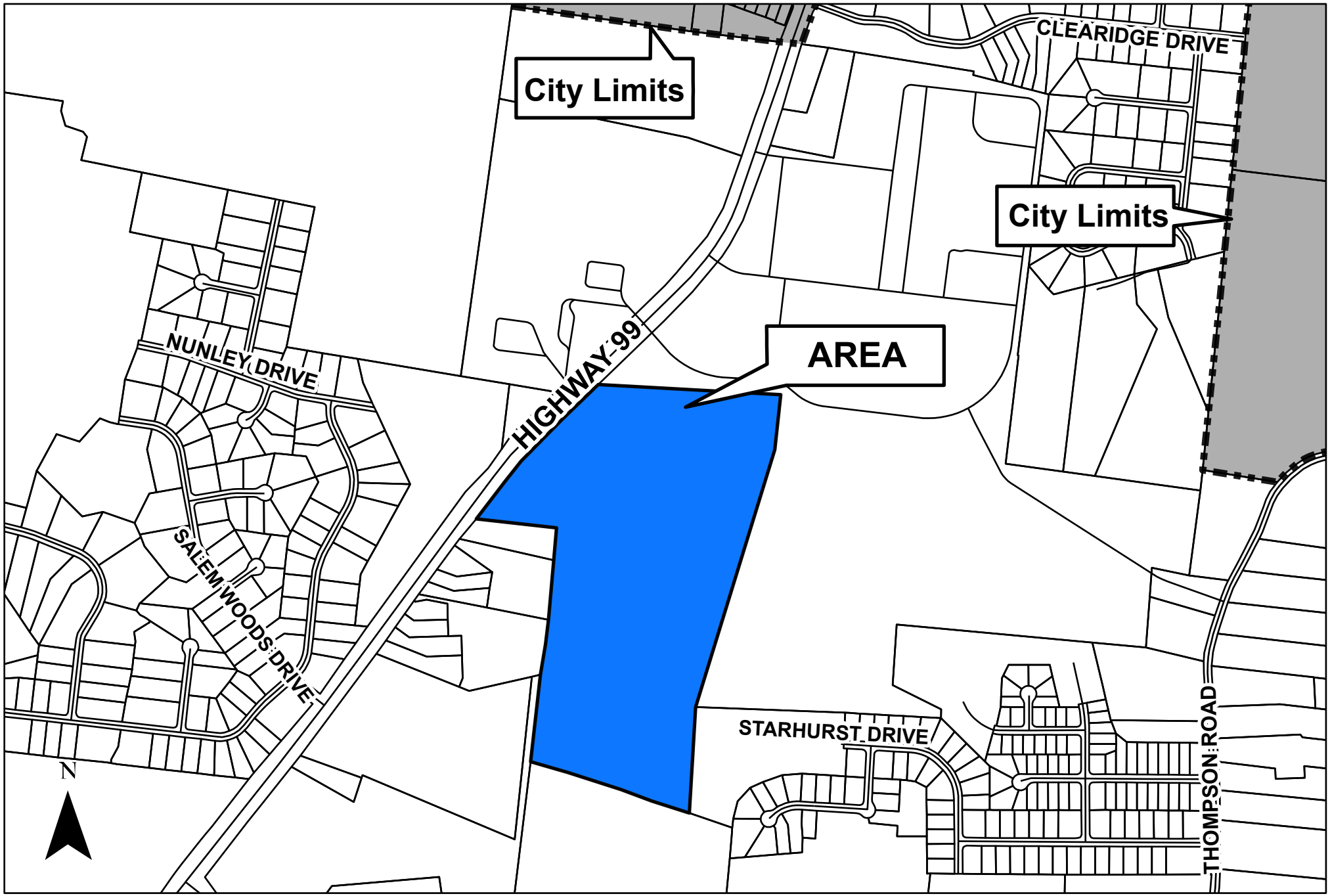
State law requires an interlocal agreement between the City and County governments in order for a non-contiguous annexation to be approved. These items were originally scheduled for public hearings before Council to be held on July 21, 2022 but were rescheduled to September 22, 2022 to allow Rutherford County government time to review the proposed interlocal agreement that was drafted by the City. On August 2nd, the Rutherford County Commission's Planning and Public Works Committee considered the interlocal agreement but did not take action. Because of the lack of action by Rutherford County on the interlocal agreement, Staff recommends that the below annexation and zoning public hearings be canceled indefinitely until such time that an interlocal agreement is approved by the City and Rutherford County.

a. Annexation petition and plan of services [2022-501] for approximately 68 acres located along Highway 99 south of Clearidge Drive, Ferrari Partners, LP applicant.

b. Zoning application [2022-401] for approximately 68 acres located along Highway 99 south of Clearidge Drive to be zoned PRD simultaneous with annexation, Patterson Company applicant.

Attachments:

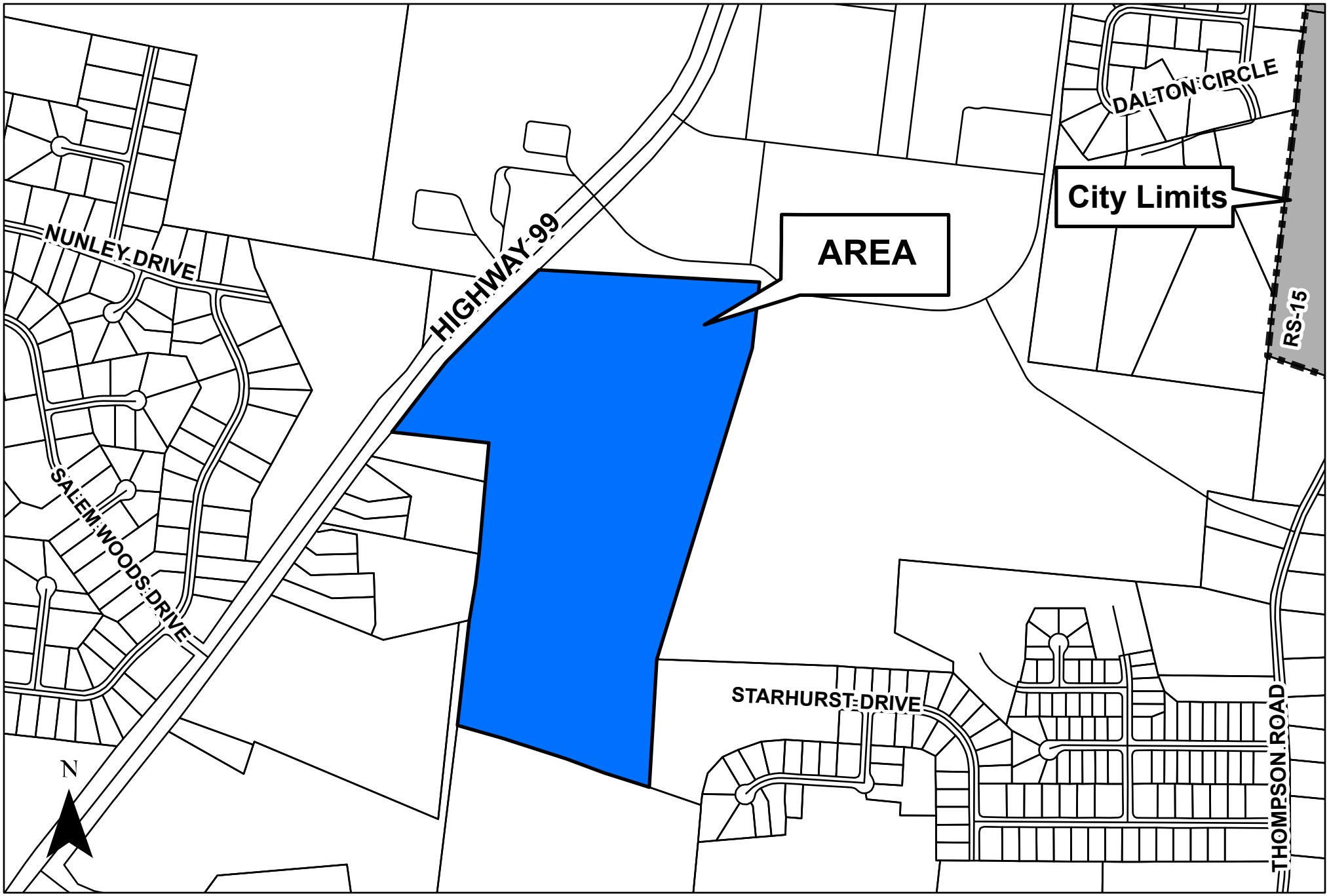
1. Map for annexation petition for approx. 68 acres located along Highway 99
2. Map for zoning application for approx. 68 acres located along Highway 99



Annexation request for property along Highway 99

0 487.5 975 1,950 2,925 3,900
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov



City of MURFREESBORO TENNESSEE

Zoning request for property along Highway 99
PRD simultaneous with Annexation

0 395 790 1,580 2,370 3,160
US Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Planning Commission Recommendations

Department: Planning

Presented by: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

Ordinance	☐
Resolution	☒
Motion	☐
Direction	☐
Information	☐

Summary

Scheduling matters previously heard by the Planning Commission for public hearings before Council.

Staff Recommendation

Schedule public hearings for the items below on September 22, 2022.

Background Information

During its regular meeting on August 3, 2022, 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 Ordinance amendment [2022-804] regarding amendments to Chart 3 pertaining to parking space and aisle design requirements, City of Murfreesboro Planning Department applicant.

b. Zoning application [2022-415] for approximately 89.2 acres located along Veterans Parkway, Blackman Road, and Lyle McDonald Court to be zoned GDO-1 (in addition to the existing CH and CF zoning), City of Murfreesboro Administration Department applicant.

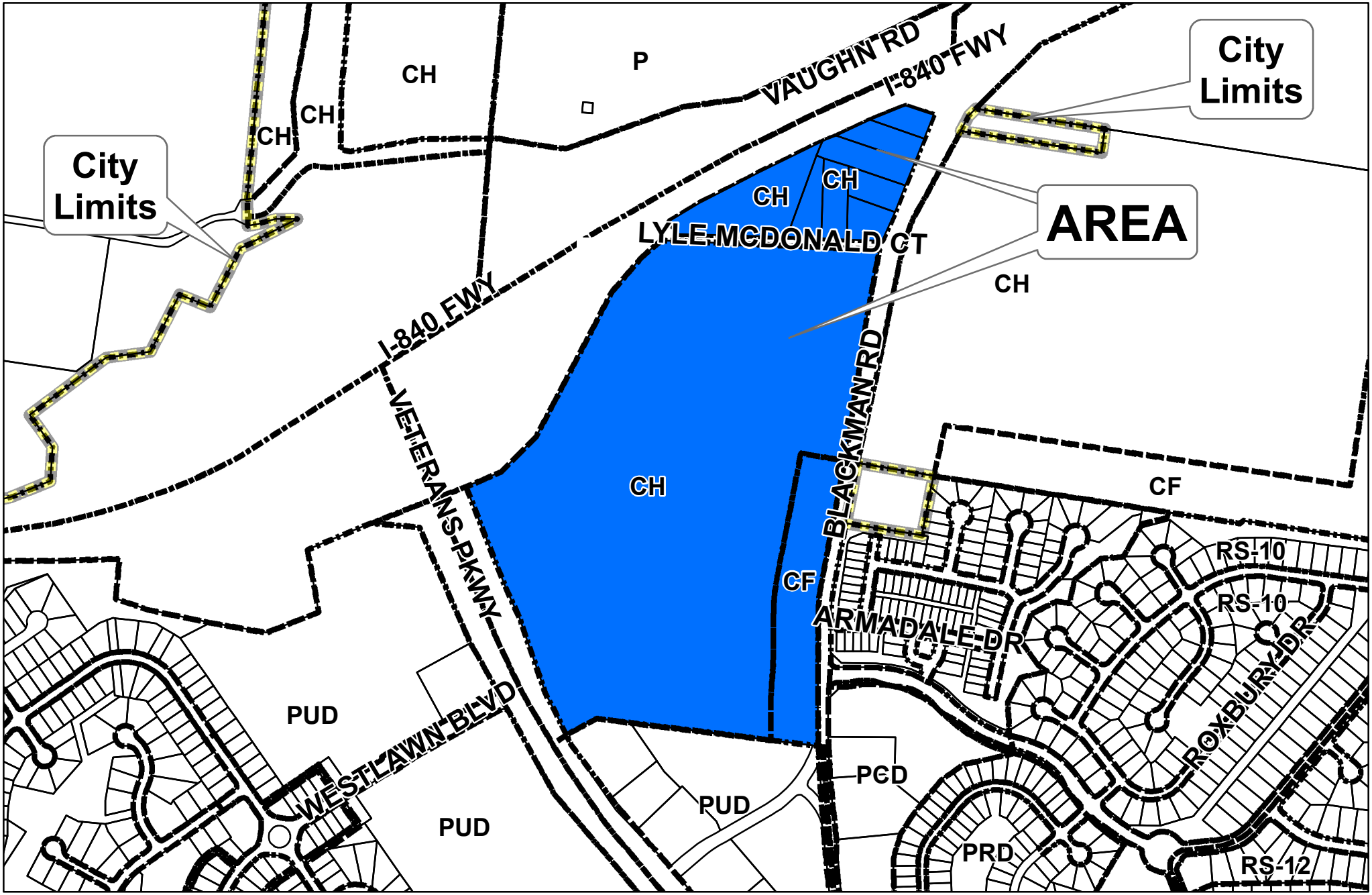
c. Zoning application [2022-419] to remove the GDO-3 zoning on approximately 51.9 acres located along Medical Center Parkway (approximately 24.6 acres) and West College Street (approximately 27.3 acres), City of Murfreesboro Administration Department applicant.

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. 89.2 acres located along Veterans Parkway, Blackman Road, and Lyle McDonald Court
2. Map for zoning application for approx. 51.9 acres located along Medical Center Parkway and West College Street

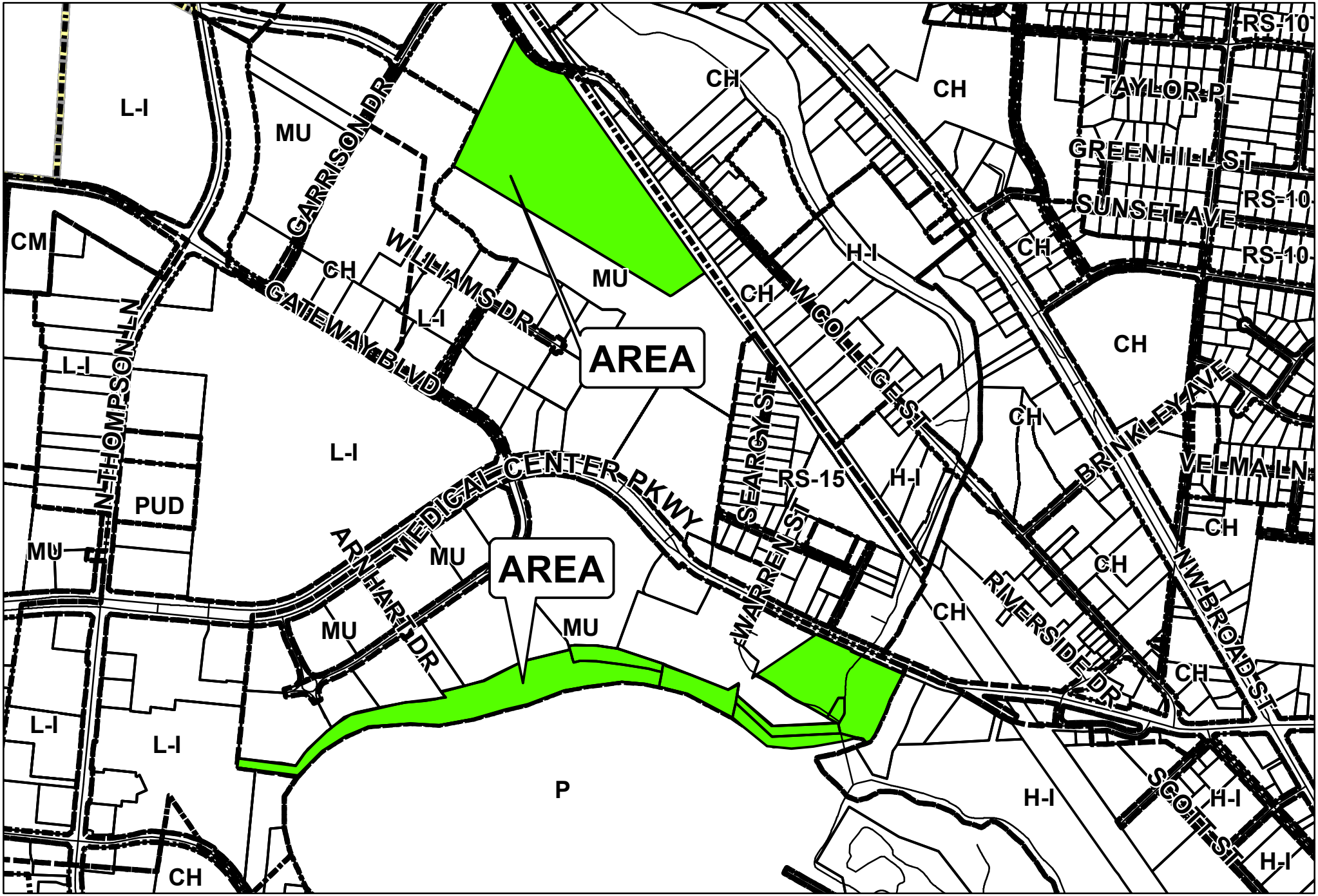


City of MURFREESBORO TENNESSEE

Zoning Request for Property along Veterans Parkway and Blackman Road
Add GDO-1 to Property Zoned CH and CF

1,250 625 0 1,250 Feet

Planning Department
City of Murfreesboro
111 West Vine St
Murfreesboro, TN 37130
www.murfreesborotn.gov



City of MURFREESBORO TENNESSEE

Areas along Medical Center Parkway and West College Street to be removed from the Gateway Design Overlay District (GDO-3)

1,300 650 0 1,300 Feet

City of Murfreesboro
Planning Department
111 W. Vine St.
Murfreesborom TN 37130
www.murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Payment in Lieu of Taxes Project for McNeilus Truck and Manufacturing Economic Development Project

Department: Administration

Presented by: Craig Tindall, City Manager

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

PILOT plan for economic development opportunity in the Manufacturing Segment

Staff Recommendation

Approve IDB moving forward with consideration of a PILOT plan

Background Information

McNeilus Truck and Manufacturing (McNeilus) proposes to build a manufacturing facility at 2120 Logistics Way, which is off Joe B. Jackson Parkway, south on Richard Reeves Drive. The company will engage in commercial vehicle production. McNeilus specializes in the development and manufacturing of concrete mixers and refuse collection vehicles. McNeilus is a subsidiary of Oshkosh Corporation, a $7 billion corporation, with approximately $8 billion in sales and more than $1 billion in income.

The location of the facility is approximately 51 acres at 2120 Logistics Way, off Joe B. Jackson Parkway, south on Richard Reeves Drive. The building that will house the McNeilus facility is currently under construction. The property is zoned Heavy-Industrial and is appropriate for the planned use.

McNeilus will be investing $136,200,000 into the community. The total one-time economic impact of construction activity is estimated to be $221m with an additional $1.4m in indirect sales and other tax revenue. On an on-going basis, property taxes are anticipated to be approximately $367,000. The facility will create 125 jobs within four years an annual average wage of $53,100, which is the County's average annual wage. Total wage impact, include indirect employment, is estimated to be $15m annually with annual indirect tax revenue of $520,258.

The proposed PILOT plan is a seven-year, 10% reduction in property tax payments. As stated above, property taxes are estimated to be $367,000. The City's portion of the PILOT, therefore, is $256,900 over the term. The County will provide a PILOT on the same terms, which amounts to approximately $436,000. During the PILOT term, the total local tax benefit is $13,367,718 upon incentives of $1,565,100, which is a benefit/cost ratio of 8.54, which means the project will produce economic benefits 8.54 times the incentive offered.

Council Priorities Served

Improve economic development

Projects, such as the proposed, which provide a large number of good jobs contributes to the economic health of community and is a primary goal of economic development.

Fiscal Impact

No immediate budget impact. The project offers a significant positive budgetary impact relative to the incentives offer by the PILOT.

Attachments

Economic Development Project Report – McNeilus Truck and Manufacturing

Economic Development Project Report

Project Overview

McNeilus Truck and Manufacturing, an Oshkosh Corporation company

Development Sector:	Manufacturing
Private Investment:	Approx. $136m
Total Economic Impact:	Approx. $221m one-time; $2m annually

Project Summary

Oshkosh Corporation proposes to build a McNeilus manufacturing facility in Murfreesboro. The facility will be used to manufacture commercial vehicles. McNeilus was founded in 1970 and began building heavy vehicles, concrete mixers, shortly thereafter. In 1990, McNeilus entered to refuse collection vehicle market. In 1998, McNeilus was purchased by Oshkosh Corporation. Oshkosh specializes in manufacturing severe-duty vehicles, including an array of products for defense, municipal and commercial markets and is an approximate $7 billion corporation, with almost $8 billion in sales and just over $1 billion in income. Today, McNeilus continues to development and manufacture concrete mixers and refuse vehicles continuing a long history of innovation.

McNielus' commitment to their local communities goes beyond building trucks. The company is a major contributor to the United Way in their local areas and supports Ronald McDonald House with a unique program called Cans for Kids. McNeilus also sponsors education and research programs for the construction and waste collection industries through university-level Concrete Industry Management programs and the Environmental Research and Education Foundation. The Foundation provides educational grants and scholarships and conducts scientific research dedicated to improving waste management practices.

Location

The McNeilus facility is planned to be located at 2120 Logistics Way, off Joe B. Jackson Parkway, south on Richard Reeves Drive. The property is approximately 51 acres upon which a speculative industrial structure is currently under construction. The property is zoned Heavy-Industrial, which is appropriate for the planned use. This is an area originally improved for industrial development by Swanson Development.

Attachment A depicts the project site.

Incentives

The incentive package proposed McNeilus facility is a seven-year PILOT that grants a 10% reduction in property tax payments. Property taxes are estimated to be $367,000. The total incentive, therefore, is $256,900 over the term, which has a present value of $227,000. The County will provide the same PILOT, which amounts to approximately $436,000 ($383,000 present value).

Economic Benefit

Younger Associates has completed an analysis of the economic benefits of the McNeilus facility. Younger is a nationally recognized firm serving businesses, professional groups, industries, economic development entities and governments. The City, through the Chamber of Commerce, routinely utilizes Younger's service in calculating the impact of economic development projects.

Younger's calculations are based on well-established methodology and utilized statistical data provided by the U.S. Bureau of Economic Analysis, U.S. Department of Labor, Tennessee Department of Labor, Rutherford County, and the City. When appropriate, that data is specific to the Southern Region, Rutherford County, or the City.

The Younger Economic Impact and Cost/Benefit Analysis Report is attached as Attachment 2. McNeilus plans to develop a manufacturing facility through an investment of $136,200,000. The total one-time economic impact of construction activity is estimated to be $221m with an additional $1.4m in indirect sales and other tax revenue. Property taxes, as state above, are anticipated to be $367,000. The facility will create 125 jobs within four years an annual average wage of $53,100, which is the County's average annual wage. Total wage impact, include indirect employment, is estimated to be $15m annually with annual indirect tax revenue of $520,258.

The total local tax benefit during the PILOT term is $13,367,718 upon incentives of $1,565,100, which is a benefit/cost ratio of 8.54.

ATTACHMENT 1

Project Location

MANCHESTER PIKE
MANCHESTER PIKE
MANCHESTER PIKE
MABRY DR
FIELDSTONE DR
RAMSEY RD
RAMSEY RD
ESTILL CT
SURVEY DR
COLDSTREAM RD
CALLAWAY CT
CALLAWAY CT
JOE B JACKSON PKWY
TENBY DR
TENBY DR
IONA CT
MANNON CT
PRAIRIE VIEW DR
TREASURE DR
RICHARD REEVES DR
LOGISTICS WAY
Project Site
I-24 FWY
I-24 FWY
Amazon

ATTACHMENT 2

Economic Impact and Cost/Benefit Analysis Report

Economic Impact and Cost/Benefit Analysis Summary

City of Murfeesboro, Rutherford County, TN

Company/Applicant:		Project Hurricane
Capital Investment:	$	136,200,000
Jobs:		125
Annual Average Wage:	$	53,100
PILOT Length: (years)		7
Total Local Incentive:	$	1,565,100
Local Tax Benefit:	$	13,367,718
Benefit/Cost Ratio:		8.54

City of Murfeesboro, Rutherford County, TN
Project Hurricane
Economic Impact and Benefit/Cost Analysis

One Time Expansion Impact		
Total Capital Investment	$	136,200,000
Real Property: Site Development/Construction/Tenant Improvemen	$	100,200,000
Final Demand Output Multiplier[1]		1.6682
Economic Impact	$	167,153,640
Personal Property: Equipment Purchase/Set-up	$	36,000,000
Final Demand Output Multiplier[2]		1.4846
Economic Impact	$	53,445,600
Total Economic Impact	**$**	**220,599,240**
Local Indirect Sales Tax Revenue[3]	$	1,167,452
Other Local Indirect Tax Revenue[4]	$	235,825
Total Tax Revenue	**$**	**1,403,278**

City of Murfeesboro, Rutherford County, TN

Project Hurricane

Economic Impact and Benefit/Cost Analysis

Annual Impact of Operations	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	7-Year Total
Employment, Direct (NEW full-time equivalent)	13	48	120	125	125	125	125	125
Wages & Benefits, Direct	$ 862,875	$ 3,186,000	$ 7,965,000	$ 8,296,875	$ 8,296,875	$ 8,296,875	$ 8,296,875	$ 45,201,375
Direct Effect Employment Multiplier[5]	1.9862	1.9862	1.9862	1.9862	1.9862	1.9862	1.9862	
Total Employment	**26**	**95**	**238**	**248**	**248**	**248**	**248**	**248**
Employment, Indirect	13	47	118	123	123	123	123	123
Rutherford County Annual Average Wage[6]	$ 53,199	$ 53,199	$ 53,199	$ 53,199	$ 53,199	$ 53,199	$ 53,199	
Wages, Indirect	$ 682,040	$ 2,518,302	$ 6,295,754	$ 6,558,077	$ 6,558,077	$ 6,558,077	$ 6,558,077	$ 35,728,403
Total Wages	**$ 1,544,915**	**$ 5,704,302**	**$ 14,260,754**	**$ 14,854,952**	**$ 14,854,952**	**$ 14,854,952**	**$ 14,854,952**	**$ 80,929,778**
Local Indirect Sales Tax Revenue[3]	$ 21,370	$ 78,905	$ 197,262	$ 205,481	$ 205,481	$ 205,481	$ 205,481	$ 1,119,461
Other Local Indirect Tax Revenue[4]	$ 4,317	$ 15,939	$ 39,847	$ 41,507	$ 41,507	$ 41,507	$ 41,507	$ 226,131
Indirect Residential/Commercial Property Tax Revenue	$ 28,420	$ 104,936	$ 262,339	$ 273,270	$ 273,270	$ 273,270	$ 273,270	$ 1,488,775
Total Local Indirect Tax Revenue	**$ 54,107**	**$ 199,779**	**$ 499,448**	**$ 520,258**	**$ 520,258**	**$ 520,258**	**$ 520,258**	**$ 2,834,367**

City of Murfeesboro, Rutherford County, TN
Project Hurricane

City of Murfeesboro Tax Rate: $1.2894	Real Property City of Murfeesboro			
	Full Taxes	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 96,250,000**			
Year 1	$ 496,419	90%	$ 446,777	$ 49,642
Year 2	$ 496,419	90%	$ 446,777	$ 49,642
Year 3	$ 496,419	90%	$ 446,777	$ 49,642
Year 4	$ 496,419	90%	$ 446,777	$ 49,642
Year 5	$ 496,419	90%	$ 446,777	$ 49,642
Year 6	$ 496,419	90%	$ 446,777	$ 49,642
Year 7	$ 496,419	90%	$ 446,777	$ 49,642
Total	**$ 3,474,933**		**$ 3,127,440**	**$ 347,493**

Rutherford County Tax Rate: $2.2194	Real Property Rutherford County			
	Full Taxes	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 96,250,000**			
Year 1	$ 854,469	90%	$ 769,022	$ 85,447
Year 2	$ 854,469	90%	$ 769,022	$ 85,447
Year 3	$ 854,469	90%	$ 769,022	$ 85,447
Year 4	$ 854,469	90%	$ 769,022	$ 85,447
Year 5	$ 854,469	90%	$ 769,022	$ 85,447
Year 6	$ 854,469	90%	$ 769,022	$ 85,447
Year 7	$ 854,469	90%	$ 769,022	$ 85,447
Total	**$ 5,981,283**		**$ 5,383,155**	**$ 598,128**

Total Payments Made in Lieu of Tax: **$ 8,510,594**

Total Taxes Abated on Real Property: **$ 945,622**

City of Murfeesboro, Rutherford County, TN
Project Hurricane

City of Murfeesboro Tax Rate: $1.2894	Personal Property City of Murfeesboro - Group 5 (Mfg Equip)				
	Full Taxes	Depreciation Rate	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 20,000,000**				
Year 1	$ 68,080	0.88	50%	$ 34,040	$ 34,040
Year 2	$ 58,023	0.75	50%	$ 29,012	$ 29,012
Year 3	$ 48,739	0.63	50%	$ 24,370	$ 24,370
Year 4	$ 38,682	0.50	50%	$ 19,341	$ 19,341
Year 5	$ 29,398	0.38	50%	$ 14,699	$ 14,699
Year 6	$ 19,341	0.25	50%	$ 9,671	$ 9,671
Year 7	$ 15,473	0.20	50%	$ 7,736	$ 7,736
Total	**$ 277,737**			**$ 138,868**	**$ 138,868**

Rutherford County Tax Rate: $2.21940	Personal Property Rutherford County - Group 5 (Mfg Equip)				
	Full Taxes	Depreciation Rate	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 20,000,000**				
Year 1	$ 117,184	0.88	50%	$ 58,592	$ 58,592
Year 2	$ 99,873	0.75	50%	$ 49,937	$ 49,937
Year 3	$ 83,893	0.63	50%	$ 41,947	$ 41,947
Year 4	$ 66,582	0.50	50%	$ 33,291	$ 33,291
Year 5	$ 50,602	0.38	50%	$ 25,301	$ 25,301
Year 6	$ 33,291	0.25	50%	$ 16,646	$ 16,646
Year 7	$ 26,633	0.20	50%	$ 13,316	$ 13,316
Total	**$ 478,059**			**$ 239,029**	**$ 239,029**

City of Murfeesboro Tax Rate: $1.2894	Personal Property City of Murfeesboro - Group 5 (Mfg Equip)				
	Full Taxes	Depreciation Rate	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 10,000,000**				
Year 1					
Year 2	$ 34,040	0.88	50%	$ 17,020	$ 17,020
Year 3	$ 29,012	0.75	50%	$ 14,506	$ 14,506
Year 4	$ 24,370	0.63	50%	$ 12,185	$ 12,185
Year 5	$ 19,341	0.50	50%	$ 9,671	$ 9,671
Year 6	$ 14,699	0.38	50%	$ 7,350	$ 7,350
Year 7	$ 9,671	0.25	50%	$ 4,835	$ 4,835
Total	**$ 131,132**			**$ 65,566**	**$ 65,566**

Rutherford County Tax Rate: $2.2194	Personal Property Rutherford County - Group 5 (Mfg Equip)				
	Full Taxes	Depreciation Rate	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 10,000,000**				
Year 1					
Year 2	$ 58,592	0.88	50%	$ 29,296	$ 29,296
Year 3	$ 49,937	0.75	50%	$ 24,968	$ 24,968
Year 4	$ 41,947	0.63	50%	$ 20,973	$ 20,973
Year 5	$ 33,291	0.50	50%	$ 16,646	$ 16,646
Year 6	$ 25,301	0.38	50%	$ 12,651	$ 12,651
Year 7	$ 16,646	0.25	50%	$ 8,323	$ 8,323
Total	**$ 225,713**			**$ 112,856**	**$ 112,856**

Total Payments Made in Lieu of Tax: **$ 556,320**
Total Taxes Abated on Personal Property: **$ 556,320**

City of Murfeesboro, Rutherford County, TN
Project Hurricane

City of Murfeesboro Tax Rate: $1.2894	Personal Property - City of Murfeesboro - Group 2 (Computer)				
	Full Taxes	Depreciation Rate	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 6,000,000**				
Year 1	$ 15,550	0.67	50%	$ 7,775	$ 7,775
Year 2	$ 7,659	0.33	50%	$ 3,830	$ 3,830
Year 3	$ 4,642	0.20	50%	$ 2,321	$ 2,321
Year 4	$ 4,642	0.20	50%	$ 2,321	$ 2,321
Year 5	$ 4,642	0.20	50%	$ 2,321	$ 2,321
Year 6	$ 4,642	0.20	50%	$ 2,321	$ 2,321
Year 7	$ 4,642	0.20	50%	$ 2,321	$ 2,321
Total	**$ 46,418**			**$ 23,209**	**$ 23,209**

Rutherford County Tax Rate: $2.21940	Personal Property - Rutherford County - Group2 (Computer)				
	Full Taxes	Depreciation Rate	% of taxes paid	Payment Made in Lieu of Tax	Taxes Abated
Value	**$ 6,000,000**				
Year 1	$ 26,766	0.67	50%	$ 13,383	$ 13,383
Year 2	$ 13,183	0.33	50%	$ 6,592	$ 6,592
Year 3	$ 7,990	0.20	50%	$ 3,995	$ 3,995
Year 4	$ 7,990	0.20	50%	$ 3,995	$ 3,995
Year 5	$ 7,990	0.20	50%	$ 3,995	$ 3,995
Year 6	$ 7,990	0.20	50%	$ 3,995	$ 3,995
Year 7	$ 7,990	0.20	50%	$ 3,995	$ 3,995
Total	**$ 79,898**			**$ 39,949**	**$ 39,949**

Total Payments Made in Lieu of Tax: **$ 63,158**

Total Taxes Abated on Personal Property: **$ 63,158**

City of Murfeesboro, Rutherford County, TN
Project Hurricane

Payback Summary		
PILOT Term		7
Total Taxes Forgone	$	1,565,100
Total Hard Costs	$	-
Total Taxes Forgone and Hard Costs	$	1,565,100
Tax Revenues From Construction & Set-Up	$	1,403,278
Tax Revenues From Operations During PILOT Period	$	2,834,367
Payments Received in Lieu of Tax	$	9,130,073
Total Tax Revenues Received During PILOT Period	$	13,367,718
Benefit/Cost Ratio		8.54

Projected Costs:

Hard Costs

None.

Opportunity Costs

Local government is requested to forgo for a period of years the opportunity to collect taxes on site improvement, building, and industrial equipment that are a part of the project.

Benefit/Cost Ratio: The sum of tax revenues from construction, operations and property during the PILOT period divided by the total taxes forgone and hard costs.

Notes for Project Hurricane Economic Impact Analysis

1. U.S. Bureau of Economic Analysis, 2012/2020 RIMS II aggregate final demand output multiplier for construction for Rutherford County, Tennessee. This multiplier represents the total dollar change in output that occurs in all industries for each additional dollar of output delivered by the specified industry.

2. U.S. Bureau of Economic Analysis, 2012/2020 RIMS II aggregate final demand output multiplier for wholesale trade for Rutherford County, Tennessee.

3. U.S. Department of Labor, *Consumer Expenditure Survey*, Southern US 2020 factor applied to determine the rate of indirect or "downstream" expenditures on sales taxable goods and services at the local option tax rate of $.0275. It is assumed that purchases associated with new construction and equipment will be sales tax exempt.

4. Based upon July 2020 - June 2021 collections of local Rutherford County Business, Alcohol, Hotel/Motel and Motor Vehicle fees and taxes as a ratio to local sales tax collections.

5. U.S. Bureau of Economic Analysis, 2012/2020 RIMS II industry specific direct effect employment multiplier for motor vehicle electrical and electronic equipment manufacturing for Rutherford County, Tennessee.

6. Projection based upon data from Tennessee Department of Labor; Annual Average Wage/Salary for all industry sectors in Rutherford County, 2020. Assumes an average wage increase of 1.5% for 2021 and 2022.

7. The new property tax for Rutherford County and the City of Murfreesboro is based on projected new property value from direct jobs supported by operations of the new industry. The new property value may be new single-family homes, new rental property, expansions or improvements to existing residential or commercial property. Although commercial property value is included, the residential rate of assessment is used as a conservative measure. The assessment rate of 25% and a combined Rutherford County ($2.2194) and City of Murfreesboro ($1.2894) tax rate of $3.5088 per $100 of assessed value is used. Direct property taxes paid by companies are not included in this value.

*All calculations are in constant 2022 dollars. No tax rate increases are assumed.

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: MED Pension Plan Amendment

Department: Administration

Presented by: Erin Tucker, Budget Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Pension Plan amendment to adopt SECURE Act requirements surrounding required minimum distributions

Staff Recommendation

Approve Plan amendment as required by SECURE Act

Background Information

The following Plan document changes are recommended

> The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE" Act) requires that the Pension Plan Document be adjusted to reflect the change in the required minimum distribution age from 70 ½ to 72 for those participants born after June 30, 1949. As a related matter, following the issuance of relevant final Treasury Regulations, any reference in the Pension Plan Document to applicable life expectancy tables (Uniform Life, Single Life or Joint & Last Survivor) should instead reference the Tables as published in Regulation 1.401(a)(9)-9, subject to adjustment by Regulation 1.401(a)(9)-9(f).

The MED Pension Committee approved this contract at the August 11, 2022 meeting.

Council Priorities Served

Responsible budgeting

The plan amendment reflects relevant and required actuarial and minimum distribution language.

Fiscal Impact

None

Attachments

MED Pension Plan Amendment

AMENDMENT TO

MURFREESBORO ELECTRIC DEPARTMENT PENSION PLAN

WHEREAS, the City of Murfreesboro, Tennessee (the "City") currently maintains the Murfreesboro Electric Department Pension Plan (the "Plan"); and

WHEREAS, the City has retained the right to amend the Plan; and

WHEREAS, the Plan was most recently amended and restated in its entirety effective July 1, 2020; and

WHEREAS, pursuant to the relevant provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act"), the required minimum distribution provisions of the Plan must be modified to reflect changes in applicable law, effective as of January 1, 2020; and

WHEREAS, the Plan must be amended to reflect other changes in applicable regulations, effective as of January 1, 2022;

NOW, THEREFORE, the Plan is hereby amended as follows, effective as of the dates set forth below:

1. Subsection (c)(2)(i) of Section 5.8 of the Plan, "Minimum Distribution Requirements," is deleted and replaced in its entirety to provide as follows, effective as of January 1, 2020:

> ***Life expectancy rule, spouse is Beneficiary***. If the Participant's surviving spouse is the Participant's sole "designated beneficiary," then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later, provided, however, that with respect to a Participant born after June 30, 1949, if such Participant's surviving spouse is the Participant's sole "designated beneficiary," then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72, if later.

2. Subsection (i)(6)(i) of Section 5.8 of the Plan is deleted and replaced in its entirety to provide as follows, effective as of January 1, 2020:

> The required beginning date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Participant retires, provided, however, that the required beginning date of a Participant who was born after June 30, 1949, is April 1 of the calendar year following the later of the calendar year in which the Participant attains age 72 or the calendar year in which the Participant retires.

3. The Plan is amended as follows, effective as of January 1, 2022:

Notwithstanding any provision of the Plan to the contrary, any reference to applicable life expectancy tables such as the Uniform Life Table, the Single Life Table, or the Joint and Last Survivor Table (the "Tables") shall be deemed to be a reference to the Tables as published in Regulation 1.401(a)(9)-9 from time to time, subject to adjustment as described in Regulation 1.401(a)(9)-9(f).

4. Except as otherwise provided herein, the terms of the Plan shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused this instrument to be executed this _____ day of _____, 2022, by a duly authorized officer, effective as of the dates set forth herein.

CITY OF MURFREESBORO, TENNESSEE

By: _____

Its: _____

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Annuity Placement and Lump Sum Distribution Consulting Services

Department: Administration

Presented by: Erin Tucker, Budget Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Agreement with BCG Pension Risk Consultants for annuity placement services. Agreement with Cowden & Associates for Lump Sum Distribution and Plan Termination Services

Staff Recommendation

Approve agreement with BCG Pension Risk Consultants and Cowden & Associates for Lump Sum Distribution and Plan Transfer Services.

MED Pension Committee unanimously approved the contracts at the August 11, 2022 meeting.

Background Information

Many years ago, the City permitted its electric department to establish its own defined benefit pension plan (MED Pension Plan). Similar to the City's defined benefit pension plan, the MED Pension Plan was closed in 2011 and new employees were thereafter offered a defined contribution retirement plan.

MED Pension Plan was a government plan that was exempt from most of the federal pension law that are applicable to private pension plans. Therefore, in 2020, when the City sold its electric department to Middle Tennessee Electric Membership Corp. (MTEMC), a non-government entity, the plan could not be transferred. The City retained the MED Pension Plan with the expressed intent of transferring the plan to another entity that would maintain the Plan's benefits in the future. Such transfers are common for closed pension plans and the status to the MED Pension Plan and the current market make the transfers financially feasible. As part of the sale, MTEMC agreed to fund 50% of the cost and expenses of the transfer up to $3.5m if the transfer occurs within three years of the sale date.

To assist with the pension transfer process, retention of two consulting firms, Cowden & Associated and BCG Pension Risk Consultants, is necessary. Plan participants (participants who have yet to retire and are not drawing Plan benefits) were surveyed for their interest in electing to take a lump sum distribution. Interest in a lump sum payment option was significant and offering a lump sum is helpful in positioning the Plan for a cost-efficient transfer. Cowden's services will assist plan participants in their decision to take a lump sum or remain in the Plan. BCG specializes in placing pension plan transfers, having handled over 2,500 such transactions. Placement of future payments with an annuity that assures benefit are protected and security will foremost

in the placement. Once all benefits have been distributed or transferred, Cowden will assist with formally terminating the plan.

Council Priorities Served

Responsible budgeting

Cost effective transfer of the MED Pension Plan assures the City's future funding obligations are addressed while protecting the Plan participants' benefits.

Fiscal Impact

The expense of these consulting contracts will be funded from Plan assets with a portion of the expense recovered upon transfer of the Plan.

Attachments

1. Cowden & Associates Engagement Letter
2. BCG Pension Risk Consultants Consulting Agreement

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August 2, 2022

CONFIDENTIAL - SENT VIA E-MAIL

Ms. Erin E. Tucker, CPA
Budget Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

Re: Actuarial Services for Murfreesboro Electric Department Pension Plan

Dear Erin,

The purpose of this engagement letter (the "Agreement") is to confirm our engagement to provide actuarial services (the "Services") to the City of Murfreesboro ("City," "you," or "your"). This letter describes the Services that Cowden Associates, Inc. ("Cowden," "we," "us," and "ours") will use reasonable efforts to provide for the Murfreesboro Electric Department Pension Plan (the "Plan"). The terms of this Agreement are supplemented by our Standard Terms of Engagement (the "Terms"), a copy of which is attached to this letter as Exhibit A. Those Terms are also important, and you should read them closely.

Scope of the Engagement

As requested, we are prepared to provide you with assistance with the administration of a temporary lump sum window (Phase I) and assistance with all aspects of the Plan termination (Phase II):

Phase I: Services – related to a temporary lump sum window	**Option A**	**Option B**	**Option C**
Collect participant data to identify eligible participants.	x	x	x
Review Plan amendment (to be prepared by legal counsel) allowing lump sum payments.	x	x	x
Calculate lump sum benefits.	x	x	x
Draft introductory letter to inform participants of window.		x	x
Draft and prepare election forms.		x	x
Administration of the Lump Sum Window: • Print and mail individual election forms. • Establish call center and email address to answer participant questions. • Collect returned election forms. Review for completeness. Prepare processing file for bank to cut lump sum distribution checks.			X
Fee estimate	$10,000	$20,000	$30,000

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Phase II Services – related to assistance with Plan Termination	
• We are prepared to take the lead and assist in all aspects of the Plan termination and can coordinate with the City, your legal counsel, and your current actuary, including working with your legal counsel to ensure proper execution in accordance with state and Federal laws.	
Fee estimate	$15,000

Fees & Expenses

Our fees for the Services listed above is based on our standard hourly rates of $120 to $400, payable as set forth in the Terms. Actual incurred time charges will be billed on a monthly basis. As soon as practical, but once we have incurred approximate 50% of the total estimated time charges, we will contact you regarding our thoughts on the remainder of the project. Specifically, we will discuss with you if we have determined that there are issues or other matters, that we believe will cause additional work and therefore will cause an increase in anticipated fees. We will contact you to explain the issues and then obtain your agreement prior to commencing any additional services.

In addition to fees, in the course of providing services to you, Cowden may incur expenses for services including delivery services, international telephone usage, postage, document binding, court costs, filing fees, transportation, mileage, lodging, meals and travel time. The actual expenses incurred depend on the services provided. Expense items incurred on your behalf will be itemized separately on billing statements, and you authorize Cowden to incur such expenses as are reasonable and necessary to your representation. Note that expense disbursements may not be current at the time of billing.

Staffing of the Engagement

I will be involved in coordinating and overseeing the delivery of services to you. Other service team members will be assigned to the account from among our staff as appropriate. For your reference, you can find our staff bios here: https://cowdenassociates.com/about-us/meet-our-team/

Thank you for this opportunity and we look forward to continuing our partnership! Please contact me if you have any questions or comments.

Sincerely,

Amy Crouse

Amy M. Crouse EA, ASA, MAAA
Consultant and Actuary
412.394.9355
amyc@cowdenassociates.com

cc: Randolph Wilkerson, Adam Tucker, Cathy Smith – City of Murfreesboro
Elliot Dinkin – Cowden Associates, Inc.

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AGREED AND ACKNOWLEDGED

City of Murfreesboro –

Phase I: Administration of Lump Sum window

☐ Option A
☐ Option B
☐ Option C

Phase II: Plan Termination Services

☐

_____
Signature

Print Name: _____

Title: _____

Today's Date: _____

APPROVED AS TO FORM
DocuSigned by:
Adam Tucker
43A2D3551F94...
Adam F. Tucker, City Attorney

COWDEN ASSOCIATES, INC.

_____
Signature

Print Name: Ryan G. Foley

Title: Executive Vice President

Today's Date: _____

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Exhibit A
Standard Terms of Engagement

These Standard Terms of Engagement ("Terms") add certain provisions to the Engagement Letter by and between Cowden Associates, Inc. ("Cowden"), and City of Murfreesboro ("Company") (the "Agreement") dated as of the Effective Date and shall incorporate all terms of said Agreement by reference herein.

1. Scope of Work: Cowden will provide the Services, as set forth in the Agreement. Additional Services may be requested from time to time, and will be billed at Cowden's normal hourly rates, plus direct costs, if any.

2. Payment of Fees. Cowden's terms for payment of invoices are that they are due upon receipt. A late payment fee of two percent (2%) of the invoice amount for any invoice that is forty-five (45) days past due will be applied. If an invoice is still outstanding at ninety (90) days, an additional five percent (5%) late payment fee will be added to the amount outstanding at the time the late payment fee is added. Company shall reimburse Cowden for all reasonable costs incurred in collecting any overdue payments and related interest, including, without limitation, reasonable attorneys' fees, legal expenses, filing fees, court costs, and collection agency fees. If this engagement is terminated, then any outstanding fees shall be paid promptly.

3. Relationship of the Parties. At all times during the term of the Agreement, the relationship between the Company and Cowden shall be that of independent contractors. Nothing contained herein shall indicate that the parties hereto have any employer/employee relationship, joint venture, partnership, agency relationship, or right or power to represent or act on behalf of each other except as set forth in this Agreement.

4. Insurance. Each party covenants, represents, and warrants that it now has in force and effect a valid and binding contract of professional liability insurance covering it for damages occasioned by professional errors or omissions, and covenants to keep such policy, or one similar thereto, in full force and effect at all times during the continuance of the Engagement Letter, at the party's own expense.

5. Indemnification. Notwithstanding anything to the contrary herein, each party agrees to indemnify and hold the other, and its respective principals, officers, directors, employees, affiliates and owners harmless from and against all third party liability, damages or costs, including reasonable attorney fees and court costs, incurred as a result of any breach of this Agreement or any negligent error or omission or intentionally wrongful act of the indemnifying party, its principals, officers, directors, employees or owners, except to the extent that such liability, damages or costs result from the negligent error or omission or intentionally wrongful action of the party to be indemnified.

6. Limitation of Liability. It is agreed and understood that Cowden's work will be based upon the data provided to Cowden Associates, Inc. by Company. To the extent that the data provided is incorrect or incomplete, Cowden shall not be liable for the results of work based on that data unless Cowden was negligent with respect to such data. Cowden shall have no obligation to discern any errors, omissions, or irregularities relating to data provided to Cowden by Company or any third party, except to the extent that the failure to discern such errors, omissions, or irregularities is inconsistent with the applicable professional standards established by the Actuarial Standards Board. Cowden shall not be liable for any direct, indirect, incidental, special, consequential, punitive, exemplary, or any other damages relating to or resulting from the Services performed pursuant to the Agreement.

7. Term; Termination. The term of Agreement shall be for a period of twelve (12) months from the date of execution ("Term"). If the Agreement is terminated prior to expiration of the Term, Company shall pay Cowden for all services actually performed to the termination date set forth in the notice without further liability to the Company of any nature whatsoever either in law or in equity by reason of the termination.

8. Confidential Information. Each Party acknowledges and agrees that all such information disclosed to the other or obtained by the other shall remain the property of the disclosing Party. Upon request, the receiving Party shall promptly return to the other all tangible representations of such confidential information in the recipient's possession and completely destroy all electronic copies and records of such information that cannot be returned.

9. General. These Terms and the Agreement shall be interpreted and enforced in accordance with the laws of the State of Tennessee, without giving effect to conflict of law principles. These Terms and the Agreement may not be changed or modified except in writing signed by both Parties. These Terms and the Agreement shall inure to the benefit of the respective assigns and successors of each party. The failure of either party to insist on strict compliance with any term, provision or condition of this Agreement shall not be construed as a waiver thereof. If

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any provision of this Agreement should be void, invalid or unenforceable for any reason, the remainder of the Agreement shall not be affected thereby.

10. Entire Agreement. These Terms and the Agreement replace and supersede all previous agreements, written or oral, which may have existed between the parties or their affiliates, predecessors, successors or assigns. This Agreement constitutes the full agreement of the Parties regarding the subject matter hereof.

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BCG | PENSION RISK CONSULTANTS PENBRIDGE

CONSULTING AGREEMENT

On behalf of the Murfreesboro Electric Department Pension Plan (“Plan”) and the City of Murfreesboro,Tennessee (“Plan Sponsor”), BCG Pension Risk Consultants, Inc. d/b/a BCG Pension Risk Consultants | BCG Penbridge ("Consultant") hereby agrees to provide the following consulting services regarding the selection of an annuity provider ("Insurance Carrier") for a Single Premium Group Annuity ("SPGA") Buyout Contract for Plan's liability for current and future benefit payments to specified plan participants.

Consulting Services

1. Develop a Bid Solicitation Package ("BSP") containing bid/contract specifications and relevant data for plan participants.

2. Submit BSP to Plan Sponsor for review and approval.

3. Send a BSP to all Insurance Carriers that are on the Notice of Annuity Information as distributed by the Plan Sponsor, requesting that each Insurance Carrier provide a preliminary contract bid on or before a date mutually agreed to between Plan Sponsor and Consultant and answer the Insurance Carriers' questions related to the BSP.

4. Provide to Plan Sponsor for Plan Sponsor's review and placement in the Plan's permanent files, a Due Diligence Package containing current rating, credit worthiness and financial information for each of the quoting Insurance Carriers intended to satisfy the requirements for selecting one or more providers of the "safest available annuity" pursuant to the requirements outlined in DOL Interpretive Bulletin 95-1. Consultant will act as the Independent Expert in regards to Department of Labor's Interpretive Bulletin 95-1.

5. Review the results of the preliminary bid solicitation round with Plan Sponsor as well as the Due Diligence Package for Insurance Carriers who provided a quote.

6. Solicit final bids from Insurance Carriers on a date mutually agreed to between Plan Sponsor and Consultant. Where appropriate, negotiate on behalf of the Plan with competing Insurance Carriers to obtain each carrier's most favorable pricing and/or premium deposit terms.

7. Once Plan Sponsor has selected an Insurance Carrier, coordinate execution and delivery of selected Insurance Carrier's required bid acceptance/binder agreement.

8. Assist Plan/Plan Sponsor in completing the wire transfer of the single premium (purchase funds) directly to selected Insurance Carrier's bank on or before the selected Insurance Carrier's required purchase date. Industry standard is that assets are wired within five (5) business days after selecting insurance carrier.

9. Assist Plan Sponsor in the direct transfer of all confidential participant information and data required by the selected Insurance Carrier for contract installation and administration.

10. Provide sample announcement letters for participants to inform them of the selected Insurance Carrier for annuity.

11. Review initial and final drafts of the selected Insurance Carrier's SPGA Closeout Contract for conformity with final bid/contract specifications.

12. Act as an Independent Expert/Fiduciary as defined by DOL 95-1 bulletin.

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Compensation to Consultant

As compensation for performing these services, Consultant shall be paid a base fee in the amount of One Hundred Ten Thousand Dollars ($110,000.00) payable in installments as follows:

$27,500.00	Upon execution of this Consulting Agreement
$27.500.00	Upon completion of the review of plan documents, bid specifications, data and preliminary insurance proposals (including any new Insurance Carriers)
$27,500.00	Upon completion of Carrier Due Diligence Package
$27,500.00	Upon presentation of final bid letters and selection of an annuity provider

Expenses for travel at the request of Plan Sponsor will be reimbursed by Plan Sponsor. Reimbursement shall be paid within 20 days of receipt of Consultants submittal of expenses.

Consultant does not participate in any bonus, ERA, or override agreements with any insurance carrier that will be considered for the Single Premium Group Annuity ("SPGA") Closeout Contract.

Representations by Consultant

Consultant acknowledges that it is a "qualified, independent expert" within the meaning of DOL Interpretive Bulletin 95-1 and that the Plan and Plan Sponsor are relying on Consultant for advice about meeting the "safest available annuity" standards set forth in DOL Interpretive Bulletin 95-1.

Notwithstanding any other provision contained herein, the duties of Consultant as an annuity consultant to the Plan shall be limited to those expressly imposed upon it by this agreement notwithstanding any reference contained herein to the Plan.

Termination

The Plan Sponsor or Consultant may terminate this agreement by providing 30 days advance written notice to the other party.

Termination will not affect Plan Sponsor's responsibilities under this agreement for fees owed as a result of services properly rendered or costs properly incurred by Consultant to the date of termination. Upon the date of termination, neither party to this agreement will have any further obligation under this agreement nor render any additional services pursuant to this agreement.

If Consultant has received Plan Census and has begun the liability settlement process and the Plan Sponsor terminates the agreement before the liability settlement is completed, Plan Sponsor shall pay Consultant a ten thousand dollar ($10,000.00) onetime termination fee.

Insurance

Consultant covenants, represents, and warrants that it now has in force and effect a valid and binding contract of professional liability insurance covering it for damages occasioned by professional errors or omissions, and covenants

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to keep such policy, or one similar thereto, in full force and effect at all times during the term of this agreement, at the party's own expense.

Indemnification

Notwithstanding anything to the contrary herein, each party agrees to indemnify and hold the other, and its respective principals, officers, directors, employees, affiliates and owners harmless from and against all third party liability, damages or costs, including reasonable attorney fees and court costs, incurred as a result of any breach of this Agreement or any negligent error or omission or intentionally wrongful act of the indemnifying party, its principals, officers, directors, employees or owners, except to the extent that such liability, damages or costs result from the negligent error or omission or intentionally wrongful action of the party to be indemnified..

Governing Law

This agreement shall be construed in accordance with the laws of the State of Tennessee to the extent not preempted by ERISA or other federal law.

Severability

If any term, provision, covenant or condition of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated as a result of such decision.

Entire Agreement

This agreement constitutes the entire agreement of the parties with respect to the services and fees specified herein. This agreement may not be changed or modified except in writing signed by both parties.

Executed in multiple originals to be effective as of _____, 2022.

X DocuSigned by: Michael E. Devlin
5FE57C5911134D5...

Michael E. Devlin, Principal
BCG Pension Risk Consultants, Inc.

X

Shane McFarland, Mayor
City of Murfreesboro, Tennessee

APPROVED AS TO FORM

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

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Child Advocacy Center Funding

Department: Community Services – Strategic Partnerships

Presented by: Angela Jackson, Executive Director of Community Services

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Funding for Child Advocacy Center relocation.

Staff Recommendation

Approve funding recommendation.

Background Information

The Child Advocacy Center (CAC) is a non-profit organization serving child abuse victims, child sexual abuse victims, and drug endangered children, working closely with the Murfreesboro Police Department in their work. The Child Advocacy Center will be relocating from the City's previous Fire Station 5 on Samsonite Blvd. The funding request will assist in this transition.

Fire Station 5 was built in 1976. In approximately 1996, the building was no longer serviceable as a fire station and was leased to the CAC as an in-kind donation. The building is in poor and declining condition. Needed repairs are cost-prohibitive and could only be temporary due to a poor foundation. Moreover, CAC's operational needs have expanded, and the organization requires additional and more suitable space.

The City has funded CAC for many years. The organization is a Strategic Operating Partner funded through the Police Department Budget. To cover one-time expenses related to their move, as well as rent and additional needs, additional funding is requested this year. Because the CAC serves not only the City but also Rutherford County and other cities in the County, staff is working in cooperation with these governmental entities for collaborative funding moving forward.

Council Priorities Served

Responsible Budgeting

The Strategic Partnership application requires on-going reporting and assessment to ensure measurable goals and objectives are met. This process identifies and supports

value added services that directly impact and enhance the City's mission and vision in a way that stewards the City's financial resources.

Fiscal Impact

The proposed funding, $90,000, will be reallocated to CAC within the Murfreesboro Police Department's Operating Budget. Additional expenses of $5,000 are budgeted to fund utilities at the City building until it is vacated and demolished.

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Strategic Partnerships

Department: Community Services – Strategic Partnerships

Presented by: Angela Jackson, Executive Director of Community Services

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Funding recommendations and alignments for Strategic Partnerships.

Staff Recommendation

Approve funding as shown on the attached Strategic Partnership Funding Schedule.

Background Information

Strategic Partnerships includes funding for agencies that provide services for economic development, tourism, health, education, welfare, safety, arts and culture, and enhanced public services. Strategic Operating Partners are aligned for review of application and funding recommendations with Community Development, Economic Development, Parks and Recreation, Police, Schools, and Transportation. Governmental Services Partners are aligned to the Community Services Division, with oversight in cooperation with Rutherford County Government, and Strategic Funding Partners completed an application through the Community Services Division to align with funding designations. An assessment and reporting process ensures measurable goals and objectives are met and funding is disbursed with successful completion and compliance to written agreements or benchmarks.

The transitional implementation from the historically funded "Outside Agencies" to "Strategic Partnerships" began in FY20. This fiscal year is expected to be the final recommendation for this funding structure for agencies that are not providing direct governmental services, as they will have new funding opportunities for FY2024 through the Community Investment Trust.

Council Priorities Served

Responsible budgeting

The Strategic Partnership application and review require an assessment and reporting process to ensure measurable goals and objectives are met. In addition to direct funding, consideration of in-kind services, leases, and improved communication with partners is valued. This process identifies and supports value added services that directly impact and enhance the City's mission and vision in a way that stewards the City's limited financial resources.

Fiscal Impact

Recommended funding levels are budgeted for FY23.

Attachment

Funding Schedule

FY23 STRATEGIC PARTNERSHIPS FUNDING SCHEDULE

Strategic Operating Partners: Community Development	
Boys & Girls Club	$10,000
Greenhouse Ministries	$10,000
Journeys in Community Living	$10,000
Primary Care and Hope Clinic	$10,000
Special Kids Therapy and Nursing Center	$10,000
The Family Center (Exchange Club)	$6,000
Second Harvest Food Bank of Middle Tennessee	$5,000
Portico	$3,500
Strategic Operating Partners: Economic Development	
Main Street Murfreesboro/Rutherford County, Inc.	$40,000
Main Street Murfreesboro/Rutherford County, Inc.	*lease
Strategic Operating Partners: Police	
Child Advocacy Center	$90,000
Child Advocacy Center (utilities)	$5,000
Child Advocacy Center	*lease
Domestic Violence Program, Inc. – Emergency Safe Shelter	$10,000
CASA of Rutherford County	$5,000
Domestic Violence Program, Inc. – Sexual Assault Services	$2,500
Strategic Operating Partners: Parks and Recreation	
Discovery Center	$20,000
Oaklands Association	$20,000
Mid-Cumberland Human Resource Agency - Meals-on-Wheels	$10,000
Leadership Academy, Dr. Martin Luther King, Jr. Scholarship Fund	$8,000

Strategic Operating Partners: Schools	
Read to Succeed	$10,000
Wee Care Day Care	$2,500
Wee Care Day Care	*lease
Strategic Operating Partners: Transportation	
Transit Alliance of Middle Tennessee	$5,000
Governmental Services	
Rutherford County Library System - Linebaugh	$986,407
Rutherford County Library System - MGL Library at Patterson	$217,849
Rutherford County Library System - TEC	$112,319
Rutherford County PAWS	$80,000
Tennessee Rehabilitation Center at Murfreesboro	$52,530
Rutherford County Health Department	$11,000
Rutherford County Soil Conservation District	$2,500
Strategic Funding Partners	
Center for the Arts	$25,000
Tennessee Philharmonic Orchestra	$15,000
Ethos Youth Ensembles	$10,000
Jesse C Beesley Animal Humane Foundation	$3,000

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Contract for Sidewalk Repair Services for ADA compliance.

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Contract for concrete sidewalk repair services for ADA compliance.

Staff Recommendation

Approve the contract with Precision Concrete Cutting, LLC.

Background Information

In the summer of 2021, Council approved a contract with Precision Concrete Cutting to explore a more cost-effective means of maintaining safety and ADA compliance throughout the City. This work included grinding off trip hazards along sections of sidewalk to regain ADA compliance. This method of repair was found to be less invasive and more cost effective than traditional repair methods.

With the success of this previous contract, staff proposes contracting with Precision Concrete Cutting for ADA sidewalk repairs in conjunction with annual street resurfacing projects for this next fiscal year. This contract is using the TIPS (The Interlocal Purchasing System) co-operative contract. The maximum contract amount is not to exceed $150,000 and is effective for one year from the Notice to Proceed date.

Council Priorities Served

Maintain public safety

Improvement of City streets enhances the safety and livability of neighborhoods and the City's roadway system.

Fiscal Impact

The primary funding source for the Annual City Concrete and Storm Drainage contract is from State Street Aid which is the local share of the State's gasoline tax.

Attachments

Contract for sidewalk repair services from Precision Concrete Cutting, LLC.

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SIDEWALK REPAIR CONTRACT
BETWEEN
CITY OF MURFREESBORO
AND
PRECISION CONCRETE CUTTING, INC.

This Construction Contract is entered into as of the _____day of _____, 2022 (the "Effective Date"), by and between the **CITY OF MURFREESBORO**, a Tennessee municipal corporation (the "City") and **PRECISION CONCRETE CUTTING, INC.,** a corporation of the State of Utah ("Contractor").

PROJECT DESCRIPTION

A. The project for which Contractor is providing construction repair services (the "Work") is described as follows (the "Project"): Removal of Concrete Trip Hazards measuring .25" – 2" to bring City sidewalks to ADA Standard compliance, as listed on Exhibit C, Precision Concrete's Price Quote #051622. The Work includes all construction repair services required under the Contract Documents, as hereinafter defined, including all labor, materials, equipment and services necessary to fulfill Contractor's obligations.

B. There is no architect or engineer for this project as the contemplated expenditure for the complete project does not exceed one hundred fifty thousand dollars ($150,000), and the work does not alter the structural, mechanical or electrical system of the project, as permitted by T.C.A. § 62-2-107(b).

C. The following constitute the contract documents for the Project (the "Contract Documents"):

(1) This Contract
(2) TIPS (The Interlocal Purchasing System) Contract 200602, *Pavement and Other Related Services* (the "Solicitation")
(3) Exhibit A - Supplemental Conditions
(4) Exhibit B – Insurance Requirements
(5) Exhibit C – Precision Concrete Cutting's Quote #051622
(6) Non-Collusion Affidavit
(7) Drug Free Workplace Affidavit

AGREEMENT

1. Date of Commencement; Contract Time.

1.1. The date of commencement of the Work shall be the date set forth in the Notice to Proceed by the City. The City has no liability whatsoever for any costs incurred by Contractor prior to the date set in the Notice to Proceed.

1.2. Contract Time shall be for one year from the Effective Date.

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2. Scope of Services.

2.1. The services to be provided by Contractor as authorized by the City are as follows: removal of concrete trip hazards measuring .25' – 2", with all repairs made with a 1:12 ratio in order to bring City sidewalks to ADA Standard compliance. The Work includes all construction repair services, including all labor, materials, equipment and services necessary to fulfill Contractor's obligations.

2.2. Services for each Specific Project will be detailed in a duly executed Task Order. Each Task Order will indicate specific tasks and locations where services will be provided.

2.3. This Agreement is not a commitment by City to Contractor to issue any Task Order.

3. Contract Sum.

3.1. The total value of work performed pursuant to this agreement shall not exceed one hundred fifty thousand dollars (the "Not To Exceed Price"), which will be paid to Contractor by the City in accordance with the Payment section of this Agreement. Contractor will be compensated based on the unit pricing contained in Contractor's Price Proposal, Quote #051622, of $50.00/Inch Foot (inch foot pricing is calculated by multiplying the average depth of the cut by the width of the cut in the saw cutting process).

3.2. The Contract Sum includes all items and services necessary for the Work. No increases in this price of this Contract is authorized unless a written Change Order is signed by a person duly authorized by the City, and no course of conduct, verbal agreement, singularly or cumulatively, is a valid means of modifying the Contract price and no person may waive this provision. The parties further acknowledge that change orders that individually or in the aggregate will cause the Contract Sum to exceed $25,000.00 must be approved by City Council before any such change order or orders are binding against the City.

4. Payment.

4.1. Payment Applications. At least ten days before the date established for each progress payment, Contractor will submit to City an itemized Payment Application for Work completed in accordance with the values stated in the Agreement. This Application will be supported by data substantiating the Contractor's right to payment as the City may reasonably require.

4.1.1. Materials and Equipment. Payments for materials and equipment included in a Payment Application will be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

4.1.2. Title and Liens. Contractor warrants that title to all Work included in a Payment Application will pass to the City no later than the time of the City's payment all work will be free and clear of liens; claims, security interests, or other encumbrances.

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4.2. Notice and Payment.

4.2.1. The City will within seven days after receipt of the Application, issue to Contractor a Payment Notice, for the amount determined to be due under this Agreement and provide explanation for any amount applied for that is to be withheld from payment.

4.2.2. The City will pay Contractor the amount due according the Payment Notice within five business days of the date of the Payment Notice.

4.2.3. Contractor must properly and timely pay each subcontractor and supplier upon receipt of payment from the City. The City has no responsibility for payments to a subcontractor or supplier; provided however, The City reserves the right to pay any subcontractor or supplier directly at any time.

4.3. Payment Notice, progressive payments, or use or occupancy of the Project or any part thereof does not constitute The City's acceptance of any Work not performed in accordance with this Agreement and the Contract Documents.

4.4. Substantial Completion.

4.4.1. Substantial Completion is achieved when the work, or a portion thereof, is completed sufficient for The City's occupancy or use and is accepted by The City. It is the intention of the parties that the Project be completed in whole and that acceptance of a part of the Project is at the City's sole discretion.

4.4.2. Contractor will inform The City when the work is substantially complete, and The City will inspect the Project.

4.4.3. Upon acceptance by The City of the Project as substantially complete, The City will provide Contractor written notice of Substantial Completion Acceptance and with a list of items ("Punch List") to be completed for Final Completion along with a reasonable period for The City to achieve Final Completion.

4.4.4. Contractor's warranty of the Work will begin as of the date of Substantial Completion.

4.5. Final Completion and Final Payment

4.5.1. Upon receipt of a final Payment Application, The City will inspect the Work and determine if the Work acceptable.

4.5.2. Final payment is due only after inspection and accepts as final completion by Owner and Contractor submits all releases, lien waivers, and documents (e.g. receipts) reflecting satisfaction of obligations related to construction of the Project.

4.5.3. Acceptance of final payment by Contractor, subcontractors, and material suppliers constitutes a waiver of all claims for which The City has not at the time of the final Payment Application been provided notice in writing as unsettled.

5. Duties and Responsibilities of City.

5.1. Information and Services Provided by the City.

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5.1.1. The City shall furnish all necessary surveys and a legal description of the site, upon Contractor's written request.

5.1.2. The City will obtain the zoning approval, right-of-way access, and easements required for the Project unless the Contract Documents state that the Contractor will obtain.

5.2. City's Right to Stop the Work. If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the City may direct the Contractor in writing to stop the Work until this correction is made.

5.3. The City's Right to Carry Out the Work. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

5.4. The City's Right to Perform Construction and to Award Separate Contracts. The City reserves the right to perform construction or operations related to the Project with the City's own forces, and to award separate contracts in connection with other portions of the Project. Contractor shall coordinate and cooperate with the City's own forces and separate contractors employed by the City. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore. ·

6. **Duties and Responsibilities of Contractor.** In addition to the duties and responsibilities set forth in Contract Documents, the Contractor:

6.1. Will provide construction services consistent with the Contract Documents that are beneficial in completing the Work.

6.2. Will provide post-construction warranty and repair as needed for a period of one year upon completion of the Work. Any required repairs during this warranty period will be further warrantied for a period of one year with the exception of warranties provided by manufacturer of equipment, all of which must be transferred to the City upon completion of the Work.

6.3. Provide all supervision, supplies, labor, transportation and equipment reasonably required for the proper execution of the Work and is solely responsible for all construction means, methods, techniques, sequences, and procedures, including properly coordinating all portion of the Work.

6.4. Maintain sole responsibly for the safety of Contractor personnel, all subcontractors and materialmen, and all other persons within the worksite and in the immediate vicinity of the worksite that is affected by any Work. Establishment and execution of a comprehensive personnel safety program appropriate for the type of work involved with the various Work Assignments as may be required by the appropriate local, state, and federal agencies such as OSHA and TOSHA.

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6.5. Keep the premises of the Work and the surrounding area free from any accumulation of debris or trash and will properly disposal of all surplus or waste materials upon completion of the Work.

6.6. Comply with any additional Contractor duties and responsibilities are specified in the Supplementary Conditions if attached hereto.

7. **Representations of the Contractor**. In order to induce the City to enter into this Contract, Contractor makes the following representations:

7.1.1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

7.1.2. Contractor has had the opportunity to visit and inspect the work site and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

7.1.3. Contractor is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

7.1.4. Contractor has a clear understanding the Work Assignments will involve Public Works projects.

7.1.5. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing the construction activities and delivering the construction services outlined in the Scope; information and observations obtained or that should have been obtained from site inspections; 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 to be employed by Contractor; and (3) Contractor's safety precautions and programs.

7.1.6. 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.

7.1.7. Contractor is aware of the general nature of work and that other work may be performed by the City and/or others at the various Work Assignment sites that relates to the Work as indicated in the Contract Documents.

7.1.8. Contractor has given the City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City is acceptable to Contractor.

7.1.9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8. **Duties and Responsibilities of the City**. In addition to the duties and responsibilities set forth in the above referenced documents, the City will provide suitable surveys, sketches, or drawings of the requirements and/or limits of the various individual Work Assignments;

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Appropriate schedules for the progress of the various Work Assignments; and other information as may be requested and/or appropriate for the Contractor to execute the various Work Assignments.

9. **Term and Progress of the Work.** This Contract is not effective until approved by the City and signed by all required parties.

   9.1.1. The Contract time is for a period specified in the documents identify in Section 1(a) of this Agreement. No adjustment to this time will be made except by a written Change Order signed by a person duly authorized by the City and no course of conduct, verbal agreement, singularly or cumulatively, is a valid means of modifying the Contract price and no person may waive this provision.

   9.1.2. No work on this Project may begin prior to a Notice to Proceed being issued by the City and Contractor hereby waives any claim for any compensation or reimbursement performed prior to the Notice to Proceed.

   9.1.3. The City may perform construction related to the Project with its own forces or award separate contracts in connection with other portions of the Project. Contractor must cooperate and coordinate all Contractor's work with all City work.

   9.1.4. Additional Progress of Work requirements are as specified in the Supplementary Conditions.

10. **Termination for Breach.** In the event that any of the provisions of the Contract are violated by the Contractor, the City may serve written notice upon the Contractor of its intention to terminate the Contract, and unless within 72 hours after the serving of such notice upon the Contractor such violation or delay ceases and satisfactory arrangement for correction be made, the City may immediately terminate the Contract at any time after said 72 hours. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

11. **Suspension of Work.** Any unauthorized work stoppage due to any types of strike by the Contractor's labor force is grounds for immediate termination of this Contract by the City; provided however, in the City's sole discretion, during any period of work stoppage by the Contractor's labor force, the City reserves the right to have any and all Work Assignments performed by the City crews or crews from another Contractor or Contractors and to deduct from the Contract Price all costs associated with such performance.

12. **Termination for Convenience.** The City may terminate this Contract at any time upon 30 days written notice to Contractor. In that event, the Contractor is entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.

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

14. **Maintenance of Records.** Contractor must maintain documentation for all charges associated with services provided pursuant to this Contract. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Contract, will be maintained for a period of three full years from the date of final

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payment and will be subject to audit at any reasonable time and upon reasonable notice by the City or its duly appointed representatives.

15. **Modification of Contract.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required.

16. **Priority of Documents**. In the event of conflicting provisions, all documents are to be construed according to the following priority: (i) any properly executed amendment or change order to this Contract (most recent with first priority); then (ii) this Contract and exhibits thereto; then (iii) the provisions of any required Payment and Performance Bond; then (iv) the specifications referenced herein; and lastly (v) any other documents referenced herein.

17. **No Partnership or Joint Venture.** 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 is liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.

18. **Waiver.** No waiver of any provision of this Contract, include modification of the Contract price, affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

19. **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, the Contractor certifies and warrants it will comply with this policy.

20. **Indemnification.** Contractor indemnifies 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 omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and (ii) Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, 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. Contractor must pay the City any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.

21. **Insurance.** Contractor must maintain insurance as required by and in accordance with the requirements specified in Exhibit B hereto. Contractor must name the City and the City of Murfreesboro as an additional insured on all liability insurance policies and provide the City a copy of the endorsement. Contractor must notify the City within five days if the insurance policy is renewed, cancelled, or altered in any manner and provide written documentation of such alteration.

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22. **Attorney Fees.** Contractor agrees that should either party deems it necessary to take legal action to enforce any provision of the Contract and the City prevails to any extent, Contractor must pay all expenses of such action including the City's attorney fees and costs incurred at all stages of the litigation or dispute resolution.

23. **Assignment—Consent Required.** The provisions of this Contract inure to the benefit of and is binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Contract, neither this Contract 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 will not release Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF: CITY ATTORNEY, CITY OF MURFREESBORO, 111 WEST VINE STREET, MURFREESBORO, TN 37130.

24. **Entire Contract.** This Contract and all documents listed above, set forth the entire agreement between the parties with respect to the subject matter hereof and are govern the respective duties and obligations of the parties and supersedes any and all prior or contemporaneous, written or oral negotiations, correspondence, understandings and agreements, between the parties respecting the subject matter of this Contract. No supplement, modification or amendment to this Contract is binding unless evidenced by a writing signed by the party against whom it is sought to be enforced. No waiver of any of the provisions of this Contract constituted, or may be deemed to constitute, a waiver of any other provision, whether or not similar, nor does any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party making the waiver.

25. **Force Majeure.** In the event of any occurrence of an event of *force majeure*, meaning any act of war, riot, civil unrest, order of legal authority, act of nature, epidemic, pandemic, public health crisis, or other unavoidable causes that could not have been prevented by and which are not attributed to fault or negligence of Contractor, (i) the City may choose to cancel this Contractor, pay only for work performed by Contractors, and have no further liability whatsoever under the Contract, or (ii) at the City option, Contractor will be granted an equitable extension of the period of performance.

26. **Governing Law.** The validity, construction and effect of this Contract and any and all extensions or modifications thereof is governed by the laws of the State of Tennessee. Tennessee law governs regardless of any language in any attachment or other document that the Contractor may provide.

27. **Venue.** Any action between the parties arising from this Agreement must be maintained in the courts for Rutherford County, Tennessee.

28. **Severability.** Should any provision of this Contract 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 Contract.

29. **Notices.** Notices to the City including but not limited to notice of assignment of any rights to money due to Contractor under this Contract must be mailed or hand delivered to the address below. Any notice to Contractor from the City relative to any part of the Contract will be considered delivered and the service thereof completed when said notice

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is posted by registered mail, to the said Contractor at its last given address or delivered in person to said Contractor or its authorized representative on the work.

Address for notice to Contractor:
Precision Concrete Cutting
Attn: Joseph Norris
PO Box 640610
Pike Road, AL 36064

Address for notice to the City:
City Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130

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

PRECISION CONCRETE CUTTING

By: Matthew Haney
Its: President

CITY OF MURFREESBORO

By: Shane McFarland
Its: Mayor

Approved as to form:

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

DocuSign Envelope ID: A6172D73-04AA-4E08-AB09-07EC8351FD5E

Exhibit A
Supplementary Conditions

Each party acknowledges that no Supplementary Conditions are necessary for this project by initialing below:

City: _____ Contractor: MBH

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Exhibit B
Insurance Requirements

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

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

1. **Commercial General Liability Insurance.**

   1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than $1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than $1,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.

   1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.

   1.3 Each general liability policy must be endorsed or written to:

   a. Include the per project aggregate endorsement;

   b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");

   c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;

   d. Includes a severability of interest clause; and

   e. Waive all rights of recovery against the Additional Insureds.

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

3. **Auto Liability Insurance**

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3.1 Commercial auto liability must be carried with minimum combined single limit of $1,000,000 per occurrence.

3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.

3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. Term of Coverage

4.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

4.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.

4.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.

4.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

5. Subcontractor and Lower-Tier Entities Insurance Requirements

5.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:

a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be $ 1,000,000 per occurrence, and $ 1,000,000 as the annual aggregate limit; and

b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.

c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be

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excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.

d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

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

6.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;

6.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;

6.3 Include the Project per aggregate endorsement;

6.4 Waive all rights of subrogation against the Owner;

6.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and

6.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

7. **Certificates and Endorsements**

7.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;

7.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.

7.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

8. **Reduction in Coverage.** Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The

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Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

9. **Suppliers and Materialmen Coverages**

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

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

10. **Condition Precedent to Starting Work**

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

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

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

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

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

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: FY22 CIP Funds Reallocated for Broad and Church Intersection Improvements

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Reallocate FY22 CIP bond funds for Broad St and Church St intersection improvements.

Staff Recommendation

Approve reallocation of CIP funds

Background Information

Staff has identified improvements to the Church Street/S.E. Broad Street intersection. These improvements would enhance traffic flow and pedestrain movements in and out of the Central Business District area. Planned improvements include an additional southbound right-turn lane along Church St. as well as an additional northbound right turn lane along Broad Street. Pedestrian improvements include widening existing sidewalks and modifying the streetscape along both sides of the Church Street corridor.

Council Priorities Served

Improve economic development

These intersection improvements will enhance traffic flow and pedestrain movements through the intersection; the related public improvements will greatly enhance the entrance to downtown Murfreesboro and encourage further economic activity.

Expand infrastructure

Upgrades to this intersection will improve vehicular and pedestrian movements entering and existing the downtown corridor.

Fiscal Impact

The estimated cost of the total Broad St/Church St. intersection improvements, $1,300,000, is funded by CIP reallocated FY22 bond and loan proceeds available from deferred projects.

Attachments

CIP Transfer Form

City of MURFREESBORO TENNESSEE

. . . 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 2022 Bond

Transfer CIP funds from:		Transfer CIP funds to:	
St. Clair Street Road Improvements	$ 1,300,000.00	S. Church/Broad St Intersection	$ 1,300,000.00
TOTAL TRANSFER	$ 1,300,000.00	TOTAL TRANSFER	$ 1,300,000.00

Explanation: Staff is planning improvements to South Church Street, S.E. Broad Street and N.W. Broad Street to improve traffic flow in and out of the Central Business District. It has been requested that $1,300,000 be transferred from St. Clair Street Road Impovements to South Church Street / Broad Street Intersection Improvements to purchase two properties for this project.

[signature] 7-15-22
Budget Director Signature — Date

Vicki J Massey 7/15/22
Reviewed by Finance — Date

Approved ☑ [signature]
City Manager

Declined ☐ 8·11·22
Date

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

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title:	Professional Services Contract – Medical Center Parkway Widening
Department:	Engineering
Presented by:	Chris Griffith, Executive Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Professional Services Contract for the widening of Medical Center Parkway.

Staff Recommendation

Approve the contract with Energy Land and Infrastructure, LLC.

Background Information

Staff requested a proposal from Energy Land and Infrastructure, LLC (ELI) for the preliminary and final design to widen approximately 3.41 miles of Medical Center Parkway from the I-24 Interchange to NW Broad Street. This project would include an additional thru lane in both directions extending from I-24 to Broad Street. It would also incorporate improvements to the Medical Center Parkway/NW Broad Street intersection, which includes additional turn lanes and thru lanes in multiple directions. In an effort to accelerate the timeline and minimize the impact in this corridor, the construction contracts with this project will be bid in multiple phases. A map outlining the project limits is included for your review. ELI's proposal is for $1,934,558 to complete the scope of work assigned.

Council Priorities Served

Expand Infrastructure

Improvements to these roadways will increase capacity and help traffic flow to alleviate congestion in this highly developed area.

Fiscal Impact

This expense, $1,934,558, is funded by reallocated FY19, FY21, and FY22 CIP bond and loan proceeds.

Attachments

1. Professional Services Contract from ELI.
2. Exhibit of project limits.

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STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

WHEN
"STUDY AND REPORT PHASE" ARE DELETED AND
"RESIDENT PROJECT REPRESENTATION" IS PROVIDED BY OWNER

THIS IS AN AGREEMENT made as of _____, between the CITY OF MURFREESBORO, TENNESSEE, (OWNER) and Energy Land and Infrastructure, LLC., (ENGINEER).

The work is generally described as survey, preliminary and final design, right-of-way exhibits and descriptions and the development of contract documents for the widening of approximately 3.41 miles of Medical Center Parkway from an existing 4-lane cross-section to a 6-lane cross-section in the City of Murfreesboro, TN (hereinafter called the Project). Project Limits will generally be described as I-24 Interchange to NW Broad Street (US-41/70).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional Engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1
BASIC SERVICES OF ENGINEER

1.1 General

1.1.1 ENGINEER shall provide the OWNER professional Engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional Engineering representative for the Project, providing professional Engineering consultation and advice and furnishing customary civil, and structural, engineering services and landscape architecture services incidental hereto.

~~1.2~~ [Reserved]

1.3 Preliminary Design Phase

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.3.1 In consultation with OWNER and on the basis of the accepted Study and Report documents, determine the general scope, extent, and character of the Project.

1.3.2 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

1.3.3 Advise OWNER if additional data or services of the types described in paragraph 3.4 are necessary and assist OWNER in obtaining such data and services.

1.3.4 Based on the information contained in the Preliminary Design Documents, submit a revised opinion of probable Total Project Costs.

1.3.5 Furnish five copies of the above Preliminary Design Documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

1.4 Final Design Phase

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

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1.4.1 On the basis of the accepted Preliminary Design Documents and revised opinion of probable Total Project Costs prepare for incorporation in the Contract Documents final drawings to show the general scope, extent, and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications.

1.4.2 Provide technical criteria, written descriptions and design data for use in filing applications for general permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project and assist OWNER in consultations with appropriate authorities. If permitting proceeds into an individual versus a general format, ENGINEER's services are available as part of the Agreement should the OWNER request such services, in accordance with paragraph 5.1.2.1.

1.4.3 Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent, or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

1.4.4 Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the Engineer's Joint Contract Documents Committee or as specified by OWNER), and assist in the preparation of other related documents.

1.4.5 Furnish five copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

1.5 Bidding or Negotiating Phase

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.5.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment, and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend, chair and keep minutes for mandatory or voluntary pre-bid conferences, attend, chair and keep minutes for third party utility pre-bid coordination meetings, assist OWNER in preparation of construction milestones, and receive and process deposits for Bidding Documents.

1.5.2 Issue addenda as appropriate to interpret, clarify, or expand the Bidding Documents.

1.5.3 Consult with and advise OWNER as to the acceptability of subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.5.4 Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Biding Documents.

1.5.5 Attend the bid opening, prepare bid tabulation sheets, and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

~~1.6~~ [Reserved]

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~~1.7~~ [Reserved]

SECTION 2
ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.14, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters;" these will be paid for by OWNER as indicated in Section 5.

2.1.1 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

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

2.1.4 Providing renderings or models for OWNER's use.

2.1.5 Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, design incidental thereto); and providing data or services of the type described in paragraph 3.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.4.

2.1.8 - [Reserved]

2.1.9 Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.

2.1.10 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services called for in paragraph 6.2.2.5.

2.1.11 Providing any type of property surveys or related Engineering services needed for the transfer of interests in real property and field surveys for design purposes and Engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.12 Preparation of operating, maintenance, and staffing manuals to supplement Basic Services under paragraph 1.7.3.

2.1.13 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs ~~1.2.3~~ and 1.4.2).

2.1.14 Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and

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services not otherwise provided for in this Agreement.

2.2 Required Additional Services
(See Sections 8.3 and 8.5)

When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive (except to the extent otherwise provided in Exhibit A, "Further Description of Basic Engineering Services and Related Matter"). These services are not included as part of Basic Services. ENGINEER shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in Section 5.

2.2.1 Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation of Basic Services is not commensurate with the additional services rendered.

2.2.2 Services in making revision to Drawings and Specification occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.3 Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.

2.2.4 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.5 Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.6 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3
OWNER'S RESPONSIBILITY

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER.

3.1 City Engineer shall act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have primary authority to transmit instruction, receive information, and interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

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

3.3 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.4 Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A, "Further Description of Basic Engineering Services and Related Matters") the following:

3.4.1 Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

3.4.2 appropriate professional interpretations of all the foregoing;

3.4.3 environmental assessment and impact statements;

~~3.4.4~~ [Reserved]

~~3.4.5~~ [Reserved]

3.4.6 zoning, deed, and other land use restrictions; and

3.4.7 other special data or consultations not covered in Section 2; all of which ENGINEER may use and

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rely upon in performing services under this Agreement.

~~3.5~~ [Reserved]

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

3.7 Examine all studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER; obtain advice of an attorney, insurance counselor, and other consultants as OWNER deems appropriate for such examination; and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.8 Facilitate approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9 Provide such accounting, independent cost estimating, and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code, or order applicable to their furnishing and performing the work.

3.10 If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities, and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11 If more than one prime contract is to be awarded for construction, materials, equipment, and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

3.12 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive, and other costs of the type referred to in paragraph 1.2.6) so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

3.13 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections, and final payment inspections.

3.14 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

3.15 Furnish or direct ENGINEER to provide Additional Services as stipulated in paragraph 2.1 of this Agreement, or other services as required.

3.16 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4
PERIODS OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction, and initial operation of the Project, including extra work and required extensions thereto. If in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," specific periods of time for rendering services are set forth, or specific dates by which services are to be completed are provided, and if such dates are exceeded through no fault of ENGINEER, all rates, measure, and amount of compensation provided herein shall be subject to equitable adjustments.

4.2 [Reserved]

4.3 Upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase and shall submit preliminary design documents and a revised opinion of probable Total Project Costs

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within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

4.4 After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent, or character of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase and shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the Project within the stipulated period indicated in Exhibit A, "Further Description of Basic Engineering Services and Related Matters."

4.5 ENGINEER's services under the Preliminary Design Phase and Final Design Phase shall each be considered complete as defined in Exhibit A Section 4.

4.6 After acceptance by OWNER of the ENGINEER's Drawings, Specifications, and other Final Design Phase documentation, including the most recent opinion of probable Total Project Costs, and upon OWNER's advertisement of the Project to the Public, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s) (except as may otherwise be required to complete the services called for in paragraph 6.2.2.5).

4.7 The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.

4.8 The Operational Phase will commence during the Construction Phase and will terminate one year after the date of Substantial Completion of the last prime contract for construction, materials, and equipment on which substantial completion is achieved.

4.9 If OWNER has requested significant modifications or changes in the general scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

4.10 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.11 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2 If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render Construction Phase services in respect of any prime contract for construction, materials, or equipment more than one year after Substantial Completion is achieved under that contract, the various rates of compensation provided for elsewhere in this Agreement shall be subject to equitable adjustment.

4.12 In the event that the work designed or specified by ENGINEER is to be furnished or performed 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), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contract is to proceed concurrently and is to be included in Exhibit A, "Further Description of Basic Engineering Services and Related Matters," and the provisions of paragraphs 4.4. through 4.10, inclusive, will be modified accordingly.

SECTION 5
PAYMENTS TO ENGINEER

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5.1 Methods of Payment for Services and Expense of ENGINEER.

5.1.1 For Basic Planning ~~and Study Report Services.~~ OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters") as follows:

5.1.1A For Basic Design Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A, "Further Description of Basic Engineering Services and Related Matters") as follows:

5.1.1.1 As outlined in the Basic Services of Section 1, the following studies shall be conducted:
T.B.D.

5.1.1.1A One Prime Contract. If only one prime contract is awarded for construction, materials, and equipment for the Project, the ENGINEER shall perform their services on an hourly basis for an amount not to exceed **$1,934,557.69.** This amount does not include utility designs, which be under a separate contract.

5.1.1.2 [Reserved]

~~5.1.1.3~~ [Reserved]
~~5.1.1.4~~ [Reserved]

5.1.2 For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1 General. For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 or 2.2 (except services as a consultant or witness under paragraph 2.1.13) on the basis of ENGINEER's hourly rate schedule ~~Salary Costs times a factor of 2.75~~.

5.1.2.2 Professional Associates and Consultants. For Services and Reimbursable Expenses of independent professional associates and consultant employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to ENGINEER therefor times a factor of 1.15. (See Section 8.4.)

5.1.2.3 Serving as a Witness. For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration, or other legal or administrative proceeding in accordance with paragraph 2.1.13, at the rate of $1,500.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph 5.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 5.1.2.2.

5.1.3 For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4 As used in this paragraph 5.1, the terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 5.4; and the term "Construction Cost" has the meaning assigned to it in paragraph 6.1.

~~5.1.4.1~~ [Reserved]

~~5.1.4.2~~ [Reserved]

~~5.1.4.3~~ [Reserved]

5.2 Time of Payments

5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon hours worked on the Project at the hourly rates in Section 8.4. OWNER shall pay ENGINEER upon its statement with 30 days, provided the statement are in proper order and all supporting documentation has been provided to OWNER.

~~5.2.2~~ [Reserved]
5.3 Other Provisions Concerning Payments

5.3.1 [Reserved].

5.3.2 In the event of termination by OWNER under paragraph 7.1 upon the progress of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of Section 8.4 for services rendered by ENGINEER's principals and employees engaged directly on the Project during that phase to date of termination. In the event of any such termination, ENGINEER will also be reimbursed for the charges of independent

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professional associates and consultants employed by ENGINEER to render Basic Services, and for all unpaid Additional Services and unpaid Reimbursable Expenses.

5.3.3 Records of ENGINEER's Salary Costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

5.3.4 Whenever a factor is applied to Salary Costs in determining compensation payable to ENGINEER, that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by ENGINEER and consistent with ENGINEER's overall compensation practices and procedures.

5.4 Definitions
5.4. Salary Costs used as a basis for payment mean the fees specified in Section 8.4

5.4.2 Reimbursable Expenses mean the actual, reasonable expenses, if authorized in advance by OWNER, incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly in connection with the Project, such as expenses for; transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section l.

SECTION 6
CONSTRUCTION COST AND OPINIONS OF COST

6.1 Construction Cost

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER; but it will not include ENGINEER's compensation or expenses, the cost of land, rights-of-way, or compensation for or damages to properties unless this Agreement so specifies; nor will it include OWNER's legal, accounting, insurance counseling, or auditing services, or interest and/or financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to paragraph 3.7 through 3.11, inclusive. (Construction Cost is one of the items comprising Total Project Costs defined in paragraph 1.2.5. See Section 8.3.)

6.2 Opinions of Cost

6.2.1 Since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Costs provided for herein are to be made on the basis of ENGINEER's experience and qualifications, and shall represent ENGINEER's judgment as an experienced and qualified professional ENGINEER, familiar with the construction industry. ENGINEER cannot and does not guarantee that proposals, bids, or actual Total Project Costs or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase, OWNER wishes greater assurance as to Total Project Costs or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.9.

6.2.2 If a Construction Cost limit is established by written agreement between OWNER and ENGINEER and specifically set forth in this Agreement as a condition thereto, the following will apply:

6.2.2.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Total Project Costs or Construction Costs in excess of the then-established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2 Any Construction Cost limit so established will include a contingency of 10 percent unless another amount is agreed upon in writing.

6.2.2.3 ENGINEER will determine, with advise and consent of OWNER types of materials, equipment, and component systems are to be included in the Drawings and Specifications, and to make reasonable adjustments in the general scope, extent, and character of the Project to bring it within the cost limit.

6.2.2.4 If the Bidding or Negotiating Phase has not commenced within six months after completion of

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the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER; and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2. If the lowest responsible proposal or bid exceeds the established Construction Cost limit OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's general scope, extent, or character to the extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of the condition numbered "3", ENGINEER shall modify the Contract Documents necessary to bring the Construction Cost within the cost limit. In lieu of other compensation for services in making such modifications, OWNER shall pay ENGINEER its fees and Reimbursable Expenses for such services. The providing of such service will be the limit of ENGINEER's responsibility in this regard; and, having done so, ENGINEER shall be entitled to payment for services in accordance with this Agreement and will not be liable for damages attributable to the rejected bid.

SECTION 7
GENERAL CONSIDERATION

7.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. OWNER may terminate this Agreement as to all or any part of the Work for convenience at any time without cause upon five days written notice, which notice will direct the sequence and manner in which the termination will be implemented. Upon termination for convenience, OWNER will pay ENGINEER all fees and Reimbursable Expenses incurred to date of termination.

7.2 Reuse of Documents

All documents, including Drawings and Specifications, prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project; and ENGINEER shall retain an ownership and property interest therein, whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project.. Any reuse without written verification or adaption by ENGINEER for the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants; and OWNER shall by only to the extent allowed by law, indemnify and hold harmless ENGINEER from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.3 Insurance

7.3.1 ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any and all employees, or of any person other than such employees, and from claims or damages because of injury to or destruction of property, including loss of use resulting therefrom. ENGINEER shall carry, and shall provide proof of coverage, a minimum of $1,000,000 in errors and omissions insurance.

7.4 Controlling Law

This Agreement is to be governed by the laws of the State of Tennessee.

7.5 Successors and Assigns

7.5.2 Neither OWNER nor ENGINEER shall assign, sublet, or transfer any rights under or interest in (including without limitation monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the

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contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and 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.

7.6 Dispute Resolution

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit C, "Dispute Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit C or other provisions of this Agreement or under law.

SECTION 8
EXHIBITS AND SPECIAL PROVISIONS

8.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement

8.1.1 Exhibit A, "Further Description of Basic Engineering Services and Related Matters," and Appendix consisting of 13 pages.

8.1.2 Exhibit B, "Location and Tract Count," consisting of three pages.

8.1.3 Exhibit C, "Dispute Resolution," consisting of three pages.

8.2 This Agreement (consisting of pages 1 through 11 inclusive, and the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented, modified, or canceled only by a duly executed written instrument.

8.3 In the event an error is made in the plans, the ENGINEER will correct the error in the plans, and the ENGINEER's services rendered in connection with correcting the error shall be considered as part of the Basic Services. However, if the cost to the OWNER for correcting the error includes tearing out or redoing any portion of the Project, the cost associated with the tearing out or redoing shall not be considered a part of the overall Project Cost for the purposes of calculating the ENGINEER's fee for Basic Services.

8.4 Notwithstanding any provision to the contrary, during the term of the Agreement the maximum billing rates shall be as follows:

Principal Engineer	$195/hour
Senior Project Manager	$185/hour
Project Manager	$170/hour
Senior Engineer	$155/hour
Project Engineer	$140/hour
Senior Designer	$130/hour
Engineering EIT	$120/hour
Design CADD Technician	$110/hour
Drafting Technician	$95/hour
Technical/Clerical Support	$75.00/hour

8.5 ENGINEER will obtain prior written approval before performing such work considered "Additional Services" and charging for same.

8.6 Notwithstanding any provision to the contrary, OWNER will not be invoiced for travel within Davidson, Williamson, and Rutherford Counties.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

CITY OF MURFREESBORO

By: _____

Title: _____

Address for giving notice:
Engineering Department
City of Murfreesboro
P.O. Box 1139
Murfreesboro, Tennessee 37133-1139

ENGINEER:

ENERGY LAND AND INFRASTRUCTURE, LLC.

By: _____

Title:

Address for giving notice:
745 South Church, Suite 801
Murfreesboro, Tennessee 37130
Phone

APPROVED AS TO FORM:

DocuSigned by:
Adam Tucker
Attorney for the City of Murfreesboro, Tennessee

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EXHIBIT A

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND RELATED MATTERS

This is an Exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, between the City of Murfreesboro, Tennessee, (OWNER) and Energy Land & Infrastructure, LLC (ENGINEER), for providing professional engineering services. The Basic Services of ENGINEER and the responsibility of the OWNER as described in the Agreement are amended or supplemental as indicated below, and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are as indicated below.

The Study and Report Phase services are not included in the Basic Services and have not been included in the Basic Services fee but are available as part of the Agreement should the OWNER request such services in writing, in accordance with paragraph 5.1.2.1.

Project Understanding

The work is generally described as survey, preliminary and final design, right-of-way exhibits and descriptions and the development of contract documents for the widening of approximately 3.41 miles of Medical Center Parkway from an existing 4-lane cross-section to a 6-lane cross-section in the City of Murfreesboro, TN (hereinafter called the Project). Project Limits will generally be described as I-24 Interchange to NW Broad Street (US-41/70).

Engineer will perform the following services and the project is generally divided into three specific Sections:

- Section 1 from Interstate 24 to Thompson Lane; template improvement will consist of adding a lane toward the outside of the existing template
- Section 2 from Thompson Lane to West of Warren Street; template improvement will consist of adding a lane toward the inside of the existing template
- Section 3 from West of Warren Street to NW Broad Street; template will vary from six-lane with minimal median to multiple turn lane section at the intersection with NW Broad Street and to include minor bridge modifications to accommodate six 10-foot travel lanes and separation median

More specifically, the work will be subdivided into the following Work Breakdown Structure (WBS)

WBS 1 - Project Management

This WBS will consist of the following project management activities:

- Project Coordination and Administration - Coordination with the City to provide updates, coordinate project reviews, and communicate with project stakeholders regarding progress of the project. Administrative and accounting activities related to the day-to-day management of the project.

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- Project Kick-off Meeting - consists of scheduling, setting the agenda, and producing meeting minutes for one project kick-off meeting; Establish Scope concurrence and for project schedule
- Plans Review Meetings - consists of scheduling, setting the agenda, and producing meeting minutes for up to three plan review meetings at project milestones (30%, 60%, and 100% design plans).
- Project Meetings - consists of scheduling, setting the agenda, and producing meeting minutes for up to three additional project meetings as needed throughout the project.

WBS 2 – Project Study and Development

WBS 2.1 -Kickoff Meeting

ELI will meet with City of Murfreesboro staff to discuss the overall project regarding high level project design objectives. The following preliminary analyses will be prepared to use as discussion material for the kickoff meeting:

- Obtain Key information from City and Stakeholders to confirm template design assumptions
- Develop Exhibits to present and confirm desired sections to City
- Adjust and refine cross-section template based on findings if necessary

WBS 3 – Existing Conditions Surveys *(to be performed by ELI's subconsultant Wiser Consultants, LLC (Wiser))*

WBS 3.1 – Initial Survey of Existing Conditions

Engineer's Subconsultant, Wiser Consultants, LLC (Wiser) will perform a full engineering design survey along Medical Center Parkway from I-24 to SR-1, Broad Street with a total length of approximately 3.41 miles. The DTM width will be 250' centered on existing Medical Center Parkway. This will include 18 side roads that will extend 250' along the side roads from the centerline of Medical Center Parkway with varying DTM widths. See the attached map for a more detailed location provided in Exhibit B.

Wiser will use a combination of traditional ground survey methods along with mobile and aerial lidar to collect topographic and roadway features. The bridge crossings over the Stones River and the railroad will be limited to top of deck features only and will exclude all topographic features, utilities, and bridge features underneath the deck. The outline of landscaping areas will be collected. Individual shrubs, bushes, and decorative trees within the landscaping areas will not be included. Wiser will provide field survey services to collect aboveground utilities and storm and sanitary inverts. Underground utilities will be limited to 811 markings and records provided to Wiser by individual utility owners. No quality level "A" or quality level "B" S.U.E. will be included. Right of way lines will be resolved throughout the survey limits along with the resolution of 85 property tracts (see attached map for tract count). Right-of-way and property resolution will be excluded east of Broad Street. Deliverables will include planimetrics, contours, digital terrain model, and classified lidar data. CAD deliverables will be in Open Roads Designer (ORD) formats per TDOT CADD standards. The utility model will be excluded from the delivery.

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WBS 3.2 – Right-of-Way Staking

Wiser will perform ROW staking throughout the corridor. This will be a onetime staking of ROW and proposed easements. Our assumption is that Wiser will be released to perform staking for the entire corridor upon initial request.

WBS 3.3 – Tract Exhibits and Legal Descriptions

At ELI's request, Wiser will provide tract surveys, ROW/easement exhibits and legal descriptions for specified tracts; estimated 25 tracts for budgeting purpose.

WBS 4 - Environmental Studies [RESERVED]

ELI has excluded Environmental Studies from this scope; however, ELI has the capacity and capabilities to perform these services upon request of additional services.

WBS 5 - Preliminary Design Services

WBS 5.1 - Preliminary Roadway Design

ELI will prepare a preliminary design in accordance with TDOT's Roadway Design Guidelines and current City of Murfreesboro roadway design standards. The preliminary plans will be prepared to conform to TDOT's current MicroStation and ORD CAD standards. The plans will consist of the following sheets:

- Title Sheet with index
- Roadway Typical Sections
- Present Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Driveway Profiles (if applicable)
- Culvert Cross Section(s)
- Preliminary Signing and Marking
- Roadway Cross Sections

WBS 5.3– Preliminary Signal Design to be performed by ELI's subconsultant NSI

Refer to Appendix to Exhibit A - Scope of Work – Traffic Signal Modifications provided by ELI's Subconsultant, Neel-Schaffer, Inc. (NSI)

WBS 5.4– Preliminary Bridge Design (to be performed by ELI's subconsultant NSI)

- Confirm Existing Conditions through plans research from City through ELI
- Coordinate Options for widening travel surface with City through ELI
- Analyze existing Medical Center Parkway over Stones River for proposed lane loading
- Analyze existing Medical Center Parkway over Railroad for proposed lane loading

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WBS 5.5 - Preliminary Design Submittal and Review

ELI will submit preliminary plans (30% design plans) to the City for review and comment. ELI will meet with the City to discuss the City's comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

WBS 5.6 - Preliminary Engineer's Opinion of Probable Construction Cost

ELI will prepare limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. ELI may apply contingency at an amount desired by the City to opinions for probable cost.

WBS 5.7 – Schematic Landscape Design (30% Design) *to be performed by ELI's subconsultant Kingdom Design Group, Inc. (KDGI)*

The Design Team will develop schematic-level landscape architectural documents in sufficient detail to clearly convey a comprehensive image of the Client's design intent. The design documents will identify landscape elements, spatial arrangements, and element properties. KDGi and its subconsultants will provide the preliminary and final design of landscaping plantings, site components, and systems for the widening. Landscape design elements to be included in the contract documents will consist of Site inventory and analysis (existing conditions), development of a conceptual site master plan with spatial arrangement and legend of landscaping components (in compliance with local landscaping requirements), Site Cross Sectional design, Landscaping lighting plan as needed (not inclusive of R.O.W. street lighting), assistance in the coordination of the landscape irrigation system. KDGi's scope of work is limited to landscape architectural design. ELI will provide the site survey; Construction Administration is not a part of this scope and will be additional services.

For the Schematic Design drawings will include:

- Schematic-level site plans
- Cross sections and details
- Landscape Element Schedules (includes plant quantities, sizes, and botanical and common names)
- Schematic Landscape Design (30% Design) Drawing Package, printed progress drawings upon request (otherwise assumed to be delivered and reviewed virtually)

WBS 5 ELI Deliverables:

1. Preliminary Plans package (one electronic copy, Adobe PDF format)
2. Preliminary Engineer's Opinion of Probable Construction Cost (one electronic copy, Adobe PDF format)

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WBS 6 - Right-of-Way Design Services

WBS 6.1- Right-of-Way Design.Plans

Upon completion of WBS 5, ELI will prepare the right-of-way design plans (60% design plans) in accordance with TDOT's Roadway Design Guidelines and current City of Murfreesboro roadway design standards. The plans will be prepared to conform to TDOT's current MicroStation and ORD CAD standards and will provide appropriate detail to support Right-of-Way acquisition. The plans will consist of the following sheets:

- Title Sheet
- Index with Standard Drawings
- Roadway Typical Sections
- Detail Sheets
- Right-of-Way Notes
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section(s)
- Driveway Profiles (if applicable)
- Traffic Signal Plans
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plan
- Signing and Marking
- Roadway Cross Sections

WBS 6.3 – Right-of-Way Phase (60%) Signal Design (to be performed by ELI's subconsultant NSI

Refer to Appendix to Exhibit A - Scope of Work – Traffic Signal Modifications

WBS 6.4 – Right-of-Way Phase (60%) Bridge Design (to be performed by ELI's subconsultant NSI

Design modification to relocate grated inlets, including patching existing inlets

WBS 6.5 - Right-of Way Design Submittal and Review

ELI will submit Right-of-Way design plans to the City for review and comment. ELI will meet with the City to discuss the comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

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WBS 6.6 - Schematic Landscape Design Development (60% Design) *to be performed by ELI's subconsultant KDGI*

The Design Team will develop the schematic design documents in further detail to clearly identify the developed architectural design elements. The Design Development drawings will include:

- Developed Site Plans with appropriate annotations
- Cross sections and details
- Landscape Element Schedules (includes plant quantities, sizes, and botanical and common names)

WBS 6 ELI Deliverables:

1. Right-of-Way plans package (one electronic copy, Adobe PDF format)

WBS 7 - Final Design Services

WBS 7.1 - Final Design Plans

ELI will prepare final construction plans for the project. The plans are anticipated to consist of the following sheets:

- Title Sheet
- Index and Standard Drawings
- Estimated Roadway Quantities
- Estimated Bridge Quantities
- Roadway Typical Sections
- General Notes
- Special Notes
- Detail Sheets
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section(s)
- Driveway Profiles (if applicable)
- Traffic Signal Plans
- Bridge Plans
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plans
- Signing and Marking
- Roadway Cross Sections

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WBS 7.2 – Final Signal Design (to be performed by ELI's subconsultant (NSI))

Refer to Appendix to Exhibit A - Scope of Work – Traffic Signal Modifications

WBS 7.3 – Final Bridge Design to be performed by ELI's subconsultant NSI

Create sheets for bidding and construction

WBS 7.4 - Final Engineer's Opinion of Probable Construction Cost

ELI will prepare limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. ELI may apply contingency at an amount desired by the City to opinions for probable cost.

WBS 7.5 -Final Design Submittal

ELI will prepare a set of final construction plans. ELI will submit draft construction plans to the City for review and comment. ELI will meet with the City to discuss the City's comments and coordinate the revisions received. Following the review meeting, ELI will revise the plans based on the comments received. The Final Construction plans will be signed and sealed by a State of Tennessee licensed Professional Engineer.

WBS 7.6 - Landscape Design Construction Documents (90/100% Design) *to be performed by ELI's subconsultant KDGI*

The Design Team will develop the design development landscape architectural documents in full detail to clearly identify the developed landscape design elements. The Construction Documents Package will include:

- Final drawings stamped, signed, and dated by the responsible design professional

WBS 7 ELI Deliverables:

1. Final sealed plans for City submittal (1 full-size hard copy, 2 half-size hard copies, and 1 electronic copy, Adobe PDF format)
2. Final sealed plans for bidding (1 electronic copy, Adobe PDF format) to the City
3. Final engineer's opinion of probable construction cost (1 electronic copy, Adobe PDF format) to the City

WBS 8 - Environmental Permitting

WBS 8.1-Stormwater Pollution Prevention Plan (SWPPP)

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ELI will prepare and submit the Storm Water Pollution Prevention Plan (SWPPP) permit documents required by TDEC for the land disturbance activities associated with this project. The SWPPP will consist of drawings and a technical narrative describing erosion and sediment control measures that should be implemented during construction to reduce the negative downstream impacts due to pollutant run-off related to construction activities.

ELI will submit the SWPPP document to TDEC for review. ELI will revise the SWPPP document in accordance with comments received from TDEC and will resubmit a final SWPPP document to TDEC for approval. The City of Murfreesboro shall be responsible for all permitting and review fees associated with this task.

WBS 8.2 - NPDES Permit Application

Based on the assumed impact of the project improvements on the surrounding environment, it is assumed that a National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity will be required for the project. ELI will prepare the NPDES General Permit application and will submit it to TDEC along with the approved SWPPP document for processing by TDEC.

Preparation of technical studies or applications for other project-specific environmental permits are not part of this task. If additional environmental permits are required by TDEC, USACE, or any other agency, those permits can be provided by ELI in accordance with Additional Services clause of this agreement.

WBS 8 ELI Deliverables:

1. Draft Project SWPPP (1 electronic copy, Adobe PDF format) to Client and TDEC
2. Final Project SWPPP (1 electronic copy, Adobe PDF format) to Client and TDEC
3. NPDES Permit Application (1 electronic copy, Adobe PDF format) to Client and TDEC

WBS 9 - Utility Coordination and Design

WBS 9.1 - Preliminary Utility Coordination

Upon receiving a notice to proceed, ELI will provide a notification to the potentially affected utility owners along the project corridor. The notification to each utility owner will consist of project map and a letter requesting that the utility company review the project map to determine if they own facilities within the project limits. The letter will request a written response from each utility.

Upon completion of WBS 5, ELI will submit Preliminary Plans to the identified utility owners within the project limits. The submittal to each utility owner will consist of an electronic set of plan drawings (PDF format) and a letter requesting that the utility company review the potential impacts of the proposed project to their facilities. The letter will request preliminary

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relocation plans from each utility and will also request that the utility company identify any private utility easements that fall within the project limits but are not shown on the Preliminary plans.

ELI will prepare for and host a utility coordination meeting as part of this task. Known impacted utility companies will be invited to attend a coordination meeting to discuss potential utility relocations within the project limits. ELI will document the discussions and decisions made during the meeting and distribute to the meeting attendees. Utility Owners will be responsible for identifying utility conflicts within the project limits and the design and relocation of their utilities.

WBS 9.2 - Final Utility Coordination

Upon completion of WBS 6, ELI will submit the approved Right-of-Way plans to utility owners identified in WBS 10.1. The submittal to each utility owner will consist of an electronic set of plan drawings), information detailing any design changes made during Right-of-Way design, and a letter requesting that the utility company review the potential impacts of the proposed project to their facilities and prepare final utility relocation plans.

During the Final Design phase, if there are any changes made to the proposed design plans that will impact final utility relocation plans, ELI will submit the revised plans to the utility owners. Via this task, utility companies will also be invited to attend the final plans review meeting. ELI will not perform any utility relocation design services as part of this task. It is assumed that each utility owner will design, provide plans for, and construct their utility relocations.

WBS 9.3 – Utility Design Services

ELI has excluded Utility Design from this scope; however, ELI has the capacity and capabilities to perform utility design upon request of additional services.

WBS 10 - Bid Phase Services and Construction Administration

WBS 10.1 - Proposal Contract Preparation

ELI will prepare a proposal contract in accordance with TDOT and City of Murfreesboro standards. ELI will prepare technical specifications for those items that are not covered by TDOT or City of Murfreesboro specifications. The remainder of the technical specifications will be based upon TDOT's Standard Specifications for Road and Bridge Construction or will be documented in the construction plans. The proposal contract will contain the Request for Proposals, the contract documents, bid forms, specifications, required special provisions, and an 11" x 17" plan set. The proposal contract will be submitted to the City of Murfreesboro for approval. Upon authorization from the City, ELI will proceed with bidding the project and will print and deliver 10 bound copies of the plans and Proposal Contract to the City.

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WBS 10.2 - Bid Assistance

ELI will assist the City with drafting the advertisement for bids and conduct one pre-bid meeting with potential bidders. ELI will be responsible for plans distribution during the bid phase. ELI assist the City with requests for information (RFI) that arise during the bidding process and issue statements of clarification or bid addenda as appropriate. ELI will conduct the bid opening and meet with City of Murfreesboro staff following the bid opening to assist with bid review. In addition, ELI will tabulate the bids received and evaluate the compliance of the bids with the bidding documents. ELI will prepare a written summary of this tabulation and evaluation. ELI will submit the bid tabulation and other required documentation to the City for review and approval to award the contract to the lowest responsive bidder.

WBS 10 ELI Deliverables:

1. Draft Proposal Contract (one electronic copy in Adobe PDF format) to the City
2. Final Proposal Contract (one electronic copy in Adobe PDF format) to the City
3. Plans Package and Proposal Contract copies for bidders (ten bond copies)
4. Responses to bidder questions (one electronic copy in Adobe PDF format)
5. Bid tabulation and recommendation of lowest responsive bidder submittal to the City (one electronic copy in Adobe PDF format)

WBS 10.3 – Construction Administration

ELI has excluded Construction Administration from this scope; however, ELI has the capacity and capabilities to perform this task upon request of additional services.

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APPENDIX TO EXHIBIT A
Medical Center Pkwy Roadway Improvement Project Scope of Work – Traffic Signal Modifications

The following scope of work outlines the professional design services to be provided by Neel-Schaffer, Inc. (NSI) to Energy, Land & Infrastructure (ELI) in support of the proposed improvements to Medical Center Parkway for the City of Murfreesboro. ELI has retained NSI to provide engineering services related to related modifications to existing traffic signals within the limits of the proposed project. The project design will increase the number of travel lanes from two to three in each direction, effectively creating a six-lane divided arterial typical section. The project limits include Medical Center Parkway from east of the I-24 interchange to NW Broad St with Medical Center Pkwy at Conference Center Blvd and Medical Center Pkwy at NW Broad St forming the western and eastern termini, respectively. In all, the project will impact twelve (12) existing signalized intersections. The existing traffic signals require modifications to accommodate the proposed roadway widening.

NSI proposes to provide ELI with traffic signal design services and delivery of (electronic) sealed construction plan sheets for incorporation into the overall construction plan set. We will prepare the traffic signal design per City of Murfreesboro and Tennessee Department of Transportation (TDOT) traffic signal design guidelines, as applicable. In general, traffic signal modifications will be limited to those items required to accommodate the proposed widening of Medical Center Parkway. Based on this, traffic signal design tasks may include modifications to traffic signal support poles, traffic signal head displays, vehicle detection equipment and/or pedestrian signal equipment. Required adjustments to traffic signal equipment may vary by intersection and will be determined on a case-by-case basis for each location based on the roadway design prepared by ELI. ELI will provide NSI the applicable topographical field survey and proposed roadway design CAD files allowing NSI to determine the necessary modifications to the traffic signal equipment. Design preparation will consist of two plan sheets per intersection: proposed signal layout and signal detail sheet (signal wiring diagram, vehicle detection detail and signal phasing diagram). The individual plan sheets prepared by NSI will be provided to ELI for insertion and incorporation into the overall project plan set.

ELI has indicated that the proposed widening will occur to the <u>outside</u> of existing travel lanes for the section of Medical Center Pkwy from Conference Center Dr to Thompson Ln. This includes the following signalized intersections:

- Conference Center Boulevard
- Gresham Drive
- Willow Oak
- Honey Locust
- Maple Grove
- Robert Rose
- Livy Dearing

For the above identified intersections, the scope anticipates that design tasks will consist of the following revised traffic signal elements:

- Conduit and pull box system
- Pedestrian pedestal poles, pedestrian signal displays and pushbutton locations
- Vehicular signal head displays on existing traffic signal cantilever arms

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- Replacement of base mounted cabinets (only in cases where roadway widening directly infringes on existing cabinet or desired separation from travel way)
- Unless determined otherwise, existing traffic signal support poles, cantilever arms, vehicle detection equipment, CCTV equipment with extension arms, base mounted cabinets, controller and signal instrumentation (switch, RSU, CV-V2X, conflict monitor, etc.) will be retained in this scenario.

ELI has indicated that the proposed widening will occur to the inside of existing travel lanes (i.e. median) for the section of Medical Center Pkwy from Thompson Ln to NW Broad St. This includes the following signalized intersections:

- Thompson Lane
- Joe Knight Dr
- Arnhart Dr
- Gateway Blvd
- NW Broad St

For the above identified intersections, the scope anticipates that design tasks will consist of the following revised traffic signal elements:

- Replacement of cantilever signal support poles (support poles not disturbed by widening will be retained if possible)
- Revised vehicle detection assignments (detection equipment will be relocated and re-used where possible).
- Revised traffic signal displays (relocation of existing displays and installation of additional displays as required).
- Unless determined otherwise, existing traffic signal equipment that can be retained (either in place or via relocation) will be incorporated into modified traffic signal layout: base mounted cabinets, pedestrian signal equipment (including pedestal poles, displays and pushbuttons), conduit and pull box system (some modifications possible), and signal instrumentation (switch, RSU, CV-V2X, conflict monitor, etc.).

In addition, it is anticipated that adjustments to the corridor's existing fiber optic cable interconnect cable will be required. The scope assumes that design will require relocation of existing fiber optic cable including respective conduit and pull boxes. Scope tasks include preparation of fiber cable interconnect layout sheets depicting modified position of fiber interconnect cable system based on limits of proposed roadway widening as prepared by ELI. Design approach assumes that network channel assignments (including IP addressing) will remain consistent with existing protocol.

Services currently excluded from scope of work:

- Preparation of updated basic and coordinated traffic signal timings
- Design of new traffic signal at intersection of Medical Center Pkwy and Fountains/Warren St
- Environmental documents and recommendations
- Lighting Design
- Geotechnical investigations
- Utility Relocation Design / Subsurface Utility Engineering
- Structure Design / Retaining Wall Design and Sheets
- Permit Preparation
- Public Hearing / Engagement services
- Bid Phase Services
- Construction Phase Services

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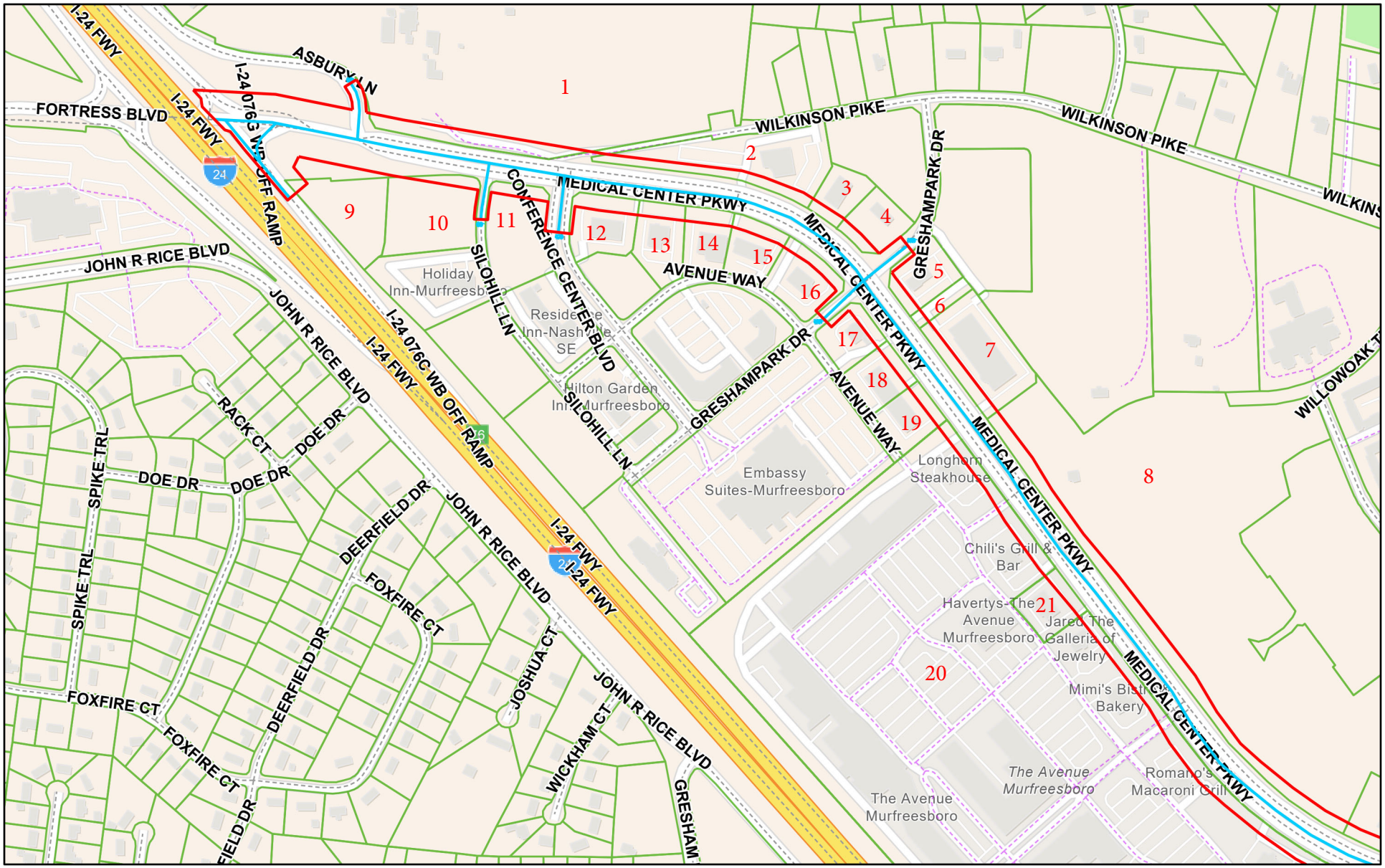
Items to be provided by City, ELI or others

- Topographic field survey, including existing utility locations
- Roadway and Storm Drainage design services
- Vehicle Traffic Counts
- Permits
- Pavement design
- Right-of-Way Acquisition services, including preparation of legal descriptions and exhibits
- Utility coordination
- Existing traffic signal timings, including Synchro software files

EXHIBIT B

Medical Center Tract Count



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0 0.1 0.2 0.4 km

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City Of Murfreesboro IT Department

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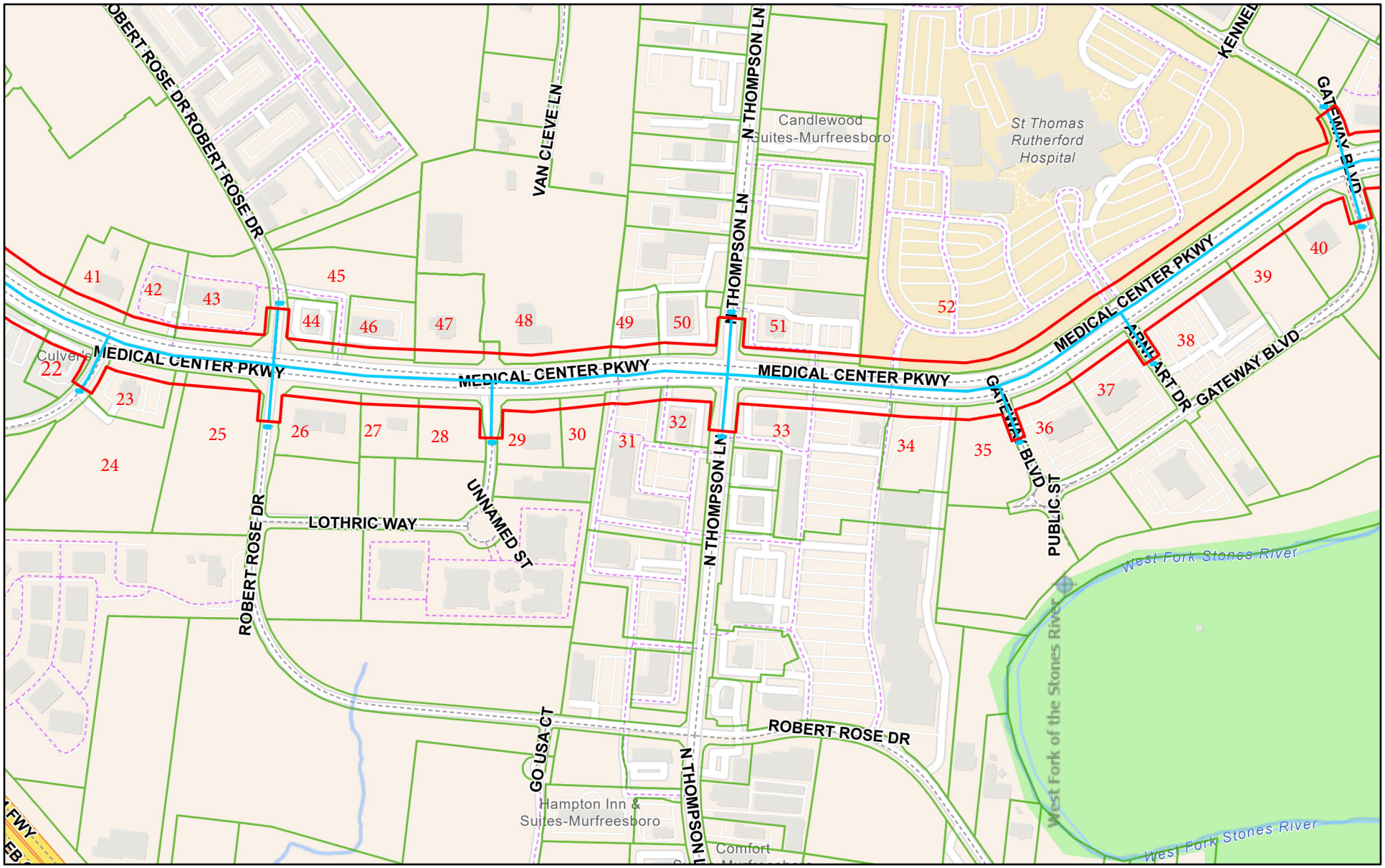
Medical Center Tract Count



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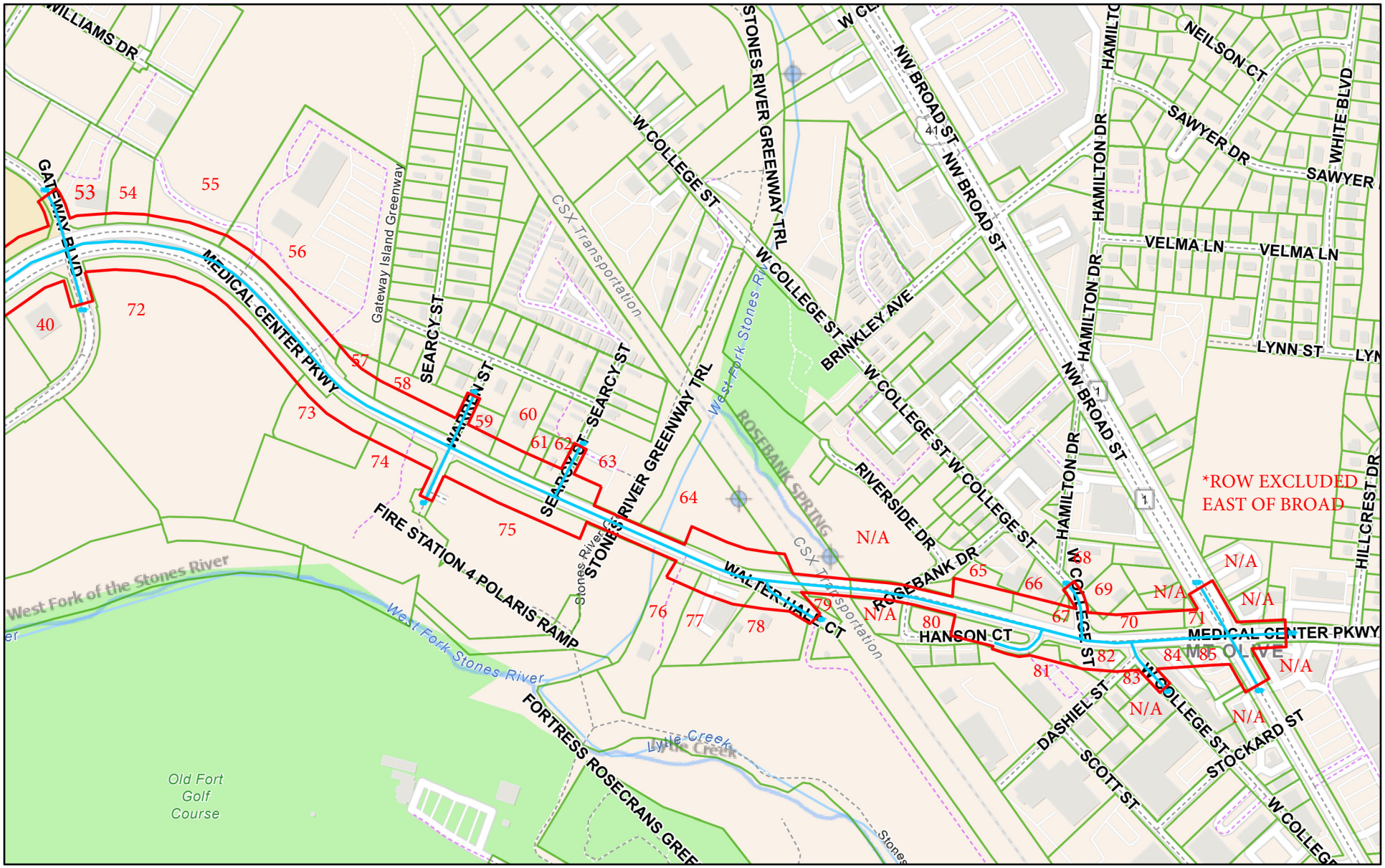
Medical Center Tract Count



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N/A - TRACT NOT INCLUDED

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EXHIBIT C

DISPUTE RESOLUTION

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 ENGINEER 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 GMP or Project Schedule, ENGINEER must first follow the provisions of any Claim procedure established by the ENGINEER Agreement before seeking relief under these Procedures.

2. **Arbitration**

2.1 Except as provided in Section 5 hereof, any Dispute that has not been resolved by negotiation will be decided by binding arbitration conducted in accordance with the Construction Industry Rules of the AAA; provided however, the matter will not be submitted to the AAA for administration.

a. The matter will be heard by an arbitrator who has 10 or more years of experience handling construction litigation matters in Rutherford, Davidson, or Williamson counties (the "Arbitrator").

b. The parties will agree upon the Arbitrator within five days of the Notice.

c If the parties are unable to agree, each party will exchange within 10 days of the Notice a list of five attorneys qualified as set forth in Section 2.1(a). The OWNER will compare lists and a name that first appears on the OWNER's list that also appears on the ENGINEER's list will serve as the Arbitrator. If no name appears on both lists, the two attorneys first appearing on each list will select a third qualified attorney to serve as the Arbitrator.

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2.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.

2.3 In connection with such arbitration, each Party is entitled to conduct not more than 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.

2.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.

2.5 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.

3. **Continuing Work** Unless otherwise agreed to in writing, ENGINEER 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 ENGINEER in accordance with the ENGINEER Agreement.

4. **Exceptions**

4.1 Neither the OWNER nor ENGINEER are required to arbitrate any third-party claim, crossclaim, 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 ENGINEER.

4.2 The OWNER or ENGINEER 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

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enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 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 OWNER for permitting, the excise of governmental police powers for the benefit of public health, safety, and welfare, or other actions taken in the OWNER's regulatory capacity.

4.4 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.

Medical Center Parking Widening Limits

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Professional Services Contract – Asbury Lane Realignment

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Professional Services Contract for the realignment of Asbury Lane.

Staff Recommendation

Approve contract with Wiser Company, LLC, subject to approval by City Attorney.

Background Information

The Engineering Department requested a proposal from Wiser Company for the preliminary and final design for the realignment of Asbury Lane. This realignment will eliminate the existing intersection of Asbury Ln. at Medical Center Parkway and reroute it to make a connection with Wilkinson Pike to the east, as outlined in the 2040 Major Transportation Plan. This design also incorporates a roundabout that connects Wilkinson Pike, Asbury Lane, and Conference Center Drive. Also included within this proposal are signal improvements at Medical Center Parkway and Conference Center Drive to accommodate this new connection. A map showing these conceptual improvements is attached for your review. Wiser Company's proposal is for $444,805 to complete the scope of work assigned.

Council Priorities Served

Expand Infrastructure

Implementation of the 2040 Major Transportation Plan through the expansion of existing roadways.

Fiscal Impact

This expense is a portion of the costs for the Wilkinson Pike project funded by the FY22 CIP Budget.

Attachments

1. Professional Services Contract from Wiser Company, LLC.
2. Exhibit of project concept.

City of MURFREESBORO TENNESSEE

. . . 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 2022 Bond

Transfer CIP funds from:			Transfer CIP funds to:		
Wilkinson Pike Widening	$	(1,500,000.00)	Asbury Lane	$	1,500,000.00
TOTAL TRANSFER	$	(1,500,000.00)	TOTAL TRANSFER	$	1,500,000.00

Explanation: It has been requested that funds be transferred from Wilkinson Pike Widening to Asbury Lane.

The extension of Wilkinson Pike to Asbury Lane was included as part of the Wilkinson Pike Widening project.

Now it has been determined that Asbury Lane needs to be a separate project.

Budget Director Signature — Date: 8-17-22

Vicki J Massey — Reviewed by Finance — Date: 08/17/22

Approved ☑ — City Manager

Declined ☐ — Date: 8-17-22

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

Wiser Company, LLC
1620 Gateway Boulevard, Suite 201
Murfreesboro, Tennessee 37129

August 11, 2022

Chris Griffith, PE
Executive Director of Public Infrastructure
City of Murfreesboro
111 W. Vine St.
Murfreesboro, TN 37133

Subject: **Proposal for Survey through Construction Plans**
Asbury Lane / Wilkinson Pike Extension

Wiser Consultants, LLC is pleased to submit the attached Design Services proposal as requested for the subject project. Our scope, assumptions and fee are as follows:

SCOPE AND ASSUMPTIONS:

Survey Services

Initial Survey:

Wiser will perform a full engineering design survey along the proposed Asbury Lane alignment from Wilkinson Pike at Greshampark Drive to Asbury Lane just north of Medical Center Pkwy. with a total length of approximately 4,400 feet. This will include a proposed alignment to connect to Medical Center Pkwy. at Conference Center Blvd. with a total length of approximately 1,500 feet. Total DTM width will be 300' centered on the proposed centerlines of Asbury Lane and Conference Center Blvd (see attached).

Wiser will use a combination of traditional ground survey methods along with mobile and aerial lidar to collect topographic and roadway features. Wiser will provide field survey services to collect underground utilities, storm and sanitary inverts. Right of way lines will be resolved throughout the survey limits along with the resolution of approximately 14 property tracts (see attached) Deliverables will include planimetrics, contours, digital terrain model and classified lidar data. CAD deliverables will be in Microstation and Geopak formats per TDOT CADD standards.

ROW Staking:

Wiser will perform ROW staking throughout the corridor. This will be a one time staking of ROW and proposed easements. Our assumption is that Wiser will be released to perform staking for the entire corridor upon initial request.

Wiser Company, LLC
1620 Gateway Boulevard, Suite 201
Murfreesboro, Tennessee 37129

Tract Exhibits and Legals:

Wiser will provide ROW/easement exhibits and legal descriptions for a maximum of 18 tracts. The fee for each tract will be an estimated $1,000 per tract.

Design Services

1. Attend monthly team meetings with the City of Murfreesboro throughout the life of the project.
2. Provide engineering design services to prepare preliminary, right-of-way, and construction documents for the project per City of Murfreesboro guidelines, specifications, and standard drawings.

    a. Preparation of Line and Grade plans to be submitted to City of Murfreesboro for review and approval including design of a roundabout.
    b. Assumes addressing related comments and alignment revisions from the City's review.
    c. Storm water design along the proposed corridor.
    d. Includes the design of 1 signalized intersection:
        i. Medical Center Pkwy @ Conference Center Blvd
    e. Provide utility coordination as necessary with those agencies that will be affected by this project.
    f. Wiser will acquire a general storm water permit (NPDES) and develop a storm water pollution prevention plan (SWPPP) per TDEC requirements, and related coordination.
    g. Assumes three (3) plan submittals to the City at various stages of project development for review and approval: 1) preliminary, 2) right-of-way, 3) final construction plans.
3. Prepare itemized estimate of probable cost using TDOT pay item numbers.
    a. A construction cost estimate will be provided at the beginning of the right-of-way acquisition phase.
    b. A detailed construction cost estimate will be provided at the end of the design phase once quantity take-offs have been prepared.
    c. An updated construction cost estimate will be provided prior to Bid advertisement.
4. Prepare bid documents per City of Murfreesboro guidelines.
5. Prepare bid notice on behalf of the City of Murfreesboro (The City will be responsible for any related costs for this activity).
6. Assist City in evaluation of bids and recommendation for contract award.

Wiser Company, LLC
1620 Gateway Boulevard, Suite 201
Murfreesboro, Tennessee 37129

The project will be developed using the following assumptions and criteria:

1. Survey limits do not overlap into Medical Center survey. If this project schedule proceeds the Medical Center schedule additional survey will be needed.
2. The typical sections for Asbury Lane, Wilkinson Pike, and Conference Center Blvd will be based on the Williamson Farm exhibit as provided by the City of Murfreesboro.
3. Right-of-way width will vary.
4. Project length is approximately 6,500 LF.
5. The maximum side slope shall be 3:1.
6. The minimum longitudinal slope will be 0.50%.
7. Maximum superelevation rate of 4% for urban design shall be utilized.
8. Any related utility design and/or relocation will be by others.
9. Entire project to be constructed as a single phase.
10. Project to have a single bid cycle.

Items that are not included within the scope of work and can be negotiated at a later date as additional services:

1. Property acquisition services.
2. Design or development of additional roads other than:
    a. Asbury Lane
    b. Wilkinson Pike
    c. Conference Center Blvd
3. Roadway or pedestrian lighting.
4. Landscaping improvements.
5. Services or costs associated with mitigation of environmental features discovered during the project.
6. Environmental studies to identify wetlands, endangered species of flora or fauna, hazardous material, or archeological sites.
7. Survey updates due to residential, commercial, or industrial development.
8. Any public involvement meetings or presentations.
9. Any changes to the horizontal and/or vertical alignment or typical section after comments have been received from the City.
10. Traffic counts or studies.
11. Construction Engineering Inspection (CEI) and related services.
12. Costs necessary to advertise and/or bid the project more than once.
13. Studies or design of a detention/retention pond.
14. Retaining wall design.
15. Septic/field lines locating and design.

Wiser Company, LLC
1620 Gateway Boulevard, Suite 201
Murfreesboro, Tennessee 37129

The following will be provided or paid by the City of Murfreesboro:

1. City Mapping.
2. City Contours.
3. Any existing traffic data on Asbury Lane, Wilkinson Pike, and Medical Center Pkwy.
4. All fees for permit applications.
5. All fees for advertisements.
6. Property access notification for Surveying services.
7. City of Murfreesboro traffic signal specifications.

FEE:

Survey Services

Initial Survey:	Hourly not to exceed $49,750
Right of Way Staking:	Hourly not to exceed $10,000
Tract Exhibits & Legals:	Hourly not to exceed $18,000

Design Services

Roadway Design:	Hourly not to exceed $316,960
Signal Design:	Hourly not to exceed $17,095
Utility Coordination:	Hourly not to exceed $10,000
Permitting:	Hourly not to exceed $15,000
Bidding Assistance:	Hourly not to exceed $8,000

SCHEDULE:

Field work can begin within 2 weeks after notice to proceed with full delivery occurring no later than 20 weeks later. Design services will proceed after the completion of the design survey.

We appreciate the opportunity to work with you. If you have any questions or need any additional information, please contact me at 615-278-1500 or DNMcClatchey@wiserconsultants.com.

Sincerely,

Wiser Consultants, LLC

Neal McClatchey, PE
Project Manager

Wiser Company, LLC
1620 Gateway Boulevard, Suite 201
Murfreesboro, Tennessee 37129

EXHIBIT B

Schedule of Hourly Fees

January 1, 2021 – December 31, 2022

Professional Services	Current Rates
Principal Engineer	$ 205.00
Senior Project Manager	$ 180.00
Senior Engineer	$ 175.00
Project Manager	$ 150.00
Project Engineer II	$ 140.00
Project Engineer I	$ 125.00
Engineering Intern II	$ 120.00
Engineering Intern I	$ 105.00
Engineering Technician	$ 105.00
CAD Technician	$ 95.00
Resident Project Representative	$ 95.00
Senior Surveyor	$ 165.00
Survey Project Manager	$ 135.00
Registered Land Surveyor	$ 125.00
1 Person Survey Crew	$ 110.00
2 Person Survey Crew	$ 160.00
3 Person Survey Crew	$ 190.00
Survey CAD Technician	$ 115.00
Utility Coordinator	$ 105.00
Cartographic Manager	$ 125.00
Certified Photogrammetrist	$ 120.00
Cartographic Tech II	$ 105.00
Cartographic Tech I	$ 95.00
Lidar Technician II	$ 105.00
Lidar Technician I	$ 95.00
Clerical Staff	$ 80.00
Equipment	
Static Laser Scanner	$ 900/Day
Mobile Laser Scanner	$8,500/Day

Gresham Smith

August 11, 2022

Neal McClatchey
Wiser Consultants
1620 Gateway Blvd., Suite 201
Murfreesboro, TN 37129

Subject: Scope of Service for Traffic Signal Design at the Conference Center Blvd. intersections with Medical Center Pkwy and Wilkinson Pike.
Murfreesboro, TN

Dear Neal:

Gresham Smith is pleased to submit for your approval the following Scope of Services for the traffic signal design at Conference Center Blvd. intersections with Medical Center Pkwy and Wilkinson Pike.

Listed below are the signal design tasks required for the design of the one (1) signalized intersection. Design plans are for mast arm and pedestrian signal installation at these locations. The signal plans will be added to the Prime Consultant's roadway plan set, and will not be bid independently.

The detailed service tasks include:

Task 1 Project Management and Coordination

Gresham Smith will manage this project for the City of Murfreesboro following all applicable City and Tennessee Department of Transportation (TDOT), standards, methods, and procedures. Gresham Smith will hold a meeting with the Prime Consultant to formulate a clear understanding of the needs for the signal design. Project progress meetings will routinely be conducted with the Prime by teleconference to provide project status. These meetings will occur monthly until the design is complete.

Monthly status reports detailing the work completed during the past month will accompany monthly progress billing.

Deliverables: Meeting minutes and monthly status reports.

Genuine Ingenuity

222 Second Avenue South
Suite 1400
Nashville, TN 37201
615.770.8100
GreshamSmith.com

Task 2 Traffic Signal Design

The design of the traffic signal at Conference Center Blvd. intersections with Medical Center Pkwy will include the following:

- Type and location of signal poles
- Signal head type and placement
- Controller cabinet placement and type
- Radar Vehicle detection design and placement (stop bar and advanced)
- Battery backup cabinet placement and type
- Signal controller cabinet detail
- Signal interconnect design
- Electrical service connection location and design
- Pedestrian signal design
- Wiring diagram
- Signal phasing diagram
- Street name sign on mast arm
- General / construction notes

As part of the design, Gresham Smith will coordinate with the local power company to confirm the electrical connect and the City to confirm the signal design. No more than three (3) submittals are included in this scope of services for the design plans: preliminary, ROW, and final construction plans. These reviews will include construction cost estimates for the proposed signal design.

Deliverables: Electronic and hard copies of Engineering Construction Signal Plans.

COMPENSATION

The following hourly not to exceed is estimated for the above scope of services:

	Fee
Total Traffic Signal Design Fee	$ 17,055.00
Expenses (includes data collection fee)	$ 40.00
Total Fee	$ 17,095.00

WORK SCHEDULE

Upon approval and a notice to proceed of the above professional services scope of work Gresham Smith will complete the scope of work within eighteen (18) months of the notice to proceed. This schedule is dependent upon a review time.

ASSUMPTIONS:

The following are a list of assumptions used to develop this scope and fee. Any changes to these will impact the cost and schedule for the project.

- The Prime Consultant's Wilkinson Pike proposed design will be used; no additional survey will be needed.
- The signal design at the intersection of Conference Center Blvd. and Medical Center Pkwy. will only include design for the additional leg of the intersection which is assumed to be one new mast arm. A full signal redesign of the intersection will not be done.
- No signal timing will be done as part of this contract.
- Per City of Murfreesboro Standards, radar detection will be used.
- No existing signal controller hardware/equipment will be reused.
- New controllers will match City standards.
- No before/after study will be conducted.
- No emergency vehicle preemption devices are part of this project.
- Mast arm designs will be per TDOT standard and will be the responsibility of the contractor
- Area is clear of any historical elements.
- No roadway design will be needed including sidewalks.
- Bicycle facilities will not be part of this project.
- The Signal Warrant Analysis has demonstrated to the City's the warrants for the traffic signal.

SERVICES NOT INCLUDED:

The following are a list of services not included within this scope and fee:

- Signal Timing;
- Survey;
- Geotechnical services;
- Utility relocation plans;
- Subsurface utility engineering (SUE);
- Permit submittals;
- Right of way field staking;
- Construction bid documents;
- Preconstruction conference meeting;
- Construction engineering service including contractor submittal and shop drawing reviews;
- Construction observation service;
- Implementation of signal timing plans into the signal controllers; and
- Public meeting presentation.

CLOSURE

This proposed Professional Services, Compensation, and Work Schedule represents our entire Scope of work. If you have any Questions or need additional information you may reach me at (615)-770-8622 or by email at meredith.cebelak@greshamsmith.com.

Sincerely,

Meredith Cebelak, PE, PhD
TSM&O Department Leader

CM

Copy Jody Vance -
Gresham Smith

Murfreesboro GIS Data

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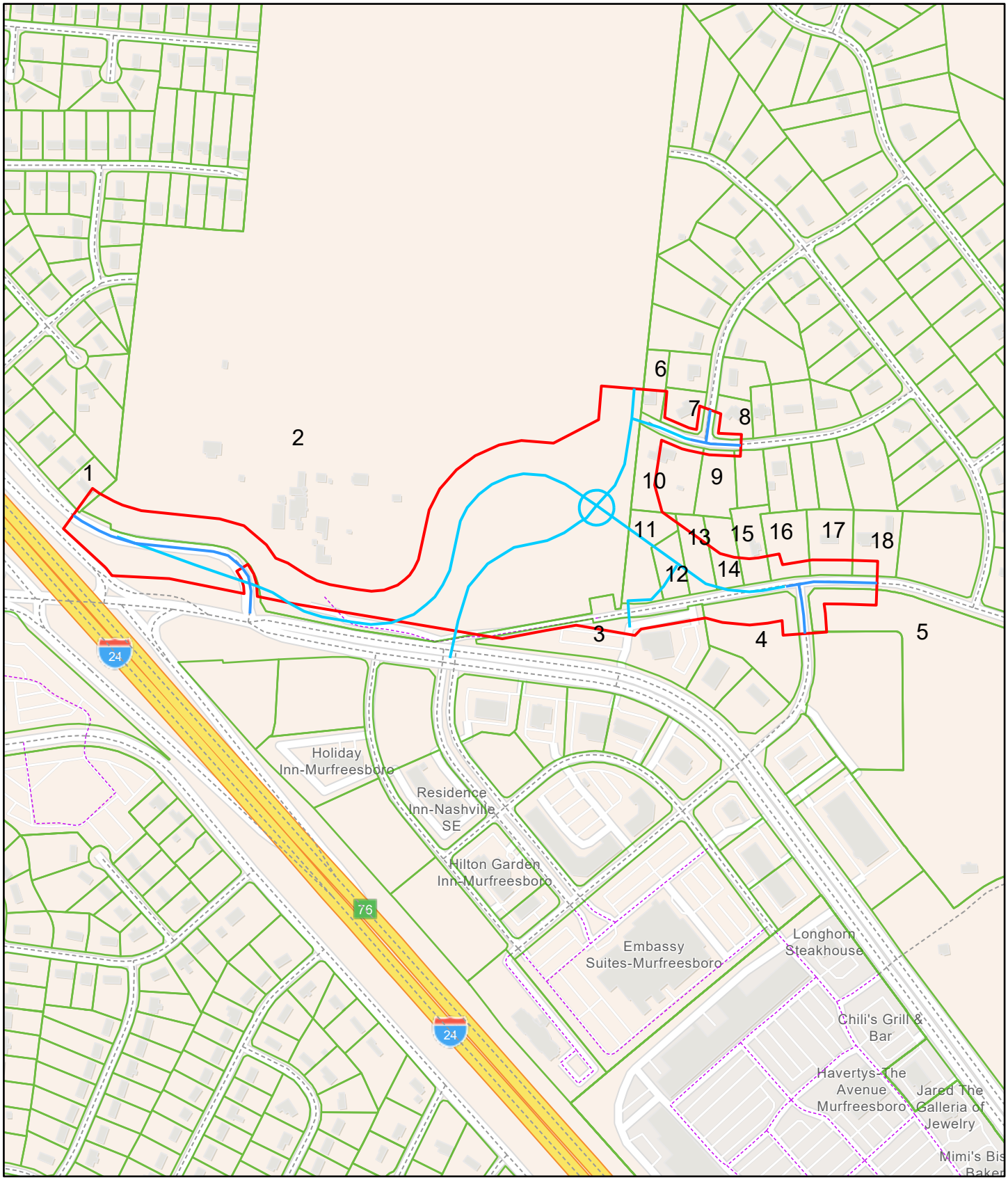
Murfreesboro GIS Data



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City Of Murfreesboro IT Department
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AGREEMENT BETWEEN WISER CONSULTANTS, LLC
AND
CITY OF MURFREESBORO, TENNESSEE

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), made and entered into by and between WISER CONSULTANTS, LLC, a Tennessee limited liability company located at 1620 Gateway Blvd., Murfreesboro, Tennessee 37129, hereinafter referred to as "ENGINEER" or "WISER", and CITY OF MURFREESBORO, TENNESSEE, 111 East Vine Street, Murfreesboro, Tennessee 37130, hereinafter referred to as "CITY", who mutually agree as follows:

DECLARATIONS. City desires to retain ENGINEER to provide engineering, related technical, and other professional services in connection with the City's Asbury Lane Extension Project hereinafter referenced as the "Project." The Project is described as follows:

City of Murfreesboro's Asbury Lane Extension project. The project includes extending Asbury Lane, Wilkinson Pike, and Conference Center Blvd, roundabout design, and a signalized intersection design.

SCOPE OF SERVICES. Engineer shall provide professional services for Survey, NEPA, Engineering Design, Bidding Assistance, and Overall Project Management for City of Murfreesboro Asbury Lane Extension Project. The WISER Fee Proposal & Scope of Work as found in Attachment A shall be considered as an integral part hereof.

1. Engineer shall be paid on a Time and Materials Basis as detailed herein, in the amount not to exceed $444,805.00 for Survey, NEPA, Design, and Preconstruction Services.

2. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The Mayor and City Council approved this Agreement on the ____ Day of _____ 2022.

IN WITNESS WHEREOF the parties have executed this Agreement through their duly authorized officers.

WISER CONSULTANTS, LLC

By:

Justin Rains, President/CEO

Date: August 11, 2022

CITY OF MURFREESBORO, TN

By _____

Title: _____

Date: _____

APPROVED AS TO FORM

_____

Adam Tucker, City Attorney

TERMS AND CONDITIONS

SECTION I: GENERAL RECITALS

WHEREAS, the CITY requires Survey, NEPA, Design, and Bidding services for the Project; and,

WHEREAS, the CITY proposes under the authority of this Agreement to employ the ENGINEER, a firm adjudged by the CITY to be qualified, for the performance of Professional Services described herein on the proposed project as identified herein; and,

WHEREAS, the CITY is authorized under its charter and state laws to enter into this Agreement.

NOW, THEREFORE, in consideration of these premises and mutual covenants herein set forth, it is agreed by and between the parties hereto as follows:

SECTION II: SERVICES OF THE ENGINEER

A. PROJECT'S LOCATION AND GENERAL STATEMENT OF ENGINEER'S ASSIGNMENT. The ENGINEER shall provide the professional services for Survey, NEPA, Engineering Design, Bidding Assistance, and Overall Project Management for the Project.

B. GENERAL PROJECT CRITERIA. The ENGINEER'S efforts shall include, but not be limited to the WISER Fee Proposal & Scope of Work letter as found in Attachment A which is incorporated herein as if copied verbatim.

Note: In accordance with the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction, Sections 107.14 and 107.18, the Contractor is responsible for project site safety. The ENGINEER'S employees are responsible for their personal safety. The ENGINEER is not charged with the role of safety inspector per Section 105.10 and Section 105.11 of Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction.

Any questions regarding the administration of the contract should be forwarded to the CITY project supervisor.

Criteria needed to supplement the foregoing shall be as directed by the CITY. Throughout the entire work the ENGINEER will endeavor to obtain the most feasible plan with appropriate weight and consideration given to minimizing the cost of the project.

C. SCHEDULES. The ENGINEER agrees to begin work immediately after receiving authorization to proceed with the work. Any time limitations herein stated are to be conditional upon timely receipt of various information to be supplied by the CITY, upon

the CITY'S close working relationship with the ENGINEER during the several functions of this project, and upon prompt review and approval of the ENGINEER'S work by the CITY and others as requested by the ENGINEER during the life of this agreement.

D. EXPERT WITNESS SERVICES: It is understood and agreed that ENGINEER'S services under this Agreement do not include any participation whatsoever in any litigation. Should such services be required, a Professional Service Agreement Addendum may be negotiated between the CITY and ENGINEER describing the services desired and providing a basis for compensation to ENGINEER.

SECTION III: CITY'S SERVICES

The CITY agrees to provide to the ENGINEER, without delay, or as they become available, the following:

A. Copies of all requested material available regarding and indicating policies of the CITY with reference to geometrics, standards, specifications and methods, and other memoranda and directives pertaining to any part or phase of the work.

B. Access to and use of all reports, data, or information in the possession of the CITY which might prove pertinent to the work set forth herein. No warranty is made as to the sufficiency of such data furnished by the CITY.

C. Right-of-Entry onto the Project site for ENGINEER'S necessary field studies and surveys. ENGINEER shall endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.

D. All information furnished the ENGINEER by the CITY, electronically or otherwise, is provided solely for the specific purpose set forth in this Agreement. Should the ENGINEER use such information for any other purpose, it shall do so at its own risk, and shall assume full responsibility for such action.

E. The CITY shall provide a project supervisor to oversee and coordinate with the ENGINEER'S project supervisor.

Contact Person	Joe Ehleben, Project Coordinator
Phone	(615) 893-6441
Email	jehleben@murfreesborotn.gov

The "Contact Person" designated above shall have the authority to act on behalf of the CITY to define scope, transmit instructions, and receive information. The Contact Person may also authorize changes in Professional Services and negotiate fees and other changes under this Agreement, which **must** then be approved by the Mayor and City Council.

F. The CITY, with the assistance of the ENGINEER, shall provide public information/relations for project development.

SECTION IV: TDOT STANDARD TERMS AND CONDITIONS

A. GOVERNING LAW: This Agreement shall be governed by the laws of the State of Tennessee. ENGINEER agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The ENGINEER acknowledges and agrees that any rights or claims against the CITY or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all applicable laws.

B. GENERAL COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:

1) The ENGINEER is assumed to be familiar with and observe and comply with those Federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the state and Federal Government regarding fortifications, military and naval establishments and other areas. The ENGINEER shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

2) The parties agree that failure of the ENGINEER to comply with this provision shall constitute a material breach of this Agreement and subject the ENGINEER to repayment of all damages by the CITY as a result of said breach.

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

D. SUBMISSION OF THE PROCEEDINGS, AGREEMENTS, AND OTHER DOCUMENTS: The ENGINEER shall submit to the CITY such data, reports, records, agreements, and other documents relating to the Project as the CITY, TDOT and the Federal Highway Administration may require.

E. APPROPRIATION OF FUNDS: This Agreement is subject to the appropriation and availability of CITY, State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the CITY reserves the right to terminate the Agreement upon thirty (30) days written notice to the ENGINEER. Said termination shall not be deemed a breach of contract by the CITY. Upon receipt of the written notice, the

ENGINEER shall cease all work associated with the Agreement. Should such an event occur, the ENGINEER shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the ENGINEER shall have no right to recover from the CITY any actual, general, special, incidental, consequential or any other damages whatsoever of any description or amount.

F. RIGHTS AND REMEDIES NOT WAIVED: In no event shall the making by the CITY of any payment to the ENGINEER constitute or be construed as a waiver by the CITY of any breach of covenant or any default which may then exist on the part of the ENGINEER and the making of such payment by the CITY, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the CITY with respect to such breach or default. Any invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

G. CITY NOT OBLIGATED TO THIRD PARTIES: The CITY shall not be obligated or liable hereunder to any party other than the ENGINEER.

H. INDEPENDENT CONTRACTOR: The parties hereto, in the performance of this agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

J. Equal Employment Opportunity:

1) In connection with the performance of any Project, the ENGINEER shall not discriminate against any employee or applicant because race, age, color, religion, gender, pregnancy, marital status, military status, disability or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, gender, pregnancy, marital status, military status, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship.

2) The ENGINEER shall insert the foregoing provision in all agreements modified only to show the particular relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such subcontractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the ENGINEER shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the CITY or TDOT setting forth the provisions of the nondiscrimination clause.

K. TITLE VI, CIVIL RIGHTS ACT OF 1964. During the performance of this contract, the ENGINEER, for itself, its assignees, and successors in interest (hereinafter referred to as the "ENGINEER ") agrees as follows:

1) Compliance with Regulations: The ENGINEER shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710.405(b), as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2) Nondiscrimination: The ENGINEER, with regard to the work performed by itself during the contract, shall not discriminate on the grounds of race, age, color, religion, gender, pregnancy, military status, disability or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The ENGINEER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations. (http://www.tdot.state.tn.us/civil-rights/titlevi/)

3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the ENGINEER for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the ENGINEER of the ENGINEER'S obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, age, color, religion, gender, pregnancy, military status, disability or national origin.

4) Information and Reports: The ENGINEER shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY or other parties participating in the funding of this agreement to be pertinent to ascertain compliance with such regulations or directives. Where any

information required of the ENGINEER is in the exclusive possession of another who fails or refuses to furnish this information, the ENGINEER shall so certify to the CITY and shall set forth what efforts it has made to obtain the information.

5) EXECUTIVE ORDER 11246 AND EXECUTIVE ORDER 11375: During the performance of work under this Agreement the ENGINEER agrees to comply with the policies set forth in Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

6) TITLE VI ADDITIONAL ASSURANCES: ENGINEER incorporates by reference Tennessee Department of Transportation Title VI Assurances- Appendix A by reference as if copied verbatim herein. (http://www.tdot.state.tn.us/civil-rights/titlevi/)

7) SANCTIONS FOR NONCOMPLIANCE: In the event of the ENGINEER'S noncompliance with the nondiscrimination provisions of this contract, the CITY shall impose such contract sanctions as it may determine to be appropriate, including, but not necessarily limited to:

a) withholding of payments to the ENGINEER under the contract until the ENGINEER complies, and/or

b) cancellation, termination, or suspension of the contract in whole or in part.

L. AMERICANS WITH DISABILITIES ACT: ENGINEER will comply with all the requirements as imposed by the Americans with Disabilities Act and the regulations of the federal government issued thereunder. The ENGINEER shall comply with the Vocational Rehabilitation Act of 1973 as approved by Congress on September 26, 1973, herein incorporated by reference, which prohibits employment discriminations against physically handicapped persons.

M. DBE SUBCONSULTANTS. In the event that DBE subconsultants are a part of this contract, the ENGINEER will report at least quarterly all amounts paid to any DBE subconsultants and to any Minority Business Enterprise (MBE) and/or Woman Owned Business Enterprise (WBE) subconsultants.

N. CONFLICTS OF INTEREST:

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

2) The ENGINEER shall insert in all agreements entered into in connection with the Project and shall require its subcontractors to insert in each of its subcontracts, the following provision:

"No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the ENGINEER in connection with any work contemplated or performed relative to this Agreement."

O. INTEREST OF MEMBERS OF OR DELEGATES TO, CONGRESS (APPLIES TO FEDERAL AID PROJECTS}: No member of or delegate of the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

P. RESTRICTIONS ON LOBBYING (APPLIES TO FEDERAL AID PROJECTS): The ENGINEER certifies, by signing this Agreement to the best of its knowledge and belief, that:

1) No federally appropriated funds have been paid or will be paid, by or on behalf of the ENGINEER, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of this Agreement, or any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan or cooperative agreement, the ENGINEER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3) The ENGINEER will require that the language of this certification be included in all subcontracts at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly. The ENGINEER understands that this certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

4) The ENGINEER agrees that during the period of performance of this agreement it and its sub-recipients must file a disclosure form at the end of each calendar year quarter in which there occurs any event that requires disclosure or materially affects the accuracy of the information contained in any previously filed disclosure form. Events that are considered to materially affect the accuracy of information reported are described in Subpart A, Section 1230.110(c) of the Office of Management and Budget interim final guidance pertaining to Federal government- wide restrictions on lobbying established by Section 319 of Public Law 101-121.

Q. Records:

1) The ENGINEER shall maintain documentation for all charges against the CITY under this Agreement. All costs charged to the Project, including any approved services contributed by the ENGINEER or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the CITY and TDOT the nature and propriety of the charges. The books, records, and documents of the ENGINEER, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the CITY at all times during the period of this Agreement and for at least three (3) years after final payment is made.

2) Copies of these documents and records shall be furnished to the CITY, TDOT or their duly appointed representatives, upon request. Records of costs incurred includes the ENGINEER'S general accounting records and the Project records, together with supporting documents and records, of the ENGINEER and all subcontractors considered necessary by the CITY for a proper audit of costs. If any litigation, claim or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit finding involving the records have been resolved.

3) The aforesaid requirements to make records available to the CITY and TDOT shall be a continuing obligation of the ENGINEER and shall survive a termination of the Agreement.

4) ENGINEER shall consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the CITY.

R. INSPECTION

1) The ENGINEER shall permit, and shall require its subcontractor or materials vendor to permit, the CITY's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

2) The CITY reserves the right to terminate this Agreement for refusal by the ENGINEER or any subcontractor or materials vendor to allow public access to all documents, papers, letters, or other material made or received in conjunction with this Agreement.

S. Termination for Convenience: The CITY may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement

by the CITY. The CITY shall give the ENGINEER at least thirty (30) days written notice before the effective termination date. The ENGINEER shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the CITY be liable to the ENGINEER for compensation for any service which has not been rendered. The final decision as to the amount for which the CITY is liable shall be determined by the CITY. Should the CITY exercise this provision, the ENGINEER shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

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

U. How Agreement is Affected by Provisions Being Held Invalid: 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.

V. Agreement Format: All words used herein in the singular form shall extend to and include all plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

W. Certification Regarding Third Party Contracts: The ENGINEER certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

1) The ENGINEER further certifies by its signature hereunder that it has disclosed and provided to the CITY a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.

2) The ENGINEER 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 CITY.

3) The ENGINEER hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the ENGINEER to the repayment of funds received from or through the CITY under this Agreement and to the payment of all damages suffered by the CITY as a result of said breach.

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

Y. CITY LIABILITY: The CITY shall have no liability except as specifically provided in this Agreement.

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

AA. REQUIRED APPROVALS: The CITY is not bound by this Agreement until it is approved by the appropriate CITY officials in accordance with its charter, applicable Tennessee State laws and regulations.

BB. VIETNAM ERA VETERANS READJUSTMENT ACT OF 1974: The ENGINEER shall comply with Section 2012 of the Vietnam Era Veterans Readjustment Act of 1974 which requires the ENGINEER to take affirmative action to employ and advance in employment qualified veterans of the Vietnam Era.

SECTION V: PAYMENTS

For the satisfactory performance of all services and assumption of the intrinsic responsibilities described and set forth in Section II, the CITY agrees to compensate the ENGINEER as hereinafter provided, subject to final approval of the CITY:

The Professional Services will be conducted in accordance with the Scope of Work and Tasks set forth in the Proposal by WISER and attached as Attachment A for the Time and Materials amount not to exceed $358,314.00, excluding reimbursable expenses, and will only be exceeded with written approval of the CITY. Phase services, if any, will be part of a supplement to this Agreement.

A. ENGINEER may invoice CITY herein to be consistent with services actually rendered but shall not exceed the $358,314.00 amount unless approved in writing by the CITY.

B. The fee amount does not include costs for environmental or regulatory permits or costs of advertisement and notices.

C. The fee amount does not include costs for any subconsultants if required. The City will contract directly with any geotechnical or right-of-way Consultants if required

D. TRAVEL EXPENSES: Travel expenses are included in the Lump Sum amount. The ENGINEER shall not request extra payment for any reason other than for a change in scope of work unless otherwise requested and authorized by the CITY.

E. ENGINEER shall submit invoices to CITY for services rendered during each invoicing period, which shall be on a monthly basis. CITY shall review invoices submitted by ENGINEER within 15 days of receipt and shall promptly either approve said invoices or notify ENGINEER of any disputed items. Approval of invoices by CITY shall not be unreasonably withheld.

F. PAYMENT OF INVOICES: Invoices are due Net 30 from invoice date.

G. ADDITIONAL WORK. In the event that the CITY, in writing, requests the ENGINEER to perform additional services on the project not covered by Section II of this Agreement, the ENGINEER agrees to perform the same after a written agreement between the CITY and the ENGINEER has been entered into and approved. At the discretion of the CITY, said agreement may provide for an appropriate increase(s) in the ENGINEER'S net fee for the performance of said Additional Work. Extension of the construction contract time resulting in additional man hours being used under this Agreement shall not be considered additional work and an increase to the net fee will not be allowed. It is understood and agreed that no work relative to Additional Work or Change of Work (see Paragraph E immediately below) shall be performed by the ENGINEER prior to the CITY'S issuance of a work order for such Additional Work or Change of Work except in those cases when the CITY deems it to be in the public interest to issue a written order prior to the origination of a supplemental agreement. In such instances, the CITY will consider an early issuance of a work order upon its prior ascertainment of the necessity for the work and upon its assurance that additional compensation is warranted.

H. ERRORS. In the event that additional work may be necessary to correct errors in the work required by the contract, it will be performed without undue delays or additional cost to the CITY.

I. CHANGE OF WORK. In the event the CITY should decide during the course of this work that there exists the need to change any work performed by the ENGINEER under this Agreement after some element of work has been approved by the CITY, the CITY shall notify the ENGINEER, in writing, to make the change, and the ENGINEER shall make the change as directed. Payment therefor is to be made by the CITY after a written agreement is entered into between the CITY and the ENGINEER providing for appropriate adjustment in the compensation ceiling inclusive of appropriate adjustment in the ENGINEER'S net fee, which amounts shall be as negotiated.

J. ABANDONMENT OF PROJECT. In the event the CITY decides to abandon all or any part of any project subsequent to the effectuation of this Agreement, the ENGINEER shall be paid by the CITY for all work completed prior to its having received written notice from the CITY to stop work.

SECTION VII: MISCELLANEOUS PROVISIONS

The ENGINEER and the CITY mutually agree as follows:

A. OWNERSHIP OF ENGINEERING DOCUMENTS: Tracings, plans, specifications, any maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the CITY. Basic design notes and sketches, charts, computations, all original drawings, and other data prepared or obtained under this Agreement shall be made available, upon request, to the CITY without restriction or limitation of their use.

B. DELAYS AND EXTENSIONS: Time is of the essence with this Agreement. Reasonable extensions of promised times shall be mutually arrived at by the parties in the event of unavoidable delays.

C. PROGRESS: The ENGINEER shall prepare detailed progress schedules for the project or items of the work and shall submit monthly progress reports based on such schedules to the CITY. Each report shall provide an identification of work accomplished since the previous report.

D. MEDIATION: Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the ENGINEER and the CITY shall be referred to a mediator before either party pursues other means of redress. The mediator shall be a person agreed upon by both parties.

E. SUBLETTING, ASSIGNMENT, OR TRANSFER: Subletting, assignment, or transfer of all or part of the interest of the ENGINEER is prohibited unless by written consent of the CITY and all agencies participating in the funding of this Agreement.

F. EMPLOYMENT OF CITY WORKERS: The ENGINEER shall not engage, on a full, part-time, or other basis during the period of the Agreement, any professional or technical personnel who are or have been at any time during the period of the Agreement in the employ of the CITY or the State of Tennessee, except regularly retired employees, without the written consent of the CITY.

G. COVENANT AGAINST CONTINGENT FEES: The ENGINEER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the ENGINEER to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

H. ENGINEER'S ENDORSEMENT: The ENGINEER'S endorsement shall be placed on the final maps of the survey, on preliminary and final construction plans, specifications, estimates, also other engineering data and documents furnished by the ENGINEER to the CITY, as applicable.

I. CONTROL: To the extent applicable, all work by the ENGINEER is to be performed in

a manner satisfactory to the CITY and in accordance with the established customs, practices, and procedures of the Tennessee Department of Transportation ("TDOT") and in conformity with the standards adopted by the American Association of State Highway and Transportation Officials and approved by the Secretary of Transportation as provided in Title 23 U.S.C., Sec. 109(b) as amended. The decision of the CITY is to control in all questions regarding locations, type of design, dimension of design, and similar questions. The ENGINEER is to periodically request sufficient conferences to ensure that the work is being done by the ENGINEER in a satisfactory manner and that all locations and designs are made in accordance with the wishes of the CITY.

J. COST ESTIMATES: The CITY hereby acknowledges that ENGINEER cannot warrant that opinions or estimates of costs provided by ENGINEER will not vary from actual cost incurred by the CITY.

K. EFFECT OF EXISTING DATA ON AMOUNTS PAYABLE: The ENGINEER hereby certifies that prior to Agreement of the parties to this Agreement on the amounts payable, as expressed in Section V, ENGINEER reviewed, considered, and evaluated existing engineering data, traffic counts, services and projections to be provided by the CITY, other materials and data to be furnished by the CITY, and determined the amounts payable in contemplation of the effect of said data and materials upon its undertaking under this Agreement. Existing engineering data so reviewed, considered, and evaluated includes, but is not necessarily limited to, those set out in Section 111.

L. EQUIPMENT AND INSTRUMENTATIONS: It is understood and agreed that if any additional equipment is needed for the project, the CITY must be notified prior to any action. If necessary, said equipment shall be purchased by the CITY in compliance with the CITY'S low bid procedures. Said equipment shall be considered as the CITY'S property unless other means pertaining to the disposition of same are provided elsewhere within this Agreement.

M. ENVIRONMENTAL PROTECTION REGULATIONS: Under this Agreement the ENGINEER shall give due consideration to and, as applicable, comply with the standards, orders, or requirements set forth under Section 306 of the Clean Air Act (42 U.S.C. 1857 h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

N. ENERGY POLICY AND CONSERVATION ACT: Under this Agreement the ENGINEER shall give due consideration to and, as applicable, comply with the standards, orders, and requirements relating to energy efficiency contained in the TDOT energy conservation plans issued in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

0. STANDARD OF CARE: The ENGINEER shall assume full responsibility for the quality of the ENGINEER'S work and its conformance with all applicable laws, rules, regulations and orders governing said work. The ENGINEER shall perform its duties in conformance with the reasonable standard of care as applicable to members of its profession within the State of Tennessee practicing under similar conditions. There is no warranty, express or implied, by way of illustration and not limitation, warranty for fitness of particular purpose, or warranties of merchantability.

P. COPYRIGHTING: The ENGINEER shall be prohibited from copyrighting any papers, reports, forms or other material which is a part of any work under this Agreement

without written approval from the CITY. Publication rights to any documents produced are reserved by the CITY.

Q. NOTICES: Any notice required hereunder shall be sufficiently given when sent to the signatories hereunder or to the above-named contact person via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

R. PROHIBITION OF ILLEGAL IMMIGRANTS: The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Agreement to supply goods or services to the state of Tennessee, shall be a material provision of this Agreement, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Agreement.

1) The ENGINEER hereby attests, certifies, warrants, and assures that the ENGINEER shall not knowingly utilize the services of an illegal immigrant in the performance of this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Agreement. The ENGINEER shall reaffirm this attestation, in writing, by submitting to the CITY a completed and signed copy of the document as Attachment 8, hereto, semi-annually during the period of this Agreement. Such attestations shall be maintained by the ENGINEER and made available to CITY officials upon request.

2) Prior to the use of any subcontractor in the performance of this Agreement, and semi-annually thereafter, during the period of this Agreement, the ENGINEER shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Agreement. Attestations obtained from such subcontractors shall be maintained by the ENGINEER and made available to CITY officials upon request.

3) The ENGINEER shall maintain records for all personnel used in the performance of this Agreement. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the CITY.

4) The ENGINEER understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit the ENGINEER from contracting with, or submitting an offer, proposal, or bid to contract with the state of Tennessee to supply goods or services for a period of one year after the ENGINEER is discovered to have knowingly used the services of illegal immigrants during the performance of this Agreement.

5) For purposes of this Agreement, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or

allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Agreement.

S. ELECTRONIC FORMAT: ENGINEER deliverables may include database design, electronic computer-aided design and drafting (CADD) files, or other electronic documents or deliverables. Unless specifically directed otherwise by the CITY prior to execution of this Agreement, databases and electronic files shall be developed based on ENGINEER'S standard practice and procedure. ENGINEER shall not be liable for any erroneous information supplied by the CITY or third party that ENGINEER relies upon and incorporates into an electronic file or other documents.

T. WARRANTY: Due to the easily alterable nature of electronic media, files, documents, and other deliverables, ENGINEER makes no warranties, either expressed or implied, with respect to the accuracy, completeness, merchantability, or fitness for any particular purpose, including, but not limited to, performance in any software used by the CITY or any other consultant or contractor.

U. SEVERABILITY: Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

V. INSURANCE:

1) During the performance of the Services under this Agreement, ENGINEER shall maintain the following minimum insurance:
   a) General Liability Insurance with a combined single limit of $1,000,000 per occurrence and $2,000,000 annual aggregate.
   b) Automobile Liability Insurance with a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
   c) Worker's Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of $500,000 for each occurrence.
   d) Professional Liability Insurance with a limit of $2,000,000 annual aggregate.

2) ENGINEER shall add the CITY as an additional insured on its General Liability Insurance and Automobile Liability Insurance policies and as a certificate holder on its Workers' Compensation and Professional Liability Insurance policies.

3) ENGINEER shall, upon execution of this Agreement, furnish CITY certificates of insurance and copies of endorsements (blanket or specific) documenting that the CITY is named as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies in a form(s) **as is** agreeable to the CITY, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to CITY.

4) No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. CITY agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and

performance bonds by the Project's construction contractor as CITY deems adequate to indemnify CITY, ENGINEER, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

Section VIII: ENTIRETY OF THE AGREEMENT

This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alternation, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto, except that all terms and conditions contained in a CITY purchase order or other standard or preprinted work authorization issued by the CITY shall be null and void, even if such document is of later date.

This Agreement includes this document and, by this reference, incorporates the following as if fully set forth herein:

- Attachment A: WISER Fee Proposal & Scope of Work
- Attachment B: "Attestation Regarding Personnel Used in Contract or Agreement Performance"
- Attachment C: Wiser Consultants' Schedule of Hourly Fees

ATTACHMENT B

ATTESTATION REGARDING PERSONNEL USED IN CONTRACT/AGREEMENT PERFORMANCE

SUBJECT CONTRACT/ AGREEMENT NUMBER:	City of Murfreesboro - Professional services for Survey, NEPA, Engineering Design, Bidding Assistance, and Overall Project Management for the City of Murfreesboro Asbury Lane Extension Project
ENGINEER/ CONTRACTOR LEGAL ENTITY NAME:	WISER CONSULTANTS, LLC
FEDERAL EMPLOYER IDENTIFICATION NUMBER: /or Social Security Number)	46-2394712

The Engineer/ Contractor, identified above, does hereby attest, certify, warrant, and assure that the Engineer/Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract/ Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of the Contract/ Agreement.

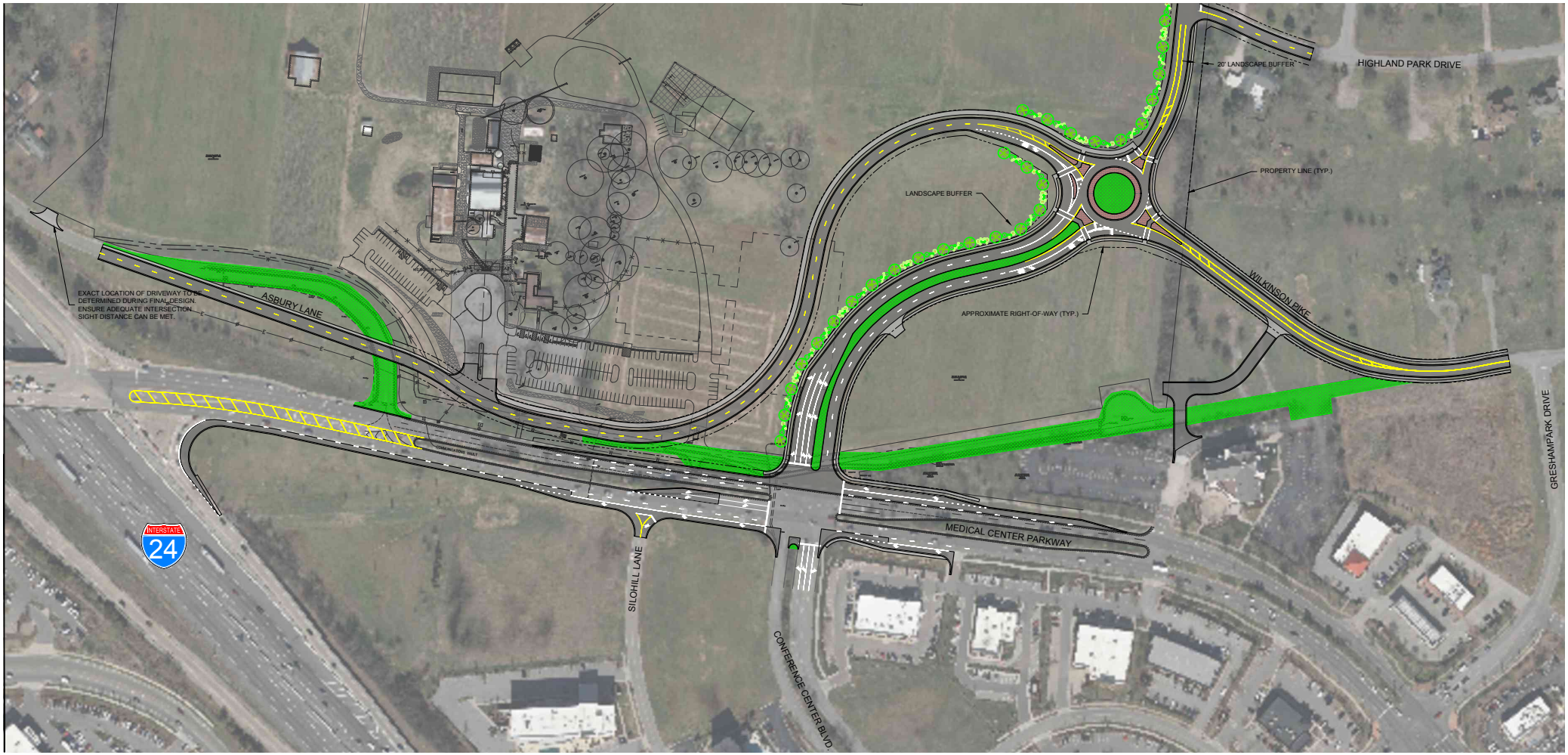
SIGNATURE:

DATE: August 11, 2022

NOTICE: This attestation MUST be signed by an Individual empowered to contractually bind the Engineer/ Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the Individual's authority to contractually bind the Engineer/ Contractor.

Compliance and non-compliance procedures will be as specified in the Tennessee Department of Finance and Administration's Policy on "Ensuring Compliance with Federal Immigration Laws by State Contractors and Subcontractors

Asbury Lane Realignment Concept



COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Acquisition of ROW and Easements for the Asbury Lane Realignment

Department: Engineering

Presented by: Chris Griffith, Executive Director

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Acquisition of property for the Asbury Lane Realignment project.

Staff Recommendation

Approve funding for appraisal services and the acquisition of right of way and easements.

Background Information

A combination of right of way and easements are required from several parcels for the realignment of Asbury Lane. Staff has requested appraisal services for the parcels impacted.

Negotiations for the needed right of way and easements will occur during the property acquisition phase of the project. If agreements are not reached, staff recommends proceeding with condemnation and depositing the appraised value in court. The cost of these appraisal services is incorporated within the project's budget.

Council Priorities Served

Expand infrastructure

Implementation of the 2040 Major Transportation Plan through the expansion of existing roadways.

Fiscal Impact

This expenditure is budgeted within the FY22 CIP budget for this project.

Attachments

Right of Way acquisition contract form.

RBA
Randy Button & Associates
Valuation Services

August 15, 2022

Joe Ehleben, Project Coordinator
City of Murfreesboro
Public Infrastructure Division
111 West Vine Street
P.O. Box 1139
Murfreesboro, Tennessee 37133-1139

RE: Appraisal Services Proposal –Ashbury Realignment
Local project administered by the City of Murfreesboro

Dear Joe:

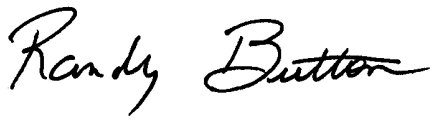
I write to express interest by my firm, in performing appraisal services for the above referenced project. All services would conform to Tennessee Department of Transportation (TDOT) Guidelines for Appraisers, Uniform Act, and Uniform Standards of Professional Appraisal Practice.

This bid represents a per tract fee for the 6 tracts that are impacted and require appraisal services. **The appraisal service bid is $36,000.**

Any additional cost associated with these tracts would follow the TDOT standards of 50% of a per tract fee for appraisal updates and $300/hour for expert testimony, not to exceed $2,400 per day. Any additional cost that may be incurred would follow the best practices established by current TDOT guidelines.

The per tract fee schedule can be found on the following page.

I appreciate the opportunity to bid on this project and look forward to working with you.



Randy Button, MAI, SRA, AI-GRS
Tennessee Certified General Appraiser

615-347-3476 | 8114 Isabella Lane, Brentwood, TN 37027 | Randy.Button@gmail.com

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Purchase of Fleet Maintenance Software

Department: Fleet Services Department

Presented by: Jack Hyatt, Director of Fleet

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Contract for the purchase of new Fleet Maintenance software from Faster Asset Solutions to migrate from a server-based operating system to a web-based operating system.

Staff Recommendation

Approve the contract for the implementation of the Faster Asset Solutions Software for the Fleet Services Department.

Background Information

This agreement allows the Fleet Services Department to upgrade from an outdated server-based system to a web-based system, Faster Asset Solutions. With the City's Public Works expanding, this creates the need for updated software to keep up with the department's growth.

Council Priorities Served

Responsible Budgeting

Efficient management of fleet services assured vehicles are returned to service as soon as possible, which is a critical part of responsible budgeting.

Fiscal Impact

Funding for this migration will be funded through the Fleet Service FY23 computer software budget for initial cost of $122,565 with an annual recurring cost of $27,772 for support and maintenance for 60 months.

Attachments

1. Copy of Contract with Faster Fleet Maintenance Software

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Agreement for FASTER Asset Solutions Web Migration

This Agreement is entered into and effective as of the ____day of _____ 2022, by and between the **City of Murfreesboro,** a municipal corporation of the State of Tennessee (the "City"), and **TT FASTER LLC d/b/a FASTER Asset Solutions,** a Limited Liability Company formed in the State of Delaware ("Contractor").

This Agreement consists of the following documents:

- This document
- GSA Contract Number GS-35F-0251U with CCG Systems, Inc.
- FASTER Asset Solutions Quote #1145 v2 dated June 30, 2022
- 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 GSA Contract Number GS-35F-0251U
- Lastly, FASTER Asset Solutions Quote #1145 v2 dated June 30, 2022

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase FASTER Web Migration as set forth on FASTER Asset Solutions Quote #1145 v2 dated June 30, 2022, from FASTER Asset Solutions in accordance with the Contractor's GSA Contract Number GS-35F-0251U with CCG Systems, Inc. and FASTER Asset Solutions Quote #1145 v2 dated June 30, 2022.

2. **Term.** Contractor's performance may be terminated in whole or in part:
   a. Contract expires February 13, 2023, per GSA Contract Number GS-35F-0251U as listed on FASTER Asset Solutions Quote #1145 v2 dated June 30, 2022.
   b. Upon 30-day prior notice, for the convenience of the City.
   c. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
   d. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
   e. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
   f. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

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Under this provision, the City will still be responsible to pay for all services provided prior to notice 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 FASTER Asset Solutions Quote #1145 v2 dated June 30, 2022, which reflects a one-time purchase of **One Hundred, Twenty-Two Thousand, Five Hundred Sixty-Five Dollars and No Cents ($122,565.00)** for Licenses, Interface Set-Up, Data and Migration Services, and Training; and an annual cost of **Twenty-Seven Thousand, Seven Hundred Seventy-Two Dollars and No Cents ($27,772.00)** for Support and Maintenance. 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 pursuant to the payment milestones identified in FASTER Asset Solutions Quote #1145 v2 dated June 30, 2022. 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. Invoices should be sent to accountspayable@murfreesborotn.gov.
   b. Payment Terms: Net 30 days after receipt of goods
   c. Reasonable efforts will be made to deliver all items within 16 weeks of issuance Purchase Order to Attn: Jack Hyatt – Fleet Services Department - 4753 Florence Rd, Murfreesboro, TN 37129- Contact Person: Jack Hyatt (tel. 615) 217-3037; email: jhyatt@murfreesborotn.gov) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
   d. Deliveries of all items shall be made as stated in the quote. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
   e. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote and GSA Contract Number GS-35F-0251U.
   f. All deliveries made pursuant to the Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the purchase price.

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

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

6. **City Property.** Any of the City's property, including but not limited to books and records, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.

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

iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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:	If to the Contractor:
City Manager	TT FASTER LLC
City of Murfreesboro	Attn: Leanna Criss
111 West Vine Street	760 Lynnhaven Pkwy, Suite 203
Murfreesboro, TN 37130	Virginia Beach, VA 23452

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

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

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

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

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

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

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

    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.**

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

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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. Notice of assignment of rights to money due to Contractor under this Agreement must be sent to the address for notices for the City identified above in Section 8 of this Agreement.

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

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

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

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

22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, each party shall bear responsibility for its own respective expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.

23. **Entire Contract.** This contract and the GSA contract set forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

24. **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 to appear on following page]

IN WITNESS WHEREOF, the parties enter into this agreement as of _____, 2022 (the "Effective Date").

CITY OF MURFREESBORO, TENNESSEE

By: _____
Shane McFarland, Mayor

TT FASTER LLC d/b/a FASTER Asset Solutions

DocuSigned by:
By: Mitch Skyer
Mitch Skyer, President

APPROVED AS TO FORM:

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

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Quote

FASTER Asset Solutions Quote and Proposal

Jack Hyatt

Fleet Manager

City of Murfreesboro, TN

FASTER Asset Solutions is pleased to submit our proposal, City of Murfreesboro, TN: FASTER Web Migration. *FASTER* has been in business since 1982 and provides FMIS systems to cities, counties, states, universities, airports, transit, public utilities, and private companies. *FASTER* is the largest provider of fleet management information systems (FMIS) to municipal governments in North America. We also believe *FASTER* is a superior choice because of the following key strategic differences in our company.

The Most Experienced Staff in the Industry:

Seventy percent of *FASTER*'s technical staff have been with us for more than 10 years. Reference checks will also reveal that no other vendor offers the level of professional technical support staff and responsiveness as *FASTER*. This results in a better implementation experience along with superior ongoing support, which ultimately results in better system utilization and ROI.

***FASTER* Invests in the Long-Term:**

No other systems provider offers better systems longevity or a more advanced and stable system. For nearly 40 years now we have continuously improved our system through three generations of technology. *FASTER* Web is our latest release and includes the ability to deploy as a cloud-based or on-premises system and integrate easily with other software through API technology.

We are Product and Service Focused:

Likely the most important distinction of our company is that *FASTER* is product and service focused. Our strategy to continually reinvest in our products, solutions, and staff, allows us to build a reputation with our customers and partners to have industry leading software and the most responsive and knowledgeable support team in the asset management space.

Thank you for the opportunity to earn your business. If there is any additional information we can provide, or questions we can answer, please don't hesitate to let us know.

Sincerely,

Best Regards,

John Griffin
***FASTER* Asset Solutions**
Business Development Manager
Direct 757.623.1700 ext 3034
Mobile: 205.515.2167
John.G@fasterasset.com

John Griffin

john.g@fasterasset.com

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FASTER

Quote

FASTER Asset Solutions
760 Lynnhaven Pkwy, Suite 203
Virginia Beach, VA 23452
United States

T: 4023055850

Quote #	**1145 v2**
Date	**Jun 30, 2022**
Expires	**Jul 31, 2022**
Contact	**John Griffin**

Prepared for

City of Murfreesboro, TN
Jack Hyatt
4753 Florence Road
Murfreesboro, TN 37129
United States

T: (615) 217-3037
E: jhyatt@murfreesborotn.gov

ACCEPT QUOTE

City of Murfreesboro, TN: FASTER Web Migration

GSA Contract # - GS-35F-0251U

One-Time Fees

Category	Item	Qty	Price	Total
LICENSE	**FASTER WEB CORE LICENSE FEE** FASTER WEB Core license fee per standard asset. Standard assets are those originally valued at $5,000 or greater and active). • This includes one instance of the FASTER Web Application with one database. • Unlimited user access (named accounts) included. 10% Item Discount ($6,970.00) FASTER (Code: 001)	820	$85.00	~~$69,700.00~~ **$62,730.00**
LICENSE	**FASTER WEB Non Standard Assets License Fee** For non standard assets (initial purchase price <$5,000). Includes setup, license fee, lifetime software updates for customers, first year maintenance and support. Fuel Only assets are also considered non standard regardless of initial purchase price. 10% Item Discount ($125.00) FASTER (Code: 012a)	50	$25.00	~~$1,250.00~~ **$1,125.00**

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Quote

Category	Item	Qty	Price	Total
SETUP / INTERFACE	**Database Management & Setup Migrating Customer** Establishment of one FASTER Web instance with a single Database. This setup includes the FASTER Web test environment that will be used during the entire implementation, all database configuration, testing, backup configuration, and validation. Includes 24x7x365 cloud database access. This same environment will be promoted to be the production environment at the time of Go-Live. • Backups: Hourly database backups will be conducted to ensure consistent and recoverable backups of the database to restore from in the event of an emergency. Database Backups will be limited to 14 days of recoverability. Backups will also be sent daily to a secure, offsite location Faster Asset (Code: 620)	1	$2,000.00	**$2,000.00**

One-Time Subtotal	$72,950.00
Discount	($7,095.00)

Annual Fees

Category	Item	Qty	Price	Total
SUPPORT and MAINTENANCE	**FASTER WEB CORE ANNUAL SUPPORT & MAINTENANCE** FASTER WEB Core annual support and maintenance fee per standard asset. FASTER (Code: 001A)	820	$17.00	**$13,940.00**
SUPPORT and MAINTENANCE	**FASTER WEB NON STANDARD ANNUAL SUPPORT & MAINTENANCE** FASTER WEB Non-Standard Assets annual support and maintenance fee per non-standard asset. FASTER (Code: FWNSALICANN)	50	$5.00	**$250.00**
SUPPORT and MAINTENANCE	**Database Annual Support and Maintenance** Annual fee for support, maintenance, software upgrades, firmware/database management, data storage, and report management. • Backups: Hourly database backups will be conducted to ensure consistent and recoverable backups of the database to restore from in the event of an emergency. Database Backups will be limited to 14 days of recoverability. Backups will also be sent daily to a secure, offsite location • Includes 24x7x365 cloud database access. FASTER (Code: DBMSANN)	1	$9,000.00	**$9,000.00**

** Annual Support and Maintenance Fees billing schedules are outlined in the terms and conditions.*

Annual Support And Maintenance Subtotal	$23,190.00

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FASTER Web Interface Add-On Solutions

One-Time Fees

Category	Item	Qty	Price	Total
SETUP / INTERFACE	**Fuel Import - Single Vendor (Existing Customer)** Single Vendor Fuel Import This is a single vendor fuel import for an existing customer who has been live on a FASTER product for more than 6 months. The import includes 1 (one) of the following options: 1. Import a new fuel vendor fuel transaction file. 2. Import a new fuel file from your existing vendor. FASTER will conduct complete configuration and testing of the fuel file layout and export files (flat files) from the fuel system. Site & Dispenser optional add on is available, if required, to the single vendor fuel import FASTER (Code: 301)	1	$3,605.00	**$3,605.00**
SETUP / INTERFACE	**Single Vendor Site and Dispenser Add On** This is an optional add-on to the Fuel Import (FI) to enable you to track the specific fuel site and/or fuel dispenser. This optional add on allows configuration to track Inventory Items so fuel imports deplete quantity from inventory. Faster Asset (Code: 303)	1	$2,575.00	**$2,575.00**
SETUP / INTERFACE	**Dashboard** The Faster Dashboard provides easy access to an at-a-glance overview of key performance indicators and data for your organization. The FASTER Dashboard is designed to give fleets a way to monitor performance, communicate, and make quick decisions about their operations. It comes with 20 Key Performance Indicators (KPIs) charts within the Dashboard Add-on, which includes the 8 module landing charts available within FASTER Web which can also be accessed via the Dashboard for one convenient high level overview. 100% Item Discount ($10,300.00) FASTER (Code: 207nc)	1	$10,300.00	~~$10,300.00~~ **$0.00**

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Category	Item	Qty	Price	Total
SETUP / INTERFACE	**Barcoding Add-On Setup** The FASTER Barcoding Add-on provides the ability to scan and print labels on customer provided hardware. This module allows for ease of data entry as well as inventory control. • Beneficial add on for use with in-house numbering system. OEM labels may be used effectively as well. • Simplifies inventory and intake processes for inventory items and storerooms. • Quickly scan incoming inventory with 2D or Symbology – Code 128 barcodes. • Reduces data errors that occur with any manual data entry process. • Print barcode labels for items, including labels for a range of items simultaneously. FASTER (Code: 208)	1	$6,180.00	**$6,180.00**

One-Time Subtotal	$22,660.00
Discount	($10,300.00)

Annual Fees

Category	Item	Qty	Price	Total
SUPPORT and MAINTENANCE	**Fuel Import Single Vendor Support and Maintenance Existing Customer** Annual support and maintenance for fuel import for existing customer FASTER (Code: 301ann)	1	$721.00	**$721.00**
SUPPORT and MAINTENANCE	**Single Vendor Site and Dispenser Support and Maintenance** Annual support and maintenance for site and dispenser FASTER (Code: 303ann)	1	$515.00	**$515.00**
SUPPORT and MAINTENANCE	**Dashboard Annual Support and Maintenance** FASTER (Code: 207ncann)	1	$2,060.00	**$2,060.00**
SUPPORT and MAINTENANCE	**Barcoding Add-On Annual Support & Maintenance** Annual recurring support and maintenance for barcode module FASTER (Code: 208ANN)	1	$1,236.00	**$1,236.00**

** Annual Support and Maintenance Fees billing schedules are outlined in the terms and conditions.*

Annual Support And Maintenance Subtotal	$4,532.00

FASTER Web Data Services

One-Time Fees

FASTER

Quote

Category	Item	Qty	Price	Total
Service / Data	**Migration Data Conversion** The Migration Data Conversion Product is used for migrating data from FASTER Win to FASTER Web. • Data Migration for FASTER Win Add-Ons are quoted individually and require an individual requirements scope • Data Migration for FASTER Win Customizations are quoted individually and require an individual requirements scope Faster Asset (Code: 408)	1	$20,000.00	**$20,000.00**
	Base Price		$20,000.00	$20,000.00
Service / Migration	**Migration Win to Web Reports** FASTER Win report(s), previously developed using Crystal Reporting Services, will be used as a template to build each corresponding report using the FASTER Web Reporting tool. • Discounted cost reflects that no requirements, specification or approval process related to these reports is needed. • The stored procedure and RPT file will be used as a template and re-constructed for FASTER Web • Report(s) are delivered at Soft Go-Live for customer testing. • Reports will be transitioned without modification. Should customer request/require modifications FASTER will conduct a requirements reveiew and provide a cost for requested modifications. • Excel – Data Only option in FASTER Win requires a custom export for FASTER Web to ensure you get data export format is presented as desired • FASTER Web uses a structured database model which may result in slight modifications between FASTER Win and Faster Web reports. Faster Asset (Code: 330m) Win to Web Report Migrations: Win to Web Report 1 (330m1) Win to Web Report 2 (330m2)	1	$8,400.00	**$8,400.00**
			One-Time Subtotal	$28,400.00

FASTER Web Training

One-Time Fees

Category	Item	Qty	Price	Total
Training	**System Overview Meetings (SOM)** System overview meetings take place via live, remote web-based sessions. Either one or two overview meetings are conducted depending on the number of participants and availability. Faster Asset (Code: 511a)	1	$3,300.00	**$3,300.00**

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Category	Item	Qty	Price	Total
Training	**Configuration Training** Configuration Training takes place via live, remote, web-based sessions. Up to three sessions are scheduled based on number of participants, customer availability, and if account coding configuration training is required. Faster Asset (Code: 511b)	1	$3,300.00	**$3,300.00**
Training	**System Training/Go Live** On Site Training - Go Live Hands-on instructor led training at a single location for up to 20 attendees. Additional training sessions and instructors may be added at any time, if needed, up to 4 (four) weeks prior to go live date. FASTER (Code: 512)	1	$0.00	**$0.00**
Training	**Asset Module Go Live Training Class** 4 Hour live training session with in person on site trainer FASTER (Code: 512a)	1	$2,200.00	**$2,200.00**
Training	**Maintenance Module Go Live Training Class** 4 Hour live training session with in person on site trainer FASTER (Code: 512b)	1	$2,200.00	**$2,200.00**
Training	**Inventory Module Go Live Training Class** 4 Hour live training session with in person on site trainer FASTER (Code: 512c)	1	$2,200.00	**$2,200.00**
Training	**Fuel Module Go Live Training Class** 1 Hour live training session with in person on site trainer FASTER (Code: 512d)	1	$550.00	**$550.00**
Training	**Vendors & Accounting Module Go Live Training Class** 1.5 Hour live training session with in person on site trainer FASTER (Code: 512e)	1	$825.00	**$825.00**
Training	**Technician Module Go Live Training Class** 2.5 Hour live training session with in person on site trainer FASTER (Code: 512f)	2	$687.50	**$1,375.00**[†]
Training	☐ **Go-Live Week System Training - Additional Trainer(s)** *Optional* Trainers are available on site for approximately 8 hours per day for the go live week. If additional trainers are needed due to shift work, exceeding maximum class size, or other customer driven training requirements. Costs are per additional FASTER trainer per week. All costs include travel, lodging, and per diem. No additional costs are included.	1	$2,750.00	**$0.00** *Not selected*

FASTER

Quote

Category	Item	Qty	Price	Total
	FASTER (Code: 512g)			
Training	☐ **Remote Training Sessions** *Optional* This instructor led remote video session includes three, 4-hour blocks of follow-up, additional or review training. Session options include any module or question and answer session with key users. • Participants have the option to interact with the software in training mode during the remote session. • Training is conducted via web conference software provided by FASTER.	1	$1,150.00	**$0.00** Not Selected
	FASTER (Code: 515)			
			One-Time Subtotal	$15,950.00

Summary

† *Non-taxable item*

Please contact us if you have any questions.

One-Time Subtotal	$139,960.00
Discount	($17,395.00)
Total One-Time	**$122,565.00 USD**
Total Annual Support And Maintenance	**$27,722.00 USD**

ACCEPT QUOTE

Cost Breakdown

Category	One-Time Fees	Annual Fees
LICENSE	$70,950.00	—
SUPPORT and MAINTENANCE	—	$27,722.00
SETUP / INTERFACE	$24,660.00	—
Service / Data	$20,000.00	—
Service / Migration	$8,400.00	—
Training	$15,950.00	—
Discount	($17,395.00)	—
Total	**$122,565.00 USD**	**$27,722.00 USD**

FASTER Web

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- The *FASTER* Web Upgrade & Support fee will be due upon software delivery of *FASTER* Web. Any months remaining on *FASTER* Win support will be deducted from the first year fee.
- Standard agreement for recurring pricing model is 60 months.
- Cancellation of service prior to term expiration will result in an early termination fee equal to 85% of the recurring fees for the remaining term period.
- Hourly database backups (secure, offsite location) will be conducted to ensure consistent and recoverable backups of the database to restore from in the event of an emergency.
- Complete database recovery backups are available for 14 (fourteen) days.
- Recurring fees may be increased after the initial term is completed.

Legacy Data Preparation and Cleanup

FASTER Asset Solutions always recommends that customers confirm that all legacy system data is current, accurate, and in good order. Data maintained in good order from previous systems will not typically require any corrections and can be imported effectively and efficiently into the FASTER Web product without issue. In the event that there are legacy data issues that require correction by the customer, FASTER Web consultants will support those efforts for our customers by providing guidance and advice.

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Amendment to Gall's Contract for the Purchase of Body Armor

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Amendment to the Gall's contract for the purchase of body armor.

Staff Recommendation

Approve the amendment to the Gall's contract for the purchase of body armor.

Background Information

MPD officers are equipped with Level III body armor, which is recommended to be replaced every five years. Currently, there are 100 sets of body armor approaching expiration in the next twelve months.

Replacements for expiring armor and carriers is available through our current contract with Galls, LLC for a total cost of $117,975.

Council Priorities Served

Safe and Livable Neighborhoods

Body Armor is a critical law enforcement tool that allows officers to be protected in hostile situations.

Fiscal Impact

The cost of this purchase, $117,975, is funded by the FY23 ARPA Grant funds.

Attachments

Amendment No. 1 of Contract Between City of Murfreesboro and Galls LLC for Uniforms for Police and Fire Departments.

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AMENDMENT #1
OF
CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
GALLS LLC
FOR UNIFORMS FOR POLICE & FIRE DEPARTMENTS

WHEREAS, the City of Murfreesboro, a municipal corporation of the State of Tennessee ("City") and Galls LLC, a limited liability corporation of the State of Delaware ("Contractor"), entered into an Agreement for purchase of uniforms for the Police and Fire Rescue Departments on April 22, 2022; and

WHEREAS, the City desires to purchase additional body armor pursuant to this Contract as set forth in Quote #21124993 (Attachment A to Amendment #1); and

WHEREAS, the purchase of the additional body armor set forth in Quote #21124993 will be funded with monies from the ARPA Grant, also known as, Coronavirus State & Local Recovery Funds ("CSLFRF"); and

WHEREAS, ARPA Grant regulations require certain clauses be included in any contract utilizing the CSLFRF grant funds;

NOW THEREFORE, the Contract is amended as follows:

SECTION 1. The Contract is amended to include the purchase of additional items as set forth in Quote #21124993 (Attachment A to Amendment #1).

SECTION 2. The Contract is amended by adding the following federally required clauses as numbered below at the end of the Contract:

24. **Title VI of the Civil Rights Act of 1964, as amended**. Contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

25. **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

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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.

26. Debarment and Suspension.
    a. The City certifies, to the best of its knowledge and belief, that the Selected Contractor:
        i. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
        ii. has not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant 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;
        iii. is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
        iv. has not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

    b. The City will provide immediate written notice to the U.S. Department of Treasury or granting authority, if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, the Selected Contractor is excluded or disqualified, or presently falls under any of the prohibitions of sections i-iv.

    c. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. The Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

        i. Debarred from participation in any federally assisted Award;
        ii. Suspended from participation in any federally assisted Award;
        iii. Proposed for debarment from participation in any federally assisted Award;
        iv. Declared ineligible to participate in any federally assisted Award;
        v. Voluntarily excluded from participation in any federally assisted Award; or
        vi. Disqualified from participation in any federally assisted Award.
        vii. By signing this Agreement, Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, throughout the period of the awarded Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

27. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

28. **Lobbying Certification. (4220.1F.IV.2.a.(4); 49 CFR Part 20).**

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a. Contractors that apply or bid for an award exceeding $100,000 must file the lobbying certification before the awarding of the contract, and if applicable, a lobbying disclosure from a prospective third-party contractor. See, DOT regulations, "New Restrictions on Lobbying" 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd "Anti-Lobbying" Amendment, 31 U.S.C. Section 1352. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

b. The Contractor certifies, to the best of its knowledge and belief, that:

   i. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

   ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Promisor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

   iii. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

29. **Domestic preferences for procurements**. (2 CFR 200.322)

a. As appropriate and to the extent consistent with law, the Contractor, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

b. For purposes of this section:

   i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

   ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

30. **Increasing Seat Belt Use in the United States**. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

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31. **Reducing Text Messaging While Driving**. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

In all other respects the Contract between the City of Murfreesboro and Galls LLC, is affirmed with no additional changes or modifications. This amendment is hereby effective _____.

CITY OF MURFREESBORO

By:_____
Shane McFarland, Mayor

GALLS LLC

DocuSigned by:
By: Tiffany Brewer
Michael Padden, Chief Executive Officer

Approved as to form:

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

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ATTACHMENT A TO AMENDMENT #1

Quote

Customer: (5147834) CITY OF MURFREESBORO POLICE
Date: 07/05/2022
Sales Rep: TRAVIS HARDIN

Quote Number: 21124993
Quote Expiration: 08/04/2022

Sold To:
CITY OF MURFREESBORO POLICE
P. O. BOX 1139
ATTN: ACCOUNTS PAYABLE
MURFREESBORO, TN 37133
BECKI TUCKER

Ship To:
MURFREESBORO POLICE DEPT
1004 N. HIGHLAND AVE
MURFREESBORO, TN 37130
BECKI TUCKER

Line	Item	Description	Qty	Retail	Your Price	Ext Total
1	BL635 NAV CTM 00	POINT BLANK AXBIIIA HILITE 1 CARRIER	100		865.00	86,500.00
1.1	BP0002	MALE CUSTOM VEST	100			
2	BP634 7X9	SPEED PLATE	100		116.75	11,675.00
3	BP3734 MDNV CSTM 00	GDAM001B0J MODIFIED GUARDIAN MODULAR CARRIER	100		198.00	19,800.00
3.1	BP0001	BODY ARMOR CARRIERS	100			

Quote is valid for 30 days

SUBTOTAL:	117,975.00
SHIPPING:	
TAX.....:	
TOTAL...:	117,975.00

Galls is required to collect sales tax on shipments to certain states. Sales tax will be added where applicable. For tax exempt customers, state laws require us to have signed tax exemption or resale certificates on file at our office. If you are tax exempt, please email or fax this information, (including your Galls account number) to Tax@galls.com or fax 859-268-5946.

Export Restrictions - This may contain commodities restricted in the United States International Trade Regulations.

1340 Russell Cave Rd
Lexington, KY 40505
Tel: 800-876-4242 Fax:877-914-2557

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Galls, LLC Invoice Credit Terms and Conditions of Sale

Payment - Invoices for items delivered pursuant to any sales order are payable only in United States currency. You, your business, and/or your agency (the "Buyer") understand that Galls, LLC (the "Seller") may impose and charge a finance charge that is the greater of 1.5% per month or the highest rate allowed by law on any amount which becomes past due and delinquent. Returned checks may be assessed a $25.00 service fee. Additionally, Buyer shall be responsible for all collection costs, court costs, and reasonable attorney's fees in connection with the recovery of delinquent amounts.

All sales are made pursuant to these Credit Terms and Conditions of Sale, and Seller objects to any different or additional terms or conditions contained in Buyer's purchase order or any other document submitted by Seller. Payments may be applied against open balances at the sole discretion of Seller and may be applied across accounts if Buyer has more than one account with Seller. Credit memos are non-refundable and may be applied to open invoices at Seller's sole discretion.

Credit Terms - Any extension of credit is based upon all amounts payable on or before the due date on any written, quoted, or agreed terms, and shall be paid in accordance with such terms. If not paid on or before such date, accounts shall be considered delinquent and subject to the additional finance charges as set forth herein.

Buyer agrees to provide Seller, upon request, with an updated credit application as a condition to the continued extension of credit. Buyer acknowledges and agrees that Seller may utilize outside credit reporting services and financial institutions to obtain information on the Buyer as a condition precedent to or for continued extension of credit. Seller may terminate any credit availability within its sole discretion and without prior notice. Buyer's continued solvency is a precondition to any sale made by Seller.

Delays - Where a specific shipping date is not designated on the face hereof or in a subsequent writing signed by the Seller, the Seller shall not be responsible for any delays, nor shall Seller be liable for any loss or damages resulting from such delays. Seller shall not be liable for any delays in filling this order caused by accidents to machinery, differences with employees, strikes, labor shortage, fire, floods, priorities requested or required by an instrumentality of the United States Government or the government of any state, delays in transportation, restrictions imposed by any federal, state or municipal law or regulation, whether valid or invalid, or causes beyond the control of the Seller.

Warranty - Seller shall pass through to Buyer all manufacturer warranties and return policies applicable to Buyer's order. Seller shall take all reasonable actions to ensure that Buyer receives the benefit of such pass through warranties and return policies. Buyer's sole remedies for any goods sold hereunder shall be as provided in such warranties and return policies and shall be solely against the applicable manufacturer. SELLER, ON BEHALF OF ITSELF, DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO SUCH GOODS.

Restocking - If a cancellation of an order or a return by Buyer is accepted or initiated by Seller and/or the manufacturer, it may be subject to a restocking charge at the discretion of Seller.

Delivery and Transportation - Products sold herein are sold FOB at the place indicated on the face of this sales order unless otherwise agreed to in writing by Seller and Buyer. The method and agency of transportation and the routing will be designated by the Seller. In the event the Buyer requests alternative shipment or routing, all extra packing, shipping and transportation charges thereby resulting will be for the Buyer's account.

Waiver - No provision herein shall be deemed a waiver by reason of any previous waiver, and no breach of any provision shall be deemed a waiver by reason of any previous breach.

Governing Law - The sole jurisdiction and venue shall be the courts of the Commonwealth of Kentucky.

Export Restrictions - This transaction may contain commodities restricted in the United States International Trade Regulations. If at a later date the Buyer decides these commodities will be exported from the United States please reference the United States Department of Commerce Bureau of Industry and Security Export Administration Regulations (15 CFR 730-774), the United States Department of State International Traffic in Arms Regulations (22 CFR 120-130) as well as any other applicable laws. These laws apply to private, commercial, and government agency export transactions. As an exporter, the Buyer will be responsible for compliance with all U.S. laws relating to the export of these items.

*Designates this item is on the Galls GSA Contract (47QSWA21D008H) all other items are OPEN MARKET.

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Purchase of New Police Vehicles

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Purchase of 11 new police vehicles.

Staff Recommendation

Approve the purchase of 11 new police vehicles from Ford of Murfreesboro.

Background Information

The purchase of 11 unmarked vehicles will be additional street appearance vehicles for the department's criminal investigations division. This equipment is available for purchase in the amount of $422,605.

These items are available for purchase through the State's General Services Central Procurement Office, which is permitted by State statute and Council Resolution. Staff has verified the cost effectiveness of the current state contract.

Council Priorities Served

Responsible budgeting

By utilizing the State's procurement contract, the City benefits from pre-negotiated, competitive pricing.

Fiscal Impact

The cost of this purchase, $422,605, is funded by the American Rescue Plan Act Funds.

Attachments

Contract with TT of F. Murfreesboro, Inc. d/b/a Ford of Murfreesboro

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CONTRACT BETWEEN
CITY OF MURFREESBORO
AND
TT OF F. MUFREESBORO, INC.
FOR PURCHASE OF VEHICLE

This Contract is entered into and effective as of the _____ day of _____ 2022, by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **TT OF F. MURFREESBORO, INC.,** a corporation of the State of Tennessee ("Contractor").

This Contract consists of the following documents:

- ***This Contract***
- ***Contractor's State of Tennessee Contract No. 209/72320 with TT of F. Murfreesboro, Inc.***
- ***Sales Quotation No. MUR024 dated July 19, 2022, from TT of F. Murfreesboro, Inc. for two 2023 PI Utility AWD Hybrid Vehicles and Optional Equipment***
- ***Sales Quotation No. MUR024 dated July 18, 2022, from TT of F. Murfreesboro, Inc. for nine 2023 PI Utility AWD V6 FFV Vehicles and Optional Equipment***
- ***Any properly executed amendments to this Agreement***

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

- ***First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)***
- ***Second, this Contract***
- ***Third, Contractor's State of Tennessee Contract No. 209/72320 with TT of F. Murfreesboro, Inc.***
- ***Finally, Sales Quotation No. MUR024 dated July 19, 2022, from TT of F. Murfreesboro Inc., for two 2023 PI Utility AWD Hybrid Vehicles and Optional Equipment and Sales Quotation No. MUR024 dated July 18, 2022, from TT of F. Murfreesboro, Inc. for nine 2023 PI Utility AWD V6 FFV Vehicles and Optional Equipment***

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase the following vehicles and optional equipment as set forth in the State of Tennessee Contract No. 209/72320 with TT of F. Murfreesboro, Inc., and Contractor's Sales Quotation No. MUR024 dated July 18, 2022 and Sales Quotation No. MUR024 dated July 19, 2022:
    a. Two 2023 PI Utility AWD Hybrid and Optional Equipment
    b. Nine 2023 PI Utility AWD V6 FFV and Optional Equipment

    Furthermore, the City may utilize this Contract to procure additional vehicles and equipment from Contractor per the State of Tennessee Contract No. 209/72320 through the term of the contract. Such future procurements shall be executed through a Purchase Order after purchases exceeding $25,000 have been approved by Council.

2. **Term.** The term of this Contract shall be from _____, 2022 (the "Effective Date") to the expiration of the State of Tennessee No. Contract 209/72320 on December 31, 2023, or as amended by the State of Tennessee. 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.

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c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.

d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

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

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

a. The price for the goods and other items to be provided under this Contract is set forth in the Sales Quotation No. MUR024 dated July 19, 2022 and July 18, 2022, for two 2023 PI Utility AWD Hybrid and Optional Equipment and nine 2023 PI Utility AWD V6 FFV and Optional Equipment, reflecting a **Total Purchase Price of $422,605.00** as set forth in the above referenced Sales Quotations. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. Invoices should be sent to: accountspayable@murfreesborotn.gov.

b. An employee of the City of Murfreesboro will pick-up the vehicles within three (3) working days of notification by Ford of Murfreesboro that it is ready for pickup. Please notify the City's contact person, Robert Holloway (email: 0388@murfreesborotn.gov) at (615) 849-2673 when vehicles are ready for pick-up.

c. Deliveries of all items shall be made as soon as possible after issuance of Purchase Order and no later than December 31, 2022. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.

d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote.

e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

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

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5. **Indemnification.**

a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.

c. Copyright, Trademark, Service Mark, or Patent Infringement.

i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (1) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (2) no cost or expense whatsoever accrues to the City at any time; and (3) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.

ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

1. Procure for the City the right to continue using the products or services.

2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.

3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.

iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination

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with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

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

If to the City of Murfreesboro:	If to the Contractor:
City of Murfreesboro Attn: City Manager Post Office Box 1139 111 West Vine Street Murfreesboro, TN 37133-1139	Ford of Murfreesboro Attn: Jason McCullough, Fleet Sales Manager 1550 NW Broad St. Murfreesboro TN 37129-1709

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

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

9. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.

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

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

12. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

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

14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or

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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. **Title VI of the Civil Rights Act of 1964, as amended.** Contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
16. **Gratuities and Kickbacks**. It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
17. **Assignment**. The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder
18. **Integration**. This Contract, Sales Quotations, and State contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
19. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, epidemic, pandemic or other cause of similar or dissimilar nature beyond its control.
20. **Governing Law and Venue**. The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide.

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Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

21. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

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

23. **Debarment and Suspension**.

a) The City certifies, to the best of its knowledge and belief, that the Selected Contractor:

- **i.** is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- **ii.** has not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant 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;
- **iii.** is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- **iv.** has not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

b) The City will provide immediate written notice to the U.S. Department of Treasury or granting authority, if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, the Selected Contractor is excluded or disqualified, or presently falls under any of the prohibitions of sections i-iv.

c) The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. The Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

i. Debarred from participation in any federally assisted Award;
ii. Suspended from participation in any federally assisted Award;
iii. Proposed for debarment from participation in any federally assisted Award;
iv. Declared ineligible to participate in any federally assisted Award;
v. Voluntarily excluded from participation in any federally assisted Award; or
vi. Disqualified from participation in any federally assisted Award.
vii. By signing this Agreement, Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to

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suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, throughout the period of the awarded Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

24. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

25. **Lobbying Certification. (4220.1F.IV.2.a.(4); 49 CFR Part 20).**

a) Contractors that apply or bid for an award exceeding $100,000 must file the lobbying certification before the awarding of the contract, and if applicable, a lobbying disclosure from a prospective third party contractor. See, DOT regulations, "New Restrictions on Lobbying" 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd "Anti-Lobbying" Amendment, 31 U.S.C. Section 1352. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

b) The Contractor certifies, to the best of its knowledge and belief, that:

i. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Promisor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

iii. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

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26. **Domestic preferences for procurements**. (2 CFR 200.322)

    a) As appropriate and to the extent consistent with law, the Contractor, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

    b) For purposes of this section:

        i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

        ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

27. **Increasing Seat Belt Use in the United States**. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

28. **Reducing Text Messaging While Driving**. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

29. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

IN WITNESS WHEREOF, the parties enter into this agreement as of _____, 2022 (the "Effective Date").

CITY OF MURFREESBORO

By: _____
Shane McFarland, Mayor

TT of F. MURFREESBORO, INC.

DocuSigned by:
By: Jason McCullough
97569610812B4F4...
Jason McCullough, Fleet Manager

APPROVED AS TO FORM:

DocuSigned by:
Adam F. Tucker
43A2035E51F9401...
Adam F. Tucker, City Attorney

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Ford of Murfreesboro
1550 NW Broad St. Murfreesboro, TN 37129

SWC QUOTE

SWC 209

TO:
City of Murfreesboro

DATE	7/19/2022
TERMS	
DELIVERY	TBD
NUMBER	MUR024

We are pleased to quote you the following:

QUANTITY	CODE	DESCRIPTION	UNIT PRICE	TOTAL
2	K8A	PI Utility AWD Hybrid MSRP $43,190	$40,558.00	$81,116.00
2	OPT	Optional Equipment	$865.00	$1,730.00
		Window Sticker and Build Sheet include detailed optional and upfit equipment information. Any options that are not highlighted are included at no additional cost.		
		Total Price	**$41,423.00**	**$82,846.00**

We will be happy to supply any further information you may need and trust that you call on us to fill your order, which will receive our prompt and careful attention.

QUOTE SIGNED

July 19, 2022
DATE

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Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

As Configured Vehicle

Code	Description	MSRP
Base Vehicle		
K8A	Base Vehicle Price (K8A)	$41,110.00
Packages		
500A	Order Code 500A *Includes:* *- Engine: 3.3L V6 Direct-Injection Hybrid System (136-MPH top speed).* *- Transmission: 10-Speed Automatic* *- 3.73 Axle Ratio* *- GVWR: 6,840 lbs (3,103 kgs)* *- Tires: 255/60R18 AS BSW* *- Radio: AM/FM/MP3 Capable* *Includes clock, 4-speakers, Bluetooth interface with hands-free voice command support (compatible with most Bluetooth connected mobile devices), 1 USB port and 4.2" color LCD screen center stack smart display.*	N/C
Powertrain		
99W	Engine: 3.3L V6 Direct-Injection Hybrid System *(136-MPH top speed).*	Included
44B	Transmission: 10-Speed Automatic	Included
STDAX	3.73 Axle Ratio	Included
STDGV	GVWR: 6,840 lbs (3,103 kgs)	Included
Wheels & Tires		
STDTR	Tires: 255/60R18 AS BSW	Included
64E	Wheels: 18" Painted Aluminum *Spare wheel is an 18" conventional (Police) black steel wheel.*	$475.00
Seats & Seat Trim		
F	Unique HD Cloth Front Bucket Seats w/Cloth Rear *Includes driver 6-way power track (fore/aft. up/down, tilt with manual recline, 2-way manual lumbar) and passenger 2-way manual track (fore/aft. with manual recline).*	Included
Other Options		
PAINT	Monotone Paint Application	STD

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

DocuSign Envelope ID: 89A04DC7-4310-4DD0-8F47-AEFDA5019B78

Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

As Configured Vehicle (cont'd)

Code	Description	MSRP
119WB	119" Wheelbase	STD
STDRD	Radio: AM/FM/MP3 Capable *Includes clock, 4-speakers, Bluetooth interface with hands-free voice command support (compatible with most Bluetooth connected mobile devices), 1 USB port and 4.2" color LCD screen center stack smart display.*	Included
65U	Interior Upgrade Package *Includes:* *- 1st & 2nd Row Carpet Floor Covering* *Includes front and rear floor mats.* *- Unique HD Cloth Front Bucket Seats w/Cloth Rear* *Includes driver 6-way power track (fore/aft. up/down, tilt with manual recline, 2-way manual lumbar) and passenger 2-way manual track (fore/aft. with manual recline).* *- Center Floor Console Less Shifter* *Includes console and top plate with 2 cup holders. (Maintains column shifter).* *- SYNC 3 Communications & Entertainment System* *Includes 911 Assist, VHR, SYNC Services, AppLink, Bluetooth, steering wheel controls, USB port and auxiliary input jack.*	$390.00
55F	Remote Keyless Entry Key Fob w/o Key Pad *Does not include PATS. Includes 4-key fobs. Key fobs are not fobbed alike when ordered with keyed-alike.*	$340.00
16C	1st & 2nd Row Carpet Floor Covering *Includes front and rear floor mats.*	Included
Emissions		
425	50 State Emission System Flexible Fuel Vehicle (FFV) system is standard equipment for vehicles equipped with the 3.3L V6 Direct-Injection engine.	STD
Interior Color		
F6_01	Charcoal Black w/Unique HD Cloth Front Bucket Seats w/Cloth Rear	N/C
Exterior Color		
YZ_01	Oxford White	N/C
SUBTOTAL		$42,315.00
Destination Charge		$1,495.00
TOTAL		$43,810.00

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

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Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

Major Equipment

(Based on selected options, shown at right)

3.3L V-6 DOHC w/port/direct injection 285hp
10 speed automatic w/OD

Exterior: Oxford White
Interior: Charcoal Black w/Unique HD Cloth Front Bucket Seats w/Cloth Rear

* 4-wheel ABS
* Traction control
* Advance Trac w/Roll Stability Control
* Dual zone electronic automatic temperature control
* AM/FM stereo with seek-scan, auxiliary audio input, external memory control
* LED brakelights
* Dual power remote mirrors
* 18 x 8 aluminum wheels
* Driver and front passenger seat mounted side airbags
* Rear window defroster
* Message Center
* Reclining front bucket seats
* Audio control on steering wheel
* Brake assistance
* P 255/60R18 BSW AS W-rated tires
* Automatic air conditioning
* Tinted glass
* Streaming audio
* Rear child safety locks
* Variable intermittent speed-sensitive wipers wipers
* Dual front airbags
* Airbag occupancy sensor
* Tachometer
* Underseat ducts
* 35-30-35 folding rear split-bench
* Class III hitch

Fuel Economy

City
N/A

Hwy
N/A

As Configured Vehicle

	MSRP
STANDARD VEHICLE PRICE	$41,110.00
Order Code 500A	N/C
Engine: 3.3L V6 Direct-Injection Hybrid System	Included
Transmission: 10-Speed Automatic	Included
3.73 Axle Ratio	Included
GVWR: 6,840 lbs (3,103 kgs)	Included
Tires: 255/60R18 AS BSW	Included
Monotone Paint Application	STD
119" Wheelbase	STD
Radio: AM/FM/MP3 Capable	Included
50 State Emission System	STD
Interior Upgrade Package	$390.00
1st & 2nd Row Carpet Floor Covering	Included
Unique HD Cloth Front Bucket Seats w/Cloth Rear	Included
Center Floor Console Less Shifter	Included
SYNC 3 Communications & Entertainment System	Included
Remote Keyless Entry Key Fob w/o Key Pad	$340.00
Wheels: 18" Painted Aluminum	$475.00
Oxford White	N/C

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

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Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

As Configured Vehicle	MSRP
Charcoal Black w/Unique HD Cloth Front Bucket Seats w/Cloth Rear	N/C
SUBTOTAL	$42,315.00
Destination Charge	$1,495.00
TOTAL	**$43,810.00**

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

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Ford of Murfreesboro
1550 NW Broad St. Murfreesboro, TN 37129

SWC QUOTE

SWC 209

TO:
City of Murfreesboro

DATE	7/18/2022
TERMS	
DELIVERY	TBD
NUMBER	MUR024

We are pleased to quote you the following:

QUANTITY	CODE	DESCRIPTION	UNIT PRICE	TOTAL
9	K8A	PI Utility AWD V6 FFV MSRP: $39,820	$37,751.00	$339,759.00
9	OPT	Optional Equipment		
		Window Sticker and Build Sheet include detailed optional and upfit equipment information. Any options that are not highlighted are included at no additional cost.		
		Total Price	**$37,751.00**	**$339,759.00**

We will be happy to supply any further information you may need and trust that you call on us to fill your order, which will receive our prompt and careful attention.

QUOTE SIGNED

July 18, 2022

DATE

DocuSign Envelope ID: 89A04DC7-4310-4DD0-8F47-AEFDA5019B78

Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

As Configured Vehicle

Code	Description	MSRP
Base Vehicle		
K8A	Base Vehicle Price (K8A)	$41,110.00
Packages		
500A	Order Code 500A *Includes:* *- 3.73 Axle Ratio* *- GVWR: 6,840 lbs (3,103 kgs)* *- Tires: 255/60R18 AS BSW* *- Radio: AM/FM/MP3 Capable* *Includes clock, 4-speakers, Bluetooth interface with hands-free voice command support (compatible with most Bluetooth connected mobile devices), 1 USB port and 4.2" color LCD screen center stack smart display.*	N/C
Powertrain		
99B	Engine: 3.3L V6 Direct-Injection (FFV) *(136-MPH top speed). Note: Deletes regenerative braking and lithium-ion battery pack; adds 250-Amp alternator, replaces H7 AGM battery (800 CCA/80-amp) with H7 SLI battery (730 CCA/80-amp) and replaces 19-gallon tank with 21.4-gallon.*	-$3,370.00
44U	Transmission: 10-Speed Automatic (44U)	N/C
STDAX	3.73 Axle Ratio	Included
STDGV	GVWR: 6,840 lbs (3,103 kgs)	Included
Wheels & Tires		
STDTR	Tires: 255/60R18 AS BSW	Included
64E	Wheels: 18" Painted Aluminum *Spare wheel is an 18" conventional (Police) black steel wheel.*	$475.00
Seats & Seat Trim		
F	Unique HD Cloth Front Bucket Seats w/Cloth Rear *Includes driver 6-way power track (fore/aft. up/down, tilt with manual recline, 2-way manual lumbar) and passenger 2-way manual track (fore/aft. with manual recline).*	Included
Other Options		
PAINT	Monotone Paint Application	STD

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

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Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

As Configured Vehicle (cont'd)

Code	Description	MSRP
119WB	119" Wheelbase	STD
STDRD	Radio: AM/FM/MP3 Capable *Includes clock, 4-speakers, Bluetooth interface with hands-free voice command support (compatible with most Bluetooth connected mobile devices), 1 USB port and 4.2" color LCD screen center stack smart display.*	Included
65U	Interior Upgrade Package *Includes:* *- 1st & 2nd Row Carpet Floor Covering* *Includes front and rear floor mats.* *- Unique HD Cloth Front Bucket Seats w/Cloth Rear* *Includes driver 6-way power track (fore/aft. up/down, tilt with manual recline, 2-way manual lumbar) and passenger 2-way manual track (fore/aft. with manual recline).* *- Center Floor Console Less Shifter* *Includes console and top plate with 2 cup holders. (Maintains column shifter).* *- SYNC 3 Communications & Entertainment System* *Includes 911 Assist, VHR, SYNC Services, AppLink, Bluetooth, steering wheel controls, USB port and auxiliary input jack.*	$390.00
55F	Remote Keyless Entry Key Fob w/o Key Pad *Does not include PATS. Includes 4-key fobs. Key fobs are not fobbed alike when ordered with keyed-alike.*	$340.00
16C	1st & 2nd Row Carpet Floor Covering *Includes front and rear floor mats.*	Included
Emissions		
425	50 State Emission System Flexible Fuel Vehicle (FFV) system is standard equipment for vehicles equipped with the 3.3L V6 Direct-Injection engine.	STD
Interior Color		
F6_01	Charcoal Black w/Unique HD Cloth Front Bucket Seats w/Cloth Rear	N/C
Exterior Color		
YZ_01	Oxford White	N/C
SUBTOTAL		$38,945.00
Destination Charge		$1,495.00
TOTAL		$40,440.00

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

DocuSign Envelope ID: 89A04DC7-4310-4DD0-8F47-AEFDA5019B78

Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

Major Equipment

(Based on selected options, shown at right)

3.3L V-6 DOHC w/gasoline direct injection 285hp
10 speed automatic w/OD

Exterior: Oxford White
Interior: Charcoal Black w/Unique HD Cloth Front Bucket Seats w/Cloth Rear

* 4-wheel ABS
* Traction control
* Advance Trac w/Roll Stability Control
* Dual zone electronic automatic temperature control
* AM/FM stereo with seek-scan, auxiliary audio input, external memory control
* LED brakelights
* Dual power remote mirrors
* 18 x 8 aluminum wheels
* Driver and front passenger seat mounted side airbags
* Rear window defroster
* Message Center
* Reclining front bucket seats
* Audio control on steering wheel
* Brake assistance
* P 255/60R18 BSW AS W-rated tires
* Automatic air conditioning
* Tinted glass
* Streaming audio
* Rear child safety locks
* Variable intermittent speed-sensitive wipers wipers
* Dual front airbags
* Airbag occupancy sensor
* Tachometer
* Underseat ducts
* 35-30-35 folding rear split-bench
* Class III hitch

Fuel Economy

City
N/A

Hwy
N/A

As Configured Vehicle

	MSRP
STANDARD VEHICLE PRICE	$41,110.00
Order Code 500A	N/C
3.73 Axle Ratio	Included
GVWR: 6,840 lbs (3,103 kgs)	Included
Tires: 255/60R18 AS BSW	Included
Monotone Paint Application	STD
119" Wheelbase	STD
Radio: AM/FM/MP3 Capable	Included
50 State Emission System	STD
Engine: 3.3L V6 Direct-Injection (FFV)	-$3,370.00
Transmission: 10-Speed Automatic (44U)	N/C
Interior Upgrade Package	$390.00
1st & 2nd Row Carpet Floor Covering	Included
Unique HD Cloth Front Bucket Seats w/Cloth Rear	Included
Center Floor Console Less Shifter	Included
SYNC 3 Communications & Entertainment System	Included
Remote Keyless Entry Key Fob w/o Key Pad	$340.00
Wheels: 18" Painted Aluminum	$475.00
Oxford White	N/C

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

DocuSign Envelope ID: 89A04DC7-4310-4DD0-8F47-AEFDA5019B78

Prepared by: Jason McCullough
07/14/2022

Ford of Murfreesboro | 1550 N.W. Broad St. Murfreesboro Tennessee | 371291709

2022 Police Interceptor Utility AWD Base (K8A)

Price Level: 250

As Configured Vehicle	MSRP
Charcoal Black w/Unique HD Cloth Front Bucket Seats w/Cloth Rear	N/C
SUBTOTAL	$38,945.00
Destination Charge	$1,495.00
TOTAL	**$40,440.00**

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

DocuSign Envelope ID: 89A04DC7-4310-4DD0-8F47-AEFDA5019B78

From: Jeff Keaton
To: Jenny Licsko
Subject: FW: [EXTERNAL]- Model Year Order
Date: Friday, July 22, 2022 10:34:16 AM

From: Jason Mccullough <jmccullough@fordofmurfreesboro.com>
Sent: Friday, July 22, 2022 10:33 AM
To: Jeff Keaton <0294@murfreesborotn.gov>
Subject: [EXTERNAL]- Model Year Order

Let this e-mail serve as confirmation that the new order will be for 2023 model year Police Interceptor Utilities. The system used to build the vehicle information is updated by Ford to include the most recent or current models and I anticipate that will be done somewhere around the middle of August.

Thanks,

Jason McCullough – Fleet Sales Manager
Ford of Murfreesboro
(615) 785-9141

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Engineering Task Order for WRRF Wet Weather Upgrades

Department: Water Resources Board

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Engineering task order from Smith Seckman and Reid (SSR) to upgrade the Water Resource Recovery Facility for flows occurring during peak wet weather events.

Staff Recommendation

Approve SSR Engineering Task Order 2141002.0.

Background Information

MWRD has budgeted for wet weather upgrades to the WRRF since September of 2017. SSR completed a hydraulic capacity study of the WRRF in February 2021 that detailed several necessary upgrades to handle the flows generated by peak wet weather events in the Department's sanitary sewer collection system service area. The proposed upgrades include additional filters, additional UV disinfection equipment, piping upgrades, and an assessment of refurbishing and placing the WRRF's decommissioned headworks back into service. The attached exhibit illustrates the preferred option and associated upgrades to the WRRF that would allow it to process 80 million gallons per day (MGD) during a wet weather peak rain event. The exhibit also breaks down the estimated probable construction cost of $8,150,000. These wet weather upgrades will be usable as part of any future WRRF treatment train expansion (e.g., addition of a new oxidation ditch and clarifiers).

The engineering services fees are tabulated below:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Section 1 of Agreement)		
a. Study and Report Phase*	$70,000	Hourly Not to Exceed
a. Preliminary and Final Design Phase	$304,320	Hourly Not to Exceed
b. Bidding or Negotiating Phase	$27,720	Hourly Not to Exceed
c. Construction Phase**	$228,565	Hourly Not to Exceed
d. Operational Phase	$6,855	Hourly Not to Exceed
e. Project Management	$55,440	Hourly Not to Exceed
TOTAL COMPENSATION (lines 1.a-e)	**$693,000**	

Council Priorities Served

Expand Infrastructure

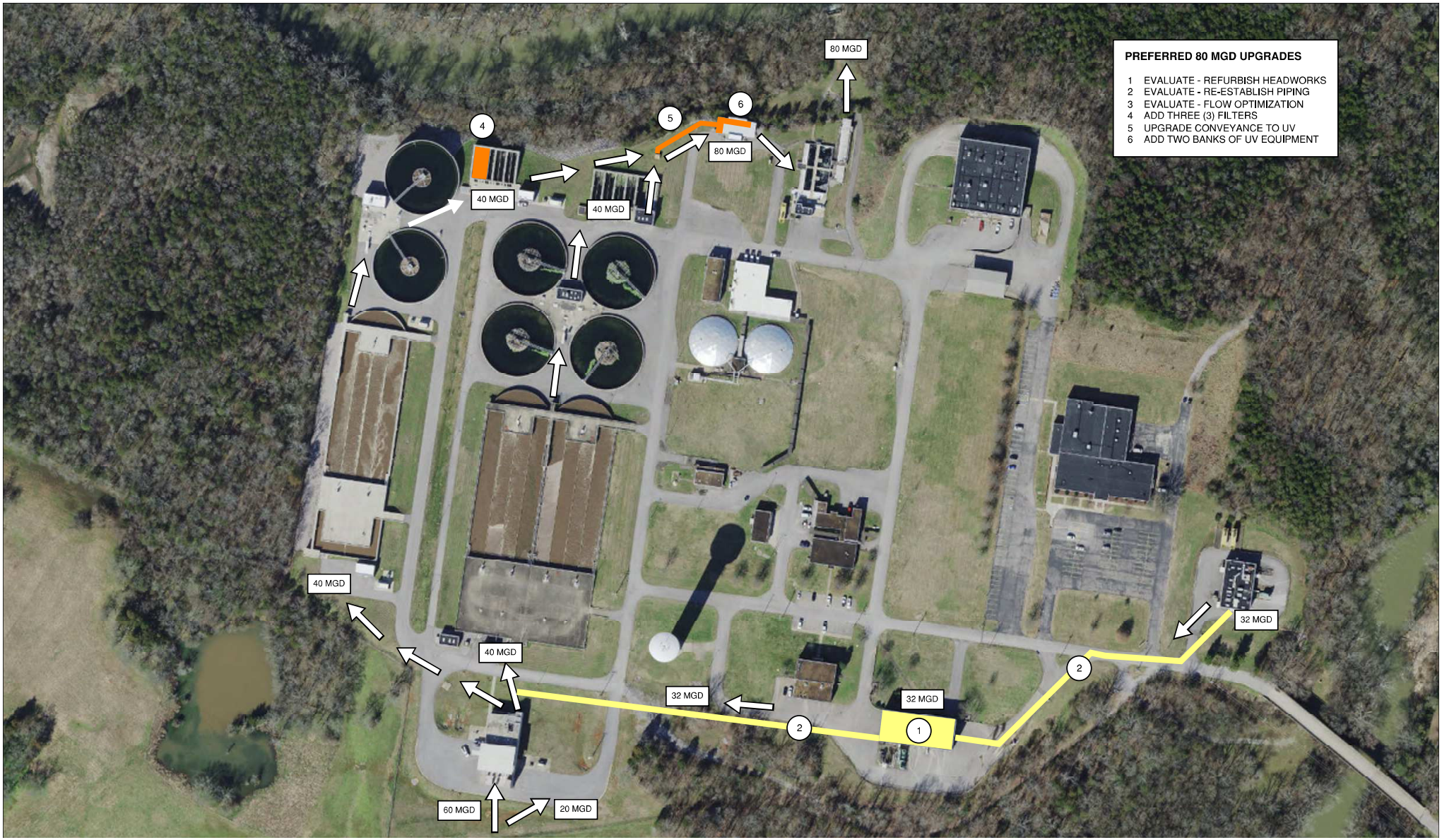
Making improvements and upgrades at the WRRF to handle wet weather peak flows delivered from expanded and newly constructed sanitary sewer regional pumping stations eliminates the WRRF from being a bottle neck during large rain events and also reduces the risk of sanitary sewer overflows occurring in the sewer collection system.

Fiscal Impact

The expenses, $693,000, is funded by MWRD Working Capital Reserves. An additional $8,379,000 is budgeted for permitting, construction improvements, and construction inspections.

Attachments

1. Preferred Option Exhibit and Total Cost Estimate for WRRF Wet Weather Upgrades
2. SSR Engineering Task Order No. 2141002.0



MWRRF HYDRAULIC CAPACITY STUDY

PREFERRED OPTION - REQUIRED UPGRADES
80 MGD CAPACITY

SSR NO. 1941002.0

Summary of Opinion of Project Costs

Description	Opinion of Probable Cost
General Conditions	$442,000
Sitework and Buried Piping Improvements	$914,000
Concrete	$324,000
Existing Headworks Refurbishment [3]	TBD
Filters	$2,120,000
UV Disinfection	$944,000
Electrical and Controls	$750,000
Other Construction Costs (Process Piping, Misc. Metals, Painting, Etc.)	$476,000
Contingency (30%) [7]	$1,791,000
Escalation to Mid-Point of Construction (5%) [9]	$389,000
Total Probable Construction Cost	**$8,150,000**
Existing Headworks Condition and Conveyance Assessment Study	$25,000
Engineering and Construction Administration (8.5%) [9]	$693,000
Construction Testing and Special Inspections (2%)	$163,000
Permitting (0.5%)	$41,000
Total Probable Project Cost	**$9,072,000**

Notes:

1. Costs include Contractor's Overhead and Profit.
2. Costs are based in part on the WRRF Phase 4D construction costs and escalated based on recent (May 2022) ENR cost indices.
3. Cost for refurbishment of the existing Headworks cannot be determined at this time. A condition assessment of the facility and conveyance upgrades is required to prepare an opinion of cost.
4. Costs are rounded up to the nearest thousand dollars.
5. Land acquisition costs are not included as Murfreesboro owns the necessary property for the proposed improvements.
6. Costs are presented in FY2022 US dollars.
7. Costs are a Class 3 opinion of cost for budget planning purposes with an expected accuracy range of -10 percent to +30% in accordance with AACE International Recommended Practice No. 18R-97.
8. Escalation assumes 5 percent based on current inflation rate.
9. Engineering costs do not include design and CA services for work associated with refurbishing the existing Headworks and associated conveyance upgrades. Scope and fee for that work will be identified during the Headworks condition assessment and provided as a separate task order, if requested.

Task Order

In accordance with the Standard Form of Agreement Between Owner and Engineer for Professional Services, dated August 6, 2002 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

a.	Effective Date of Task Order:	_____, 2022
b.	Owner:	Murfreesboro Water Resources Department
c.	Engineer:	Smith Seckman Reid
d.	Specific Project (title):	WRRF Wet Weather Upgrades
e.	Specific Project (description):	The project includes the study, design, bidding, and construction administration for upgrading the existing water resource recovery facility (WRRF) to treat peak wet weather flows up to 80 mgd by adding three (3) new tertiary filters, two (2) banks of UV disinfection equipment, and conveyance upgrades between the filters and UV disinfection processes. The project also includes an evaluation of refurbishing the older Headworks Building and conveyance upgrades required to recommission the Headworks Building.

2. Services of Engineer

A. The specific services to be provided or furnished by Engineer under this Task Order are:

the services (and related terms and conditions) set forth in the following sections of Basic Services of Engineer in the Agreement modified herein for this specific Task Order, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

- Study and Report Services (Agreement, Paragraph 1.2) and the following:
  - Assessment of decommissioned Headworks Building to identify refurbishment requirement to place the facility back into service including screening equipment, grit removal equipment, electrical equipment, HVAC equipment, and controls equipment
  - Study and evaluation to re-establish piping from Main PS to decommissioned Headworks Building and piping from older Headworks Building to Oxidation Ditch Nos. 1 and 2
  - Study and evaluation of alternatives to convey a portion of the flow from the SWRPS, OCPS, NERPS to optimize use of the refurbished treatment capacity at the decommissioned Headworks Building
- Preliminary Design Phase (Agreement, Paragraph 1.3)

- Final Design Phase (Agreement, Paragraph 1.4) as modified below:
    - Preparation of construction drawings and specifications to be delivered for MWRD review at 50% and 90% project milestones
    - Preparation of opinion of probable construction costs to be delivered for MWRD review at the 50-percent milestone and a final cost opinion delivered to MWRD prior to MWRD contract procurement (100% milestone)
    - Preparation and submittal of 100% drawings and specifications to TDEC and Murfreesboro Codes and Planning Commission
- Bidding or Negotiating Services (Agreement, Paragraph 1.5)
- Construction Phase Services (Agreement, Paragraph 1.6) and the following:
    - Visit the Site promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion
    - not including Resident Project Representative (RPR) services (as referenced in 1.6.2.1)
- Operational Phase Services (Agreement, Paragraph 1.7)

B. All the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Exclusions

A. Services associated with government funding programs, i.e., State Revolving Fund loan program.

B. Study and Report Phase Services to evaluate refurbishment of existing Odor Control system.

C. Design and construction administration services of upgrades identified in the Study and Report Phase Services. If pursued, these services would be provided under a separate Task Order or amendment to this Task Order.

D. Controls integration services.

E. RPR Services (Agreement, Paragraph 1.6.1). These services will be provided under a separate Task Order if Owner should require these services.

4. Additional Services

A. Additional Services that may be authorized or necessary under this Task Order are:

set forth as Additional Services in Part 2—Additional Services of Engineer, of the Agreement modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

5. Owner's Responsibilities

Owner shall have those responsibilities set forth in Section 3 of the Agreement, subject to the following:

A. Delete Paragraph 3.5.

6. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule. If additional services are requested as a result of the Study and Report Phase Services the following schedule will be adjusted to allow time for Board and Council approval of separate task order and an additional 30 days to the design schedule.

Party	Action	Schedule
Engineer	**Furnish electronic review copies of the Report and other Study and Report Phase deliverables to Owner.**	**Within 30 days of the Effective Date of the Task Order.**
Owner	**Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.**	**Within 14 days of the receipt of Report and other Study and Report Phase deliverables from Engineer.**
Engineer	**Furnish electronic copies of the revised Report and other Study and Report Phase deliverables to Owner.**	**Within 5 days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.**
Engineer	**Furnish electronic review copies of the 50% Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.**	**Within 90 days of the receipt of Owner's comments regarding the basis of design memorandum.**
Owner	**Submit comments regarding 50% Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.**	**Within 14 days of the receipt of 50% Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.**
Engineer	**Furnish electronic review copies of the 90% Drawings and Specifications, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase**	**Within 100 days of the receipt of Owner's comments regarding the 50% Preliminary Design Phase documents.**

	deliverables, to Owner.	
Owner	**Submit comments and instructions regarding the 90% Drawings and Specifications, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.**	**Within 14 days of the receipt of the 90% Drawings and Specifications, 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 electronic review copies of the 100% Drawings and Specifications, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.**	**Within 10 days of Owner's comments regarding 90% Drawings and Specifications and other 90% documents.**
Owner	**Submit comments and instructions regarding the 100% Drawings and Specifications, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.**	**Within 5 days of the receipt of the final Drawings and Specifications, 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 electronic copies of the 100% Drawings and Specifications, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner and Regulatory agencies.**	**Within 10 days of the receipt of Owner's comments and instructions regarding the 100% Drawings and Specifications, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.**

7. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Section 1 of Agreement)		
a. Study and Report Phase*	$70,000	Hourly Not to Exceed
a. Preliminary and Final Design Phase	$304,320	Hourly Not to Exceed
b. Bidding or Negotiating Phase	$27,720	Hourly Not to Exceed
c. Construction Phase**	$228,565	Hourly Not to Exceed
d. Operational Phase	$6,855	Hourly Not to Exceed
e. Project Management	$55,440	Hourly Not to Exceed
TOTAL COMPENSATION (lines 1.a-e)	**$693,000**	
REIMBURSABLE EXPENSES * **		
a. Out-of-Town Mileage	$0	$0.56 /mile
b. Air Transportation	$0	At Cost
c. Meals and Lodging	$0	At Cost
d. External Plotting	$500	At Cost
e. Screen and Grit Equipment	$5,000	At Cost

Description of Service	Amount	Basis of Compensation
Manufacturer Equipment Assessments		

*Includes 25,000 for assessment of existing Headworks.

**Based on a 9-month continuous construction period.

***Reimbursable expenses are estimated amounts.

Engineer expects the entire contract duration for these services to be less than 18 months, excluding any services identified in the Study and Report Phase. If the contract duration extends beyond this time, commensurate additional compensation may be required.

Compensation items and totals based in whole or in part on Hourly Rates are estimates only. 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 compensation amount unless approved in writing by the Owner.

8. Consultants retained as of the Effective Date of the Task Order:

A. None.

9. Attachments:

B. Detailed project understanding.

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 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 _____, 2022.

CITY OF MURFREESBORO:

By: _____

Print Name: _____

Title: _____

WITNESS:

By: _____

Print Name: _____

Title: _____

SMITH SECKMAN REID:

By: _____

Print Name: Andrew Johnson

Title: Principal

WITNESS:

By: _____

Print Name: Brent Fowler

Title: Principal

APROVED AS TO FORM:

_____

City of Murfreesboro Legal Department

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COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Equipment Storage Addition

Department: Water Resources Board

Presented by: Darren Gore

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Accept bid from Rice Construction to build an additional equipment storage structure located at MWRD O&M.

Staff Recommendation

Accept lowest bid from Rice Construction.

Background Information

In 2015, O&M built a storage structure to house our CCTV equipment with plans to expand later. With the acquisition of additional equipment and vehicles, the department has deemed it necessary to construct the addition.

Council Priorities Served

Responsible budgeting

By soliciting bids, The Department benefits from competitive pricing.

Fiscal Impact

Rice Construction LLC submitted the lowest bid of $343,517. With the recent unexpected price increases, this bid is $118,517 over O&M's Capital Budget FY22 of $225,000; if approved the additional funding will come from working reserves.

Attachments

1. Johnson + Bailey Memo
2. Johnson + Bailey Agreement

Johnson + Bailey Architects P.C.

January 11, 2022

Mr. Darren Gore, Director
City of Murfreesboro Water Resources
300 NW Broad St.
Murfreesboro, TN 37130

Re: Equipment Storage Building Addition
City of Murfreesboro Water Resources
Operations & Maintenance Facility
Murfreesboro, TN
J+B No. 2115

Dear Mr. Gore:

In response to your request, Johnson + Bailey Architects is pleased to submit the following proposal for architectural services for the referenced project. This project will consist of a 3,000 square foot addition to an existing equipment storage building at the Operations & Maintenance Facility for which Johnson + Bailey Architects provided the architectural services.

The existing structure is a metal building with two bays and a shed roof. Portal framing for a side opening to facilitate access to a future planned addition was a part of the original design and construction. The proposed addition would have a shed roof, which along with the existing roof, would form a gable over the combined structures. The proposed addition would include a restroom and have overhead gas unit heaters similar to the existing structure.

We propose to provide full architectural services using the State of Tennessee fee schedule which is calculated by the formula 35/(log P-1.15) where P is the construction cost. We typically use the State's fee schedule for City projects. Due to the similarity of the proposed addition and the existing structure, we would offer a fifteen percent (15%) discount on our total fee. This fee includes architectural, structural, civil, mechanical, plumbing, and electrical, disciplines as applicable. The Owner would cover the expense of the survey, any required testing and printing cost for bid documents. The scope of services includes Construction Documents, Bidding, and Construction Administration services as described in AIA Document B101 - 2017, Standard Form of Agreement Between Owner and Architect.

Recently we have experienced cost increases and availability issues with steel products would have an impact on this project. Attached is an estimate of the project cost that I prepared for Matt Powers back in November. We would need to reevaluate this estimate prior to bidding.

Your consideration of Johnson + Bailey Architects for this project is sincerely appreciated. If you find the above acceptable, we will prepare an AIA Document B101 - 2007, Standard Form of Agreement Between Owner and Architect for review and execution.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

JOHNSON + BAILEY ARCHITECTS P.C.

James Richard Pettit AIA

encl: Cost Estimate dated November 13, 2021

City Center • Suite 700
100 East Vine Street
Murfreesboro, Tennessee 37130
615 890 4560 • FAX 615 890 4564

MWR-O&M STORAGE BUILDING ADDITION			11/13/2021
BUILDING COST			
SITE WORK			
CRUSHED STONE BUILDING PAD	3,850	SF	$13,475
UTILITY EXTENSION (BY MWR)			$0
BUILIDNG			
GENERAL DEMO	1	LS	$2,500
CONCRETE BUILDING PAD 6"	3,000	SF	$30,000
METAL BUILDING	3,000	SF	$48,000
METAL BUILDING ERECTION	3,000	SF	$18,000
OVERHEAD DOOR & OPERATOR	2	EA	$10,000
GAS HEATERS & INSTALLATION	2	EA	$6,000
RESTROOM W/UTILITIES 5' OUTSIDE OF BUILDING	1	EA	$13,250
MISC. CONSTRUCTION COST	1	LS	$5,000
ELECTRICAL & LIGHTING (BYMWR)			$0
SUBTOTAL			$146,225
CONTRACTOR'S O&P			$21,934
PERMIT, BOND, INSURANCE			$5,000
TOTAL CONSTRUCTION COST			$173,159
SITE SURVEY			$2,000
MATERIAL TESTING			$5,000
ARCHITECTURAL FEE (DISCOUNTED 15%)			$12,601
TOTAL PROJECT COST			$192,759

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Third (3rd) day of March in the year Two Thousand Twenty Two (2022)
(In words, indicate day, month and year.)

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

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

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

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

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

Equipment Storage Building Addition
City of Murfreesboro Water Resources
Operations & Maintenance Facility
1725 South Church Street
Murfreesboro, Tennessee 37133
J+B No. 2115

The Owner and Architect agree as follows.

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

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

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User Notes: (1517971505)

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13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See attached Johnson + Bailey Architects P.C. letter dated January 11, 2022.

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

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

To be determined

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

.1 Design phase milestone dates, if any:

Init.
/

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User Notes: (1517971505)

To be determined

.2 Construction commencement date:

To be determined

.3 Substantial Completion date or dates:

(Paragraph deleted)

(Paragraphs deleted)

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Latta Structural Engineers
8005 Church Street, East
Suite 216
Brentwood, Tennessee 37027

.2 Mechanical Engineer:

Entech Engineering, Inc.
5301 Virginia Way
Suite 140
Brentwood, Tennessee 37027

.3 Electrical Engineer:

Entech Engineering, Inc.
5301 Virginia Way
Suite 140
Brentwood, Tennessee 37027

4. Civil Engineer:

Huddleston-Steele Engineering Inc.
2115 North West Broad Street
Murfreesboro, Tennessee 37129

§ 1.1.11.2 Consultants retained under Supplemental Services:

None

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

None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the

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Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraph deleted)

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

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

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

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

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

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

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

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§ **2.5.6** Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000.000.00) in the aggregate.

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

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

2.5.9 Indemnification Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from claims including all costs, expenses and reasonable attorney's fees, to the extent losses and damages are caused by Architect's negligent acts, errors or omissions in performing professional services under this Agreement, except for claims arising out of the negligence of the Owner.

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

§ **3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

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

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

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

3.1.8 In accordance with the standard of care, the Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

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

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

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

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

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix

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and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

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

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

§ 3.4 Construction Documents Phase Services

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

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

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

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

.1 facilitating the distribution of Bidding Documents to prospective bidders;

.2 organizing and conducting a pre-bid conference for prospective bidders;

.3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,

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.4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

§ 3.5.3 Negotiated Proposals

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

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

.1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective contractors;

.3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,

.4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

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

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

§ 3.6.2 Evaluations of the Work

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

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

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

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

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

§ 3.6.3 Certificates for Payment to Contractor

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

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

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

§ 3.6.4 Submittals

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

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

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procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

§ 3.6.5 Changes in the Work

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

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

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

Supplemental Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Architect & Owner
§ 4.1.1.2 Multiple preliminary designs	Architect's Basic Services
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Not Provided
§ 4.1.1.9 Landscape design	Not Provided
§ 4.1.1.10 Architectural interior design	Not Provided
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect's Basic Services
§ 4.1.1.21 Telecommunications/data design	Not Provided
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

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

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

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

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

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

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

§ 4.2 Architect's Additional Services

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

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

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

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.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

(Paragraphs deleted)

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

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,

.11 Assistance to the Initial Decision Maker, if other than the Architect.

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

(Paragraphs deleted)

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

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

.1 One (1) review of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 Weekly visits to the site by the Architect during construction

.3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspection for any portion of the Work to determine final completion.

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

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner, with Architect's assistance, shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary

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throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

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

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

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

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

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

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

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

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

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

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

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

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

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

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

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

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

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

.1 undertake a good faith effort to obtain necessary and timely approval of Council for an increase in the budget for the cost of the Work, as may be necessary, and then if approval is timely obtained, give written approval of an increase in the budget for the Cost of the Work;

.2 authorize rebidding or renegotiating of the Project within a reasonable time;

.3 terminate in accordance with Section 9.5;

.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,

.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding, or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under Section 6.6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

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

(Paragraph deleted)

§ 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, in accordance herewith, the Architect shall have no liability to the Owner for delay or damage caused the Owner because

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of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and shall negotiate with the Owner any expenses incurred in the interruption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

(Paragraphs deleted)

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

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests

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

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

(Paragraphs deleted)

A percentage of construction cost calculated by the Formula [35/(LogP-1.15)] *.85 where P is the construction cost, (15% discount).

.3 Other

(Describe the method of compensation)

.

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

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

Init.
/

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Hourly Rates for services indicated in this Agreement.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Hourly Rates for services indicated in this Agreement.

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

Hourly Rates for services indicated in this Agreement.

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

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

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

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	**Rate ($0.00)**
Architectural Services	
Principal Architect	$175.00 Per Hour
Staff Architect	$125.00 Per Hour
Intern Architect	$ 90.00 Per Hour
Interior Designer	$100.00 Per Hour

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Field Representative	$ 85.00 Per Hour
Draftsman	$ 85.00 Per Hour
Administrative Personnel	$ 65.00 Per Hour

§ 11.8 Compensation for Reimbursable Expenses

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

(Paragraphs deleted)

.3 Fees paid for securing approval of permitting and other fees required by authorities having jurisdiction over the Project;

.4 Printing, reproductions, plots, and standard form documents;

(Paragraphs deleted)

.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

(Paragraphs deleted)

.13 Third party exploration test for investigations of existing roof substrates.

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

(Paragraphs deleted)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

(Paragraph deleted)

§ 11.10.2 Progress Payments

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

Three Percent per annum

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

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

(Paragraphs deleted)

.4 Other documents:

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

Johnson + Bailey Architects P.C. letter dated January 11, 2022.

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

City of Murfreesboro	Johnson + Bailey Architects P.C.
OWNER *(Signature)*	**ARCHITECT** *(Signature)*
Craig Tindall, City Manager Date:	James Richard Pettit, President Date:
(Printed name and title)	*(Printed name, title, and license number, if required)*

Owner

APPROVED AS TO FORM:

(Signature)
Adam Tucker, City Attorney
Date:
(Printed name, title, and license number, if required)

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AIA® Document B101™ – 2017

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PAGE 1

AGREEMENT made as of the Third (3rd) day of March in the year Two Thousand Twenty Two (2022)

...

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

...

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

...

(Name, location and detailed description)

Equipment Storage Building Addition
City of Murfreesboro Water Resources
Operations & Maintenance Facility
1725 South Church Street
Murfreesboro, Tennessee 37133
J+B No. 2115

PAGE 2

See attached Johnson + Bailey Architects P.C. letter dated January 11, 2022.

...

To be determined

PAGE 3

To be determined

...

To be determined

...

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.4 Other milestone dates:

:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

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~~.3 Other, if any:~~
~~*(List any other consultants and contractors retained by the Owner.)*~~

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

...

Latta Structural Engineers
8005 Church Street, East
Suite 216
Brentwood, Tennessee 37027

...

Entech Engineering, Inc.
5301 Virginia Way
Suite 140
Brentwood, Tennessee 37027

...

Entech Engineering, Inc.
5301 Virginia Way
Suite 140
Brentwood, Tennessee 37027

4. Civil Engineer:

Huddleston-Steele Engineering Inc.
2115 North West Broad Street
Murfreesboro, Tennessee 37129

...

None

...

None

PAGE 4

~~§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite~~

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~~AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

...

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

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

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

...

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

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

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed ~~operations.~~
operations
PAGE 5

2.5.9 Indemnification Architect agrees to indemnify, save and hold harmless the Owner, its officials, officers, and employees, from claims including all costs, expenses and reasonable attorney's fees, to the extent losses and damages are caused by Architect's negligent acts, errors or omissions in performing professional services under this Agreement, except for claims arising out of the negligence of the Owner.

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

...

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall

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~~provide prompt~~ review the services and information for completeness and sufficiency and provide timely written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.
PAGE 6

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

3.1.8 In accordance with the standard of care, the Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

...

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

...

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's ~~approval.~~approval thereof. Owner's approval of the documents must be in writing to be binding against either party.
PAGE 7

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

...

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, inform the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point of time, and take any action required under Section 6.5, and request the Owner's written approval. Owner's approval of the documents and any adjustments or actions suggested by the Architect must be in writing to be binding against either party. The Architect will also ascertain that all elements of the construction documents specific to the Owner's requirements, including modifications to the General Conditions, are correctly contained within the construction documents prior to bidding.
PAGE 8

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

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section ~~4.2.3,~~ 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents,

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(2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract ~~Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's~~ Documents. The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents; provided however, the Owner, with advise and assistance from the Architect, shall make final decisions on matters relating to aesthetic ~~effect shall be final if consistent with the intent expressed in the Contract Documents.~~effect, Contract Sum and Contract Time..
PAGE 9

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold ~~approval of the schedule.~~ approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, ~~with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.~~timely so as not to affect the Contract Time or Contract Sum..
PAGE 10

§ 3.6.5.1 The Architect may ~~order~~ authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to ~~Section 4.2,~~ the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall timely report to Owner, in writing, those minor changes in the Work authorized by Architect pursuant to this section. If the Architect and the Owner determine that the implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

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

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

PAGE 11

§ 3.6.6.4 The Architect shall review, approve and forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final

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payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

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

...

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

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

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~~.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~
~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~

~~.9 Evaluation of the qualifications of entities providing bids or proposals;~~

...

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

~~.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~
~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~
~~.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,~~

...

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

...

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

...

§ 5.2 The ~~Owner~~ Owner, with Architect's assistance, shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.
PAGE 14

5.3.1 The Owner has the right to reject any portion of the Architect's services on the Project, including but not limited to Schematic Design Documents, Design Development Documents, Construction Documents, or the Architect's provision of services during the construction of the Project, or any other design services or documents on any reasonable basis, including, but not limited to aesthetics or because in the Owner's opinion, the construction cost of such design is likely to exceed the budget for Cost of the Services. If at any time, the Architect's services is rejected by the Owner, the Architect must proceed when requested by the Owner, to revise the design services or documents prepared for that phase to the Owner's satisfaction. These revisions shall be made without adjustment to the compensation provided hereunder, unless revisions are made to services previously approved by the Owner under previous phases, in which case such revision services will be paid as a Change in Sevices. Should there be substantial revisions to the original program after the approval of the Schematic Design Documents, which changes substantially

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increase the scope of design services to be furnished hereunder, such revision services will be paid as a Change in Services. The Architect must so notify the Owner of all Changes in Services in writing and receive approval from Owner before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to the Architect for additional services or Changes in Services without such written approval by Owner.

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

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

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

...

~~**§ 5.15** Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.~~

...

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

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.1 undertake a good faith effort to obtain necessary and timely approval of Council for an increase in the budget for the cost of the Work, as may be necessary, and then if approval is timely obtained, give written approval of an increase in the budget for the Cost of the Work;

...

§ 6.7 If the Owner chooses to proceed under Section ~~6.6.4, the Architect shall modify the Construction Documents~~ 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding, or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the ~~Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's~~

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~~budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents~~ Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under ~~this Article 6.~~ Section 6.6.

...

§ 7.3 ~~The~~ Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive irrevocable, royalty-free, right and license to use the Architect's Instruments of Service ~~solely and exclusively~~ for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its ~~obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11.~~ obligations, including timely payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of ~~Service, subject to any protocols established pursuant to Section 1.3,~~ Service solely and exclusively for use in performing services or construction for the Project. ~~If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~ Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas; any future renovations, addition, or alteration to the Project; and any future maintenance or operations issue as it pertains to the Project. Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by the Owner or Owner's representatives using the Architect's Instruments of Service.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the ~~authors~~ author of the Instruments of Service, the Owner releases the Architect ~~and Architect's consultant(s) from all~~ from liability for claims and causes of action arising from such ~~uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~ use.

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§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, ~~in accordance with the requirements of the binding dispute resolution method selected in this Agreement and~~ within the period specified by applicable ~~law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~ Tennessee law.

...

~~**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

...

[X] Litigation in a court of competent jurisdiction

...

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

~~**§ 8.3 Arbitration**~~

~~**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.4 Consolidation or Joinder**~~

~~**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

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

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

§ 9.2 If the Owner suspends the ~~Project,~~ Project for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, ~~the Architect shall be~~

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~~compensated~~ the Owner and the Architect shall negotiate the amount of any compensation the Owner will pay the Architect for expenses incurred in the interruption and resumption of the Architect's services. The Owner and the Architect shall negotiate any adjustments to the Architect's fees for the remaining services and the time schedules ~~shall be equitably adjusted.~~ for completion.

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~~**§ 9.7** In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:~~

~~*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*~~

~~.1 Termination Fee:~~

~~.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

...

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

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

...

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

~~.1 Stipulated Sum~~
~~*(Insert amount)*~~

~~.2 Percentage Basis~~
~~*(Insert percentage value)*~~

~~( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~ A percentage of construction cost calculated by the Formula [35/(LogP-1.15)] *.85 where P is the construction cost, (15% discount).

...

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Hourly Rates for services indicated in this Agreement.

...

Hourly Rates for services indicated in this Agreement.

...

Hourly Rates for services indicated in this Agreement.

...

Schematic & Design Development Phase	Thirty Five	percent (	35	%)
~~Design Development Phase~~	~~Forty~~	~~percent (~~ percent (	~~40~~	~~%)~~ %)
Construction Documents Phase				
~~Procurement Phase~~	Five	percent (	5	%)
Bidding or NegoitationPhase	Twenty	percent (	20	%)
Construction Phase				

...

Total Basic Compensation	~~one~~ One hundred	percent (	100	%)

...

Architectural Services	
Principal Architect	$175.00 Per Hour
Staff Architect	$125.00 Per Hour
Intern Architect	$ 90.00 Per Hour
Interior Designer	$100.00 Per Hour
Field Representative	$ 85.00 Per Hour
Draftsman	$ 85.00 Per Hour
Administrative Personnel	$ 65.00 Per Hour

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~~.1 Transportation and authorized out-of-town travel and subsistence;~~
~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
~~.3 Permitting~~ .3 Fees paid for securing approval of permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
~~.5 Postage, handling, and delivery;~~
~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

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...

~~.9 All taxes levied on professional services and on reimbursable expenses;~~
~~.10 Site office expenses;~~
~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~
~~.12 Other similar Project-related expenditures.~~**.13 Third party exploration test for investigations of existing roof substrates.**

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

~~**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:~~
~~*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*~~

...

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

~~**§ 11.10.1.2** If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ($) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

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

...

~~%~~ Three Percent per annum

~~.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~
~~*(Insert the date of the E203-2013 incorporated into this agreement.)*~~

~~.3 Exhibits:~~
~~*(Check the appropriate box for any exhibits incorporated into this Agreement.)*~~

~~[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:~~
~~*(Insert the date of the E204-2017 incorporated into this agreement.)*~~

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~~[ ] Other Exhibits incorporated into this Agreement:~~
~~(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)~~

...

Johnson + Bailey Architects P.C. letter dated January 11, 2022.

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

City of Murfreesboro	Johnson + Bailey Architects P.C.
...	
Craig Tindall, City Manager Date:	James Richard Pettit, President Date:

...

Owner

APPROVED AS TO FORM:

(Signature)
Adam Tucker, City Attorney
Date:
(Printed name, title, and license number, if required)

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, James Richard Pettit, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:32:57 ET on 03/04/2022 under Order No. 2529373163 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Road Development Agreement Chandler Place (MTI-19) in Farmhouse Downs

Department: Administration

Presented by: Sam A. Huddleston, PE, Executive Director Development Services

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Road Development and Construction Agreement for Chandler Place in Farmhouse Downs Subdivision.

Staff Recommendation

Approve the Agreement and the proposed expenditures for City obligations in the Agreement.

Background Information

The 2040 Major Transportation Plan includes a proposed 3-lane route identified as MTI-19. MTI 19 extends northward from Bradyville Pike (SR-99) near Irby Lane to East Main St/Woodbury Pk crossing John Bragg Hwy (SR-1/US70S) just east of Rutherford Blvd.

This route crosses a development tract known as Farmhouse Downs, a residential and commercial development with approximately 270 acres south of John Bragg Hwy. Consistent with the City's development policies, URS CAP SFRI LLC (URS) is building an approximate 5,000 portion of MTI-19 known as Lyons Farms Pkwy through Farmhouse Downs including signalization at John Bragg Hwy. A Road Development and Construction Agreement is proposed to support the development of MTI-19 Phase 1 due to the benefit to the City and the public by completing projects identified on the Major Transportation Plan.

The proposed Agreement requires the City to improve an approximate 1,800 foot portion of Chandler Place with grading and base stone placement for a 2-lane roadway as in kind participation in MTI-19. The Agreement requires that URS dedicate the RoW and place a base and binder course of pavement upon the connection of Chandler Place to MTI-19 in Farmhouse Downs. Once open to traffic, the City will coordinate with MTE to provide street lighting. Upgrades to Chandler Place including the final pavement course, curb and gutter, utilities, and other street elements will be provided at a future date to be determined. The completion of Chandler Place will provide an important connection of MTI-19 Phase 1 in Farmhouse Downs to South Rutherford Boulevard.

MTI-19 Phase 1 costs is estimated at $5,000,000 including roadway, RoW, and signalization. The grading, base stone, and street lighting to be provided by the City estimated to be approximately $150,000 to be paid from State Street Aid and is the amount of expenditures approved with this action. Equipment and labor will be provided

by the Street Department and funded from the Departments operating budget. The private participation by URS is estimated at $300,000 including land value and the future construction costs to complete Chandler Place is estimated to be $600,000.

Council Priorities Served

Responsible budgeting

The Agreement provides for a public-private partnership to fund and construct a new roadway on the Major Transportation Plan.

Improve economic development

Roadways on the Major Transportation Plan promote access and improve traffic management from areas of significant economic benefit.

Expand infrastructure

Construction a portion of MTI-19, a proposed 3-lane roadway, is a needed roadway segment from the Major Transportation Plan

Fiscal Impact

The expense, approximately $150,000 will be funded from State Street Aid and departmental labor cost will be absorb within the Department's operating budget.

Attachments

Road Development and Construction Agreement

ROAD DEVELOPMENT AND CONSTRUCTION AGREEMENT

This Road Development and Construction Agreement ("Agreement") is between the City of Murfreesboro, Tennessee, a municipal corporation in Rutherford County, Tennessee ("City") and URS Cap SFR I, LLC, a Tennessee limited liability company doing business in Murfreesboro, Tennessee ("Developer").

WHEREAS, the following facts exist:

A. City land development requirements, policies and procedures, and transportation and traffic policies promote street connectivity between potential development tracts as well as require that development master plans investigate and provide street connectivity between potential development tracts;

B. The Master Plan and the Final Plat for Aspen Heights Subdivision of record at Plat Book 37, page 111, Register's Office for Rutherford County, Tennessee contemplates and shows an extension of that certain public street known as Chandler Place ("Chandler Place Extension") across Lot 2 of Aspen Heights Subdivision ("Lot 2") to the western line of the development tract owned by Developer, being Tax Map 103 parcel 60.03 (the "Development Tract");

C. Developer currently owns Lot 2;

D. The Aspen Heights Master Plan envisioned completion of the Chandler Place Extension upon the development of the Development Tract;

E. Aspen Heights Subdivision Final Plat labels Lot 2 as future right-of-way;

F. Developer owns the Development Tract and has an approved Master Plan for Farmhouse Downs, Section 1 ("Farmhouse Master Plan"), approved by Murfreesboro Planning Commission on April 21, 2021;

G. The Farmhouse Master Plan provides for a street connection across Lot 2 for Chandler Place; and

H. City and Developer desire the timely connection of Chandler Place to the Development Tract to provide multiple points on ingress and egress for access to the Development Tract and for emergency and routine service delivery.

NOW THEREFORE, for good and valuable mutual considerations, the receipt and sufficiency of which are hereby irrevocably acknowledged and confirmed, including but not limited to the benefits to be received by each party from the performance of this Agreement, the City and Developer agree as follows:

1. Within 30 days of Tennessee Department of Environment and Conservation and the Army Corps of Engineers final wetlands and environmental approvals as set forth in Paragraph 5 below, and prior to the commencement of any work contemplated by this Agreement, Developer shall provide surety in the amount of $250,000.00 in a form reasonably satisfactory to the City for Developer's work on the Chandler Place Extension.
2. Developer shall donate to the City Lot 2 as public right-of-way for the Chandler Place Extension but shall retain easements for the required construction, easements for ingress and egress and utility easements until such time as the Chandler Place Extension is fully completed and available as a public street.
3. The City shall prepare the legal description and documentation for the donation of Lot 2 and related easements and record the executed documents at the City's expense.
4. Developer shall design or cause to be designed the Chandler Place Extension as a 3-lane commercial roadway with sidewalks and curb and gutter, and shall further include a Phase I construction plan for a 2-lane 24-foot roadway with 2-foot gravel shoulders. Design and construction shall include a connection to the private street at the Eastern side of Aspen Heights as shown on the Aspen Heights Final Plat referenced above. Said designs shall be approved by the City Engineer as a condition precedent before any further work may commence.
5. Within 90 days of the execution of this Agreement, Developer shall apply for any and all necessary permits for fill in the wetlands area ("Wetlands Permits") with the Tennessee Department of Environment and Conservation and the Army Corps of Engineers as appropriate to accommodate the proposed Chandler Place Extension to a 3-lane roadway section. Any further obligation of the City hereunder is made specifically contingent upon the performance of this provision prior to construction.

6. The City shall cause to be graded the Chandler Place Extension to sub grade and repair any poor sub grade conditions and shall cause to be placed an 8-inch base stone to the approved base stone elevation on the Chandler Place Extension (the "City's Work"). The City shall cause the City's Work to be complete and ready to accept pavement within six (6) months of the Wetlands Permits being obtained.
7. City shall be responsible for the design, installation and payment of all street lighting on Chandler Place.
8. Developer shall provide the 3-inch base course and 2-inch binder course of pavement for the 2-lane Chandler Place Extension in conjunction the installation of the same base and binder courses in the immediate vicinity on Lyon Family Parkway as set forth on the Farmhouse Master Plan ("Lyon Farm Parkway") and following completion of the City's Work on the Chandler Place Extension.
9. City shall be responsible for providing the top coat of asphalt on the Chandler Place Extension at a future date to be determined exclusively by the City.
10. City shall be responsible for the design, installation and payment of a traffic signal at the intersection of Chandler Place and South Rutherford Boulevard when warranted at a future date to be determined exclusively by the City.
11. Developer shall be responsible for the design, installation and payment of a traffic signal at the intersection of John Bragg Highway and the Lyon Farm Parkway. The signal shall be designed and constructed to meet the Rutherford Boulevard Adaptive Signal specifications, including fiber optic communication facilities. The traffic signal shall be installed no later than the earlier of December 31, 2025 or prior to the recording of the final plat of the last phase of the Farmhouse Downs Subdivision.
12. The parties mutually represent their understanding that no utilities are currently contemplated to be extended along the 2-lane Chandler Place Extension. The City shall make reasonable efforts to ensure that adequate right-of-way is available in the Chandler Place Extension should utility extension be necessary in the future.
13. All notices and communications regarding the project shall be delivered as follows:

If to the City: Gary Whitaker, Assistant City Manager
111 W. Vine Street, Murfreesboro TN 37130

Email: gwhitaker@murfreesborotn.gov

With a copy to: David A. Ives, Deputy City Attorney
111 W. Vine Street, Murfreesboro TN 37130
Email: dives@murfreesborotn.gov

If to Developer: URS Cap SFR I, LLC
Christopher Gorman, Vice President
7 High Street Suite 200
Huntington NY11743
Email: cgorman@urscapitalpartners.com

With a copy to: Jack F. Stringham II
Spencer Fane Bone McAllester
511 Union Street. Suite 1000
Nashville, TN 37219
Email: jstringham@spencerfane.com.

14. This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
15. Nothing herein is intended to or may in any way be construed 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 is liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.
16. 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.
17. The provisions of this Agreement inure to the benefit of and is binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of Developer hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer will not release Developer from its obligations hereunder.
18. In the event of a dispute, the parties agree to negotiate in good faith to attempt to resolve the matter. In the event of litigation, the laws of the State of Tennessee shall

apply, and venue shall be in the Courts of Rutherford County, Tennessee. In such event, the substantially prevailing party shall be entitled to recover, in addition to any other monetary or equitable recovery, its reasonable attorney fees.

19. 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. **This Agreement shall not be effective as to the City unless and until it is expressly approved by the Murfreesboro City Counsel.**

CITY OF MURFREESBORO

By _____

Shane McFarland, Mayor

Date _____

URS Cap SFR I, LLC

By _____

Name Christopher Urso

Its MANAGER

Date 6/13/2022

ATTEST:

_____

Jennifer Brown, City Recorder

APPROVED AS TO FORM:

_____

Adam Tucker, City Attorney

Approved by Murfreesboro City Council: _____, 2022

COUNCIL COMMUNICATION

Meeting Date: 08/18/2022

Item Title: Subrecipient Agreement with Murfreesboro City Schools

Department: Administration

Presented by: Karen Lampert, Grant Manager

Requested Council Action:

Ordinance	☐
Resolution	☐
Motion	☒
Direction	☐
Information	☐

Summary

Subrecipient Agreement with Murfreesboro City Schools.

Staff Recommendation

Approve Subrecipient Agreement with Murfreesboro City Schools.

Background Information

A subrecipient agreement is needed with Murfreesboro City Schools to outline use of $500,000 in American Rescue Plan Act (ARPA) funds to provide in-school tutoring services to address learning gaps. City Schools will use funds to employ 11 Educational Assistants to implement the Tennessee Department of Education's TN All Corps Tutoring program. This project will be implemented during the 22-23 and 23-24 school years.

Provisions of educational assistance through a tutoring program was included in the ARPA spending plan approved by City Council on 02/16/2022. The project meets federal guidelines for use of ARPA funds.

Council Priorities Served

Responsible budgeting

Project identified is a one-time use of ARPA funds and does not constitute a recurring cost. Meets U.S. Treasury eligibility requirements for use of ARPA funds.

Establish strong City brand

Provides strong community benefits that help support quality of life impact and improvements.

Fiscal Impact

ARPA funds in the amount of $500,000 will be used for this project.

Attachment

Subrecipient Agreement

SUBRECIPIENT GRANT AGREEMENT

Between

THE CITY OF Murfreesboro

And

Murfreesboro City Schools

For

TN All Corps Tutoring

Funded through the

AMERICAN RESCUE PLAN ACT (ARPA) (CFDA 21.027)

For a Federal Award of $500,000

Performance Period: August 1, 2022 – June 30, 2024

Amount of federal funds obligated by this action: $500,000

Total amount of federal funds obligated to this subrecipient: $500,000

Total amount of the federal award committed to this subrecipient by the pass-through entity: $500,000

Jennifer Brown, Finance Director and City
Recorder/Treasurer
Finance & Tax Department
111 W. Vine St.
First Floor
Murfreesboro, TN 37130
Phone 615-893-5210
jbrown@murfreesborotn.gov

Federal award date: _____

Date agreement fully executed: _____

PART A
AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") entered into this _____day of _____, 2022 and dated to be effective _____, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City") and Murfreesboro City Schools, a local education agency of the State of Tennessee (the "Subrecipient"), located at 2552 South Church Street, Murfreesboro, TN 37127.

WITNESSETH THAT:

WHEREAS, the City of Murfreesboro has entered into a funding agreement with the U.S. Department of Treasury (the "Treasury") for the execution of projects and activities under the American Rescue Plan Act ("ARPA") of 2021, Public Law 117-2 and its implementing regulations, 31 CFR Part 35; and

WHEREAS, the funding agreement between the City and the Treasury provides for the implementation of a Strategic Partnership with Murfreesboro City Schools for tutoring to assist in minimizing academic gaps associated with COVID learning loss; and

WHEREAS, the Department of Treasury has authority as the federal agency overseeing and providing guidance for the City as grantee of ARPA funds to request information and monitor the Subrecipient; and

WHEREAS, the cooperation of the City and the Subrecipient is essential for the successful local implementation of projects under the ARPA program; and

WHEREAS, on February 16, 2022, the Murfreesboro City Council designated $500,000 from anticipated 2021-2024 ARPA funds for implementation of a tutoring program; and

WHEREAS, Murfreesboro City Schools, was selected to extend an existing Memorandum of Understanding for recommended award in February 16, 2022 by the ARPA Review Committee, which was formed by the City; and

WHEREAS, on February 16, 2022, the Murfreesboro City Council obligated federal funds in the amount of $500,000 for the execution of the ARPA-eligible tutoring program to minimize academic gaps associated with COVID learning loss; and

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

I. SCOPE OF SERVICES

1. **Scope of Services:** Subrecipient is a pre-kindergarten through sixth-grade municipal public-school system, also referred to as a "local education agency" established pursuant to T.C.A. §49-2-401 et. seq., Murfreesboro City Charter §92, and Murfreesboro City Code, Chapter 25. The Murfreesboro City School System consists of thirteen (13) schools and educates approximately 9,450 students.

   Due to the COVID-19 pandemic, Murfreesboro City Schools students had varying access to instruction in Spring 2020 and throughout the 2020-21 school year. Some students remained in-person learners, while others were educated at home via virtual learning with Murfreesboro City Schools and other virtual education providers or were homeschooled. Murfreesboro City Schools saw an increased amount of absenteeism among students and educators during this time due to the illness associated with the virus and quarantine protocols aimed to mitigate the threat of spreading the virus. This absenteeism resulted in a loss of instruction time. The diminished instruction resulted in lower proficiency levels, especially in math and early reading.

   To help remedy lower proficiency levels, the Tennessee Department of Education has instituted the TN ALL Corps

tutoring support. The goal of the program is to increase the amount of learning time children have access to in order to mitigate learning loss due to COVID, accelerate student achievement, and ensure students have access to consistent, high dosage/low ratio tutoring. This funding covers two years with a goal of significantly increasing student achievement by Summer 2024.

The Project funded by this Agreement is to employ eleven (11) Educational Assistants who will spend 100% of their time on improving instruction by facilitating small group tutoring sessions. These tutoring sessions will be in person, last between 30–45-minutes, and occur 2 - 3 times per week. Students must remain in tutoring for at least one calendar year and focus on one content area per semester. The tutoring will use high-quality materials that are aligned with classroom content so that classroom instruction is reinforced and enhanced. Tutoring is free for everyone and targeted toward schools with the highest poverty levels (Title Schools) and schools that have the highest subgroup deficits.

All students who participate in the tutoring program will be required to complete a placement assessment and to complete progress monitoring for the duration of their tutoring support. This will be done through the online assessment component of the free math and reading online resource program.

The services provided by Subrecipient pursuant to this Agreement are hereinafter collectively referred to as the "Program" and are defined in further detail in **Part C** through **E**.

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

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

II. COMMENCEMENT AND COMPLETION

1. **Commencement and Time of Performance:** The services of the Subrecipient are to commence as soon as practicable on or after the date of this Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement through a period ending June 30, 2024, All expenditures associated with implementation of this project must expended or encumbered by June 30, 2024; ; and submitted for reimbursement by July 15, 2024.
2. **Agreement Completion Date:** Unless an extension has been approved by the City in advance, OR unless this Agreement is terminated earlier in accordance with other provisions herein, this agreement will end on June 30, 2024 except that Subrecipient shall complete such close-out requirements no later than the date dictated by **Section 3.8** below.

III. COMPENSATION AND USE OF FUNDS

1. **Regulation for Use of Funds:** The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the American Rescue Plan Act (ARPA), 31 CFR Part 35; other regulations governing the use of these funds; and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. ***It is the Subrecipient's responsibility to read, understand, and comply with these regulations.***

2. **Uniform Grant Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards:** During the administration of this Agreement, the Subrecipient shall comply with, and adhere to 2 CFR Part 200.

3. **Total Payments:** Total amount of funds provided by the City to the Subrecipient under this Agreement shall not exceed $500,000. At the sole discretion of the City, any unexpended funds as of June 30, 2024, may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City. As referenced in **Section 2.1** above, all expenditures associated with implementation of this Project must be expended or encumbered by June 30, 2024; and submitted for reimbursement by July 15, 2024, unless a written extension request is received and approved by the City prior to June 30, 2024.

4. **Vendor Registration:** The Subrecipient must complete the necessary paperwork to become a vendor of the City of Murfreesboro before any payment can be made. This includes providing the Subrecipient's current W-9, and City staff verifying the Subrecipient's taxpayer ID with the IRS. The address on the Vendor Registration form must agree to the address on the invoice requesting reimbursement. If there are any changes, a new Vendor Registration form must be completed.

5. **Reimbursement Requests:** This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs of this Project, as described in **Part C** through **E**, and for which the Subrecipient has made payment during the period of performance as set forth in **Section 2.1** above.

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

   All requests for reimbursement must be further accompanied by an invoice which identifies the address to which the payment should be remitted and supporting documentation substantiating the payment of the eligible expenses being requested for reimbursement. Such supporting documentation shall include, but is not limited to, an agency payment voucher; a copy of the signed check with which the payment was made; any invoices, receipts and/or bills from vendors; and any relevant time sheets and related payroll reports. The Subrecipient shall also submit the Duplication of Benefits Certification, **Part H**, as required by **Section 3.6** below. The City reserves the right to request further supporting documentation as necessary to ensure compliance with ARPA, its implementing regulations and 2 CFR Part 200.

6. **Double Reimbursement:** The Subrecipient must not claim reimbursement from the City under this Agreement for any portion of its obligations that has been paid by another source of revenue. A Duplication of Benefits (hereinafter "DOB") occurs when any subrecipient receives funding assistance from multiple sources of funding for the same expenses. Federal law prohibits agencies administering federal funds from providing assistance to any person, business concern, or other entity for any part of such loss as to which they have received financial assistance under any other program or from insurance or any other source. If the City determines that a DOB has occurred, the funds that are in excess of the need and duplicated by other assistance received by the beneficiary for the same purpose must be recaptured. The Subrecipient must submit the Duplication of Benefits Certification, **Part H**, with the Requests for Reimbursement.

7. **Restriction on Disbursements:** ARPA funds shall not be disbursed to Subrecipient except pursuant to the conditions of this Agreement. Disbursements may be suspended or terminated under this Agreement upon refusal to accept any additional conditions that may be imposed by the City at any time or if the ARPA funds granted to the City of Murfreesboro are suspended or terminated.

8. **Withholding Payments:** All payments to the Subrecipient are subject to the Subrecipient's compliance with this Agreement. Any breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve the Agreement non-compliance.

9. **Close-out Reimbursement:** Close-out requests for reimbursement must be submitted by July 15, 2024 If not submitted, the unexpended funds under this Agreement shall revert to the City of Murfreesboro.

10. **Compliance with applicable laws:** The Subrecipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and the Subrecipient shall provide for compliance with the ARPA, any implementing regulations, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds, pursuant to 31 CFR § 35.9 and 2 CFR Part 200.

IV. USE AND DISPOSITION OF PROPERTY

1. **Disposition of Expendable/Non-Expendable Real and Personal Property:** The Subrecipient agrees to follow 2 CFR § 200.311 through 200.315 in regards to all real and personal property purchased in whole or in part with funds pursuant to this Agreement. These sections of 2 CFR Part 200, Subpart D govern the title, use, management, and disposition of real and personal property, which includes but is not limited to the following.

   a. **Management requirements:** The Subrecipient must have procedures in place for managing real property and equipment, whether acquired in whole or in part under a Federal award, until disposition takes place. These procedures at a minimum, must meet the following requirements:

      i. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property;

      ii. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years;

      iii. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated;

      iv. Adequate maintenance procedures must be developed to keep the property in good condition; and

      v. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

   b. **Disposition:** Barring any changes in regulations for ARPA funds by the Treasury, the Subrecipient must obtain written authorization from the City before disposing of an item of real or personal property with an original cost exceeding $1,000 (City's threshold) that was purchased with funds disbursed under this Agreement. All proceeds from the sale of real or personal property purchased with any funds disbursed under this Agreement must be returned to the City within 30 days of the receipt and must include a notation of what grant the funds were received under. The Subrecipient agrees the City may file the appropriate legal instrument(s) necessary to protect the City's financial interest and that the City has not waived any rights pertaining to property purchased with funds under this Agreement. The City will then be responsible for returning the funds to the appropriate Federal agency or using them for a purpose in accordance with Federal regulations.

V. ASSIGNMENTS

1. **Assignability:** Neither the City nor the Subrecipient shall assign, sublet, or transfer their interest in this

Agreement without the prior written consent of the other.

2. **Subcontracting/Third Party Contracts**: The Subrecipient agrees to furnish the City with a copy of any and all third-party contracts that it executes in the performance of the work to be undertaken within the scope of this Agreement.

   The Subrecipient agrees to incorporate or cause to be incorporated in all third-party contracts or subcontracts funded under the ARPA program provisions requiring all applicable Federal, State, and local laws, rules, and regulations to be adhered to in accordance with all parts of this Agreement. Specifically, the Subrecipient agrees to require and monitor compliance by all contractors, subcontractors, and other third parties. Any third-party contract that is not in accordance with the outlined budget in this Agreement will be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Subrecipient.

VI. AUDITS AND INSPECTIONS

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

   Subrecipients that expend $750,000 or more during the Subrecipient's fiscal year in Federal awards, including funds disbursed under this agreement, must have a single audit conducted for that year in accordance with the provisions of 2 CFR Part 200, Subpart F. Single audit requirements will remain in effect until all sub-award funds are expended and audited.

   Any Subrecipient receiving less than $750,000 in Federal funding shall not be required by the City to undergo an annual independent single audit of the ARPA expenditures under this Agreement; however, records must be available for review or audit by the appropriate officials of the Federal agency, the City as the pass-through entity, and the Government Accountability Office. Furthermore, no expenditures with respect to any such audit undertaken by the Subrecipient of its own initiative shall be chargeable to the funds under this Agreement. All audit reports are to be completed within six months of the Subrecipient's fiscal year end and the completed audit report must be submitted to the City within 60 days of issuance. Before the due date, the Subrecipient should submit to the City either (a) an audit report or (b) a letter giving the reason for non-compliance with the due date and requesting an extension of time with a specific date the report will be submitted. In event of the latter, the City will respond in writing to the Subrecipient to approve or disapprove the request. If audit findings are included in the audit report, Subrecipient must submit a corrective plan to the Grantee addressing audit findings to accompany the audit report. The corrective plan submitted to the Grantee shall include the action to be taken with an anticipated completion date for findings to be corrected. If the Subrecipient disagrees with the finding(s), then an explanation summarizing specific reasons for the disagreement shall be submitted to the Grantee.

VII. SUBRECIPIENT RESPONSIBILITIES

1. **Compliance with Laws**: All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Tennessee and local governments. Further, the Subrecipient agrees to perform services pursuant to the provisions of this Agreement and Federal and City regulations, rules and policies and special assurances

included therein. The Subrecipient further agrees to comply with the requirements of ARPA, 31 CFR Part 35, 2 CFR Part 200, other regulations governing the use of funds disbursed under this Agreement, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement.

2. **Non-Municipal Personnel and Services:** All services required herein will be performed by the Subrecipient under the direction of its Board of Directors or other governing body. Any services outside the Scope of Services which the Subrecipient deems necessary to assign to a subcontractor, must first have written approval from the City.

VIII. Documentation and Record Keeping

Establishment and Maintenance of Records: The Subrecipient shall establish and maintain records of all actions, and accurate books of accounts for all funds received and disbursed with full documentation to substantiate each transaction. If the Subrecipient should go out of existence, custody of the records with respect to all matters covered by this Agreement shall be assigned and transferred to the City.

1. **Record Requirements:** The Subrecipient shall maintain all records required by the Federal regulations specified in 2 CFR Part 200, Subpart D, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:

   a. Records providing a full description of each activity undertaken;

   b. Records demonstrating that each activity undertaken meets one of the four categories of ARPA;

   c. Records required to determine the eligibility of activities;

   d. Records which demonstrate compliance with the requirements in 2 CFR § 200.311 regarding any change of use of real property acquired or improved with ARPA assistance;

   e. Financial records that document all transactions and that can be properly documented and audited;

   f. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documents;

   g. Copies of all third party or subcontracts; and

   h. Detailed records on the Subrecipient's organization, financial and administrative systems, and the specific ARPA-funded project(s) or activities.

   Please note that the above descriptions are brief and provide only a summary of the records the Subrecipient is required to maintain. The Subrecipient must consult 2 CFR Part 200, Subpart D for a detailed description of the required records.

2. **Retention of and Access to Records:** In accordance with 2 CFR § 200.334 through 200.338, the Subrecipient must retain all financial records, supporting documents, statistical records, and all other records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by Treasury for a period of three years from the date of submission of the final expenditure report to the City of Murfreesboro. Records for real property and equipment acquired with funds under this Agreement shall be retained for three years after final disposition. If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

   The Subrecipient agrees that the City, Treasury, Inspectors General, and the Comptroller General of the United States, or any of their authorized representatives has access to and the right to examine all documents, papers, or other records which are pertinent to this Agreement, in order to make examinations, excerpts and transcripts. The right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. The City reserves the right, on demand and without notice, to review all of the Subrecipient's files associated with this Agreement. The same right to review will be imposed upon any

third party or subcontractor of the Subrecipient; therefore, it is the Subrecipient's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City and/or the Treasury to ensure compliance with this Agreement and with all local, state, and Federal regulations.

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

4. **Inventory Management:** The Subrecipient must submit an annual statement identifying the status of all equipment and non-real property items purchased with ARPA funds through the Agreement termination date. The status report should inventory all equipment and non-real properties purchased with ARPA funds and state the condition of the equipment and its location.

IX. PROCUREMENT

1. **Procurement Methods:** The Subrecipient must have and use documented procurement procedures, consistent with Federal, State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. Additionally, the Subrecipient's documented procurement procedures must conform to the procurement standards identified in 2 CFR § 200.318 through 200.327, including but not limited to the following. If the Subrecipient does not have documented procurement procedures, they must follow the City's procurement policy.
   a. Maintaining a code or standard of conduct governing the performance of the Subrecipient's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.
   b. All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards in 2 CFR § 200.319 through 200.320. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchases as defined in 2 CFR § 200.320 and 48 CFR Part 2, Subpart 2.1.
   c. Invitations for bids shall be based on specifications developed by the Subrecipient. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.
   d. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.
   e. The Subrecipient agrees to purchase services, goods, and materials on an "as needed basis" and at the "lowest price obtainable".
   f. The Subrecipient will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will also be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

X. SUBRECIPIENT - CONTRACT PROVISIONS

1. **Contract Provisions for Non-Federal Entities Under Federal Awards:** The Subrecipient must also make sure that any contracts related to the Program in this Agreement must contain the following provisions:
   a. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council

(Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

b. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

c. Equal Employment Opportunity: Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

d. Davis-Bacon Act: The Davis-Bacon Act (40 U.S.C. 3141-3148) requirements do not apply to projects funded solely with awards funds from the Coronavirus State and Local Fiscal Recovery Funds (hereinafter referred to as "CSFRF/CLFRF ARPA") program, except funded construction projects undertaken by the District of Columbia. Recipients may otherwise be subject to the requirements of Davis-Bacon Act, when CSFRF/CLFRF ARPA award funds are used on a construction project in conjunction with funds from another federal program that requires the enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as "baby Davis-Bacon Acts") may apply to projects. Please refer to FAQ 4.10 concerning projects funded with both CSFRF/CLFRF ARPA funds and other sources of funding.

   When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708): Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

f. Rights to Inventions made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

g. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended: Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

h. Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

i. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

j. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment: Contract must comply with 2 CFR § 200.216.

k. Domestic Preference for Procurement: Contract must comply with 2 CFR § 200.322. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purpose of this section:

   i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

   ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

l. Procurement of Recovered Materials: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part

247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XI. PERFORMANCE AND FINANCIAL REPORTING

1. **Performance and Financial Monitoring and Reporting:** The Subrecipient must comply with 2 CFR § 200.328 through 200.330, 31 CFR Part 35, and all performance and financial monitoring and reporting requirements outlined in this agreement.

   The Subrecipient is required to submit the performance and financial reports as specified and in accordance with the reporting schedule in **Part E and F**. The Subrecipient is also required to provide other information and data, as deemed necessary by the City, to meet its reporting requirements to the U.S. Department of Treasury and in accordance with ARPA reporting requirements. Any delinquent or incomplete performance and/or financial reports must be received before the City can honor any reimbursement requests for funds. As stated in **Section 13.2**, sanctions will be imposed upon the Subrecipient for failure to satisfy report due dates. Incidents of nonperformance will suspend grant operations until corrective measures are implemented. If the grant is conditioned, access to grant funds will be suspended pending a satisfactory cure to the related incident of nonperformance.

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

XII. PROGRAM MONITORING

1. **General:** City staff will evaluate progress based on the objectives, criteria, work schedule and budget in **Parts C** through **E**, to determine if it is consistent with the initial purpose of the project and in compliance with ARPA and its implementing regulations. All data necessary to review and monitor project progress as determined by the City will be made available to City personnel or an auditor as designated by the City to oversee compliance monitoring (hereinafter the "Auditor"). This includes, but is not limited to, performance records and interviews with the Subrecipient staff, as required by the City.

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

   a. The Subrecipient fails to take recommended corrective action;

   b. Projects are at high risk of error for activities that serve large number of people;

   c. Projects are at high risk based on the amount of funds involved.

2. **Financial Monitoring:** City staff shall monitor, review, and evaluate the financial procedures of the Subrecipient through documents and financial reports submitted to the City and on-site monitoring in accordance with **Part F**. The Subrecipient shall provide and make available to the City such reports and records that will be necessary for a proper financial evaluation. With reasonable notice being given to the Subrecipient, the City may schedule on-site visits as authorized in **Section 11.1** above.

3. **Programmatic Monitoring:** City staff shall monitor, review, and evaluate the Subrecipient. Performance reports will be reviewed and evaluated in accordance with **Part E**. With reasonable notice being given to the Subrecipient, the City may schedule on-site visits as authorized in **Section 11.1** above. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, data, and information as may be necessary.

The Subrecipient shall at any time and as often as the City or the Treasury may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

4. **Projects Involving Construction or Renovation:** For all projects requiring building construction or renovation, the construction/renovation must comply with the City building code and all zoning regulations. Additionally, for construction/renovation projects, including façade improvements, a City official will complete a site inspection prior to reimbursements to ensure that materials for which a reimbursement is requested are in place on the building. Reimbursements for construction/building materials and façade improvements will only be made once the materials are in place.

5. **Risk Assessment, Specific Conditions and Remedies**: The City will conduct a risk assessment as required by §200.332(b) and determine the [subrecipient's] level of risk as [low, moderate, high – select]. Risk assessments may be repeated throughout the project period [after scheduled reports, audits, unanticipated issues, or other adverse circumstances that may arise.] [If appropriate: Because the level of risk was evaluated as (moderate, high – select) at the time of award or after, the City will require specific conditions (§200.208) to be noted in the sub- award agreement, including but not limited to: correction of prior audit findings by (date), monthly reporting, prior approvals for… or other specific condition until the subrecipient is eligible for a low risk rating, at which time the specific condition(s) will be removed and the award instrument amended.]

6. In the event of noncompliance or failure to perform, the City has the authority to apply remedies, as defined in the uniform guidance (§200.339), including but not limited to: temporarily withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by the subrecipient, debarment or other remedies including civil and/or criminal penalties, as appropriate (§200.332(h).

7. The City will also consider whether the monitoring results of [subrecipient] necessitate adjustments to its own record (see §200.332(g)).

8. **Monitoring Letters and Reports:** Written reports of the City's monitoring findings will be provided to the Subrecipient within 30 days of an official monitoring visit. Such reports will note outstanding performance as well as findings or concerns and recommendations for improvement.

9. **Subrecipient Response:** The Subrecipient shall have 30 days from the receipt of a financial or programmatic monitoring visit letter to address any findings or concerns.

XIII. Termination, Sanctions and Closeouts

1. **Termination:** In the event that the Subrecipient fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action in accordance with 2 CFR § 200.339 through 200.343. The City may also terminate this Agreement for convenience.

   Furthermore, funding to be made available by the City under this Agreement has been approved by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

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

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

   a. Reasonable description of the default/reason for termination;

   b. Demand for a cure; and

   c. Statement of reasonable time within which a cure must be effected. Such reasonable time will be presumed to be not less than five, nor more than fifteen, business days. Such times shall be measured from the actual

receipt of said notice.

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

2. **Imposition of Sanctions:** The City reserves the right to impose sanctions on the Subrecipient for the violation of any terms of this Agreement, failure to comply with any terms of this Agreement, or failure to undertake the project in a timely manner. Sanctions may include, but are not necessarily limited to, suspension of the grant operations until corrective measures are implemented, withholding any and all project funds, termination of the Agreement, requiring the Subrecipient to return funds already received, or barring the Subrecipient from future funding. No sanction may be imposed pursuant to this paragraph unless the City complies with requirements of **Section 13.1** and the Subrecipient fails to cure the alleged default within the reasonable period of time provided for in the notice or as otherwise agreed between the parties.
3. **Closeout:** The Subrecipient's obligation to the City shall not end until all closeout requirements are completed in accordance with 2 CFR § 200.344. Activities during the close-out period shall include, but are not limited to, submitting final reimbursement request and final activity/progress report to the City, account for any real or personal property acquired with federal funds, and determining the custodianship of records. Grant closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Subrecipient.
4. **Post-Closeout Adjustments and Continuing Responsibilities:** The Subrecipient acknowledges the provisions of 2 CFR § 200.345 in regards to post-closeout adjustments and continuing responsibilities in relation to the U.S. Department of Treasury and the City of Murfreesboro.

XIV. Taxes

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

XV. Laws, Regulations and Special Conditions

1. The information in this Agreement is included for the convenience of the Subrecipient and to inform the Subrecipient of the diverse statutory and regulatory requirements to which the acceptance of funds makes them subject. ***For the actual regulatory or statutory requirements, the Subrecipient should consult the actual laws, regulations, and documents referenced in this Agreement.*** In addition to the other requirements set forth herein, the Subrecipient shall likewise comply with the applicable provisions of 31 CFR Part 35, in accordance with the type of project assisted. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Subrecipient.
2. **Debarment and Suspension**: In accordance with 2 CFR § 180.220, the Subrecipient shall not employ or otherwise engage any debarred, suspended, or ineligible contractors or subcontractors to conduct any activities under this Agreement. The Subrecipient will consult appropriate references, including but not limited to the Excluded Parties Listing System website at https://sam.gov/, to ascertain the status of any third parties prior to engaging their services. The Subrecipient will submit to the City the names of contractors and subcontractors selected under this Agreement, including a certification by the Subrecipient that it has determined that none of these entities are presently debarred, suspended, or ineligible. The following link will provide information on how to look up suspended and debarred companies on sam.gov: https://www.dol.gov/agencies/ofccp/debarred-list.
3. **Emerging Business Enterprises:** If a Subrecipient solicits or requests an invitation for bids, every effort feasible

will be made to contact emerging, minority-owned, and women-owned business enterprises for a response to the solicitation or invitation for bidders. If utilizing a minority subcontractor, the Subrecipient shall summarize what portion of the project the minority subcontractor handled. At the end of the project, the Subrecipient shall submit a summary of all payments made to the minority subcontractor(s). The Subrecipient shall submit all necessary forms with quarterly reports to assure compliance with this requirement.

4. **Building and Zoning Regulations and Permits:** The Subrecipient agrees to comply with Federal, State and local laws. In particular, the Subrecipient shall comply with all applicable building and zoning regulations. In addition, the Subrecipient shall obtain all necessary permits for intended improvements or building activities.

5. **Section 504 - Persons with Disabilities: The** Subrecipient, in the implementation of projects funded by this Agreement and in all of its other operations, will comply with all requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) (and the implementing regulations at 24 CFR Part 8), the Americans with Disabilities Act of 1990 (PL 101-336), and all state and local laws requiring physical and program accessibility to people with disabilities, and agrees to defend, hold harmless, and indemnify the City from and against any and all liability for any noncompliance on the part of the Subrecipient.

6. **Discrimination Prohibited:** No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any project or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "project or activity" is defined as any function conducted by an identifiable administrative unit of the Subrecipient receiving funds pursuant to this contract.

   The Subrecipient further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in **Part B**.

7. **Nepotism:** No person shall be employed or contracted with if a member of his or her immediate family is on the Board of Directors of the Subrecipient or is employed in an administrative capacity by the Subrecipient. For the purposes of this section: "immediate family" includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild and "administrative capacity" includes those who have selection, hiring, supervisory or operational responsibility for the project.

8. **Conflict of Interest:** The Subrecipient hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, in accordance with 2 CFR § 200.318(c), no employee, officer, or agent of the Subrecipient who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the project assisted under this Agreement.

9. **Political Activity Prohibited:**

   a. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.

   b. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S Code (USC).

10. **Lobbying Prohibited:** None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Tennessee. The Subrecipient shall assure compliance with the regulations at 2 CFR § 200.450 by submitting, and requiring all applicable subcontractors to submit, a

certification of compliance with this provision.

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal 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 the Federal contract, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

XVI. MISCELLANEOUS CLAUSES AND NOTICES

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

   The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Subrecipient waives its right to a jury trial to resolve any disputes that may arise hereunder.

   No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
6. **Insurance**: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Tennessee Governmental Tort Liability Act (T.C.A. §29-20-101 et seq.), Subrecipient shall bear the risk of any loss or damage to any personal property to which Subrecipient holds title.
7. **Findings Confidential**: Except as provided by law, all reports, information, data, and documentation prepared or assessed by the City or the Subrecipient under this Agreement are confidential. The Subrecipient agrees that the reports shall not be made available to any individual or organization without the prior written approval of the City.

   Subrecipient may have access to private or confidential data maintained by City to the extent necessary to carry

out its responsibilities under this Agreement. Subrecipient must comply with all the requirements of Tennessee Public Records Act (T.C.A. §10-7-503 *et seq.*) in providing services and/or goods under this Agreement. Subrecipient shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Subrecipient must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Subrecipient. Upon the termination or expiration of this Agreement, Subrecipient shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Tennessee Public Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

8. **Dissemination of Information:** The Subrecipient, at such times and in such forms as the Treasury and/or the City may require, shall furnish to the Treasury and/or the City, such statements, records, reports, data and information the Treasury and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Subrecipient under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in the Tennessee Public Records Act (T.C.A. §10-7-503 *et seq.*).

9. **Identification of Documents and Projects:** All projects, reports, maps, news releases and/or other documents undertaken as part of this Agreement, other than documents exclusively for internal use with City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "City of Murfreesboro", then name of the Subrecipient, and, in the case of written material, the month and year of preparation and the following information regarding Federal assistance: "The funding of this project, report, map, document, etc., was financed (in whole or in part) through a grant of ARPA funds from the U.S. Department of Treasury and the City of Wichita."

10. **Training Required:** It shall be the responsibility of the Subrecipient to participate in all appropriate training conducted by the Treasury or as required by the City.

11. **Copyrights:** If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to Treasury regulations. The Treasury and the City reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

12. **Patents:** Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to the Treasury and the City for determination by the Treasury and the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to the Treasury regulations.

13. **Anti-Trust Litigation:** For good cause, and as consideration for executing this contract, the Subrecipient, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Tennessee, relating to the particular product, products, or services purchased or acquired by the Subrecipient pursuant to this contract.

14. **Compliance with Law.** Subrecipient shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

15. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Subrecipient and is not

intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.

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

    a. Subrecipient is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Subrecipient or an entity other than City. Subject to the foregoing, Subrecipient hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Subrecipient's operations or the performance of services by Subrecipient hereunder.

    b. The parties hereby acknowledge and agree that City will not: (a) require Subrecipient to work exclusively for City; (b) establish means or methods of work for Subrecipient, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes; (c) pay to Subrecipient a salary or hourly rate, but rather will pay to Subrecipient a fixed or contract rate; (d) provide training for Subrecipient on performance of the services to be done; City may provide informational briefing on known conditions; (e) provide tools or benefits to Subrecipient (materials and equipment may be supplied if negotiated); (f) dictate the time of Subrecipient's performance; and (g) pay Subrecipient personally; instead, City will make all checks payable to the trade or business name under which Subrecipient does business.

    c. Subrecipient does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

    d. Unless given express written consent by City, Subrecipient agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the Program site.

    e. If Subrecipient is given written permission to have other parties on the site, and Subrecipient engages any other party which may be deemed to be an employee of Subrecipient, Subrecipient will be required to provide the appropriate workers' compensation insurance coverage as required by operation of law or other agreement.

    f. Subrecipient has and hereby retains control of and supervision over the performance of Subrecipient's obligations hereunder. Subrecipient agrees to retain control over any allowed parties employed or contracted by Subrecipient for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Subrecipient.

    g. Subrecipient represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

    h. All services are to be performed solely at the risk of Subrecipient and Subrecipient shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

    i. Subrecipient will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

XVII. APPENDICES

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

Part A – Agreement

Part B – Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements

Part C – Subrecipient Information, Project Scope, and Timeline

Part D – Project Budget

Part E – Performance Measures and Reporting

Part F – Financial Reporting

Part G – Reimbursement Request Form

Part H – Duplication of Benefits Certification

XVIII. AUTHORIZATION TO ENTER INTO CONTRACT

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

SUBRECIPIENT

Bobby N Duke III

Dr. Bobby N. Duke, III
Director of Schools

Date: 8/5/2022

CITY OF MURFREESBORO

_____
Shane McFarland, Mayor

Date:_____

APPROVED AS TO FORM:

_____
Adam F. Tucker, City Attorney

PART B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its departments, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Subrecipient shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

C. In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments.

D. CIVIL RIGHTS REQUIREMENTS.

1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 12132, Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

2. Equal Employment Opportunity. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, Subrecipient shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the awarded Agreement. Subrecipient shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment; upgrading demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Subrecipient shall refrain from discrimination against present and prospective employees for reason of age.

4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Subrecipient shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

E. If Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-recipients and contractors also comply with Title VI and other applicable authorities covered in this document.

PART C

SUBRECIPIENT INFORMATION, PROJECT SCOPE, AND TIMELINE

I. SUBRECIPIENT INFORMATION

Subrecipient:	Murfreesboro City School District
SAM UEI:	D23MHJLC9TJ9
Grant & CFDA:	American Rescue Plan Act (ARPA) – CFDA 21.027
Award Amount:	$500,000
Address:	2552 South Church St.
City:	Murfreesboro
State:	Tennessee
Zip Code + 4:	37127-6342
Contact Person:	Kim Williams, Director of Finance
Contact Email:	Kim.Williams@cityschools.net
Contact Phone:	615-893-2313

II. PROJECT SCOPE

Project Overview: The Project funded by this Agreement is to underwrite the cost of employing eleven (11) Educational Assistants to provide tutoring services as part of the TN ALL CORPS Program.

Providing High-Quality Academic Intervention Through Tutoring to Mitigate Learning Loss Due To COVID-19:

3. **Background** – Subrecipient is a pre-kindergarten through sixth-grade municipal public-school system, also referred to as a "local education agency" established pursuant to T.C.A. §49-2-401 et. seq., Murfreesboro City Charter §92, and Murfreesboro City Code, Chapter 25. The Murfreesboro City School System consists of thirteen (13) schools and educates approximately 9,450 students.

   Due to the COVID-19 pandemic, Murfreesboro City Schools students had varying access to instruction in Spring 2020 and throughout the 2020-21 school year. Some students remained in-person learners, while others were educated at home via virtual learning with Murfreesboro City Schools and other virtual education providers or were homeschooled. Murfreesboro City Schools saw an increased amount of absenteeism among students and educators during this time due to the illness associated with the virus and quarantine protocols aimed to mitigate the threat of spreading the virus. This absenteeism resulted in a loss of instruction time. The diminished instruction resulted in lower proficiency levels, especially in math and early reading.

   To help remedy lower proficiency levels, the Tennessee Department of Education has instituted the TN ALL Corps tutoring support. The goal of the program is to increase the amount of learning time children have access to in order to mitigate learning loss due to COVID, accelerate student achievement, and ensure students have access to consistent, high dosage/low ratio tutoring. This funding covers two years with a goal of significantly increasing student achievement by Summer 2024.

   The Project funded by this Agreement is to employ eleven (11) Educational Assistants who will spend 100% of their time on improving instruction by facilitating small group tutoring sessions. These tutoring sessions will be in

person, last between 30–45-minutes, and occur 2 - 3 times per week. Students must remain in tutoring for at least one calendar year and focus on one content area per semester. The tutoring will use high-quality materials that are aligned with classroom content so that classroom instruction is reinforced and enhanced. Tutoring is free for everyone and targeted toward schools with the highest poverty levels (Title Schools) and schools that have the highest subgroup deficits.

All students who participate in the tutoring program will be required to complete a placement assessment and to complete progress monitoring for the duration of their tutoring support. This will be done through the online assessment component of the free math and reading online resource program.

4. Education Assistant (EA) Role

a. The Tier 1 Intervention Educational Assistants will spend 100% of their time improving instruction by facilitating small group tutoring, and reinforcing instruction as directed by the teacher. These tutoring sessions will be in person, last between 30–45-minutes, and occur 2 - 3 times per week. The EA will assist instructional personnel with the development and presentation of learning materials and instructional exercises. The EA will confer with the teacher concerning standards-based instruction and materials to meet student needs.

b. EAs will also be expected to:

- **i.** Provide customized teacher support to meet unique student needs through differentiated instruction;
- **ii.** Model effective instructional strategies;
- **iii.** Establish specific goals and strategies targeting student achievement, and monitor and adjust progress toward those goals throughout the year so that continuous academic improvement occurs;
- **iv.** Work with school-based and central office staff to meet specific program requirements; and
- **v.** Collect, analyze, and respond to data collected through the tutoring programs.

c. EAs will be available to Subrecipient for in-service training in instruction-related topics as requested.

d. EAs have access to a 5-module training course for aspiring and alternative educators to learn more about tutoring and to succeed as a tutor. Throughout the 5-module course, aspiring and alternative educators will learn everything from the basics of tutoring to academic best practices.

III. PROJECT TIMELINE

The overall project must comply with the timelines in Section II and III of the Agreement (Part A). Below is an estimated timeline of this Project.

August 5, 2022	Signed Subrecipient agreement completed
August 1, 2022	11 E.A. have been hired and issued a start date no later than August 8, 2022
August 3-9, 2022	E.A. will be trained
August 5-19, 2022	E.A will begin identification of students to receive services
August 19 to June 2024	E.A will begin servicing students

PART D

Program BUDGET

Expense	Amounts
Expense	Amounts
Salaries: 11 Educational Assistants at 37.5 hours each-100% of time dedicated to Tier 1 tutoring x 10 months (40 weeks)	$ 284,735
Benefits: Taxes, medical, 401K, unemployment, life, etc. (27% of total salary costs)	$215,265
Total Salaries	**$500,000**
Total Expenses	**$500,000**

Remainder of page intentionally left blank.

PART E

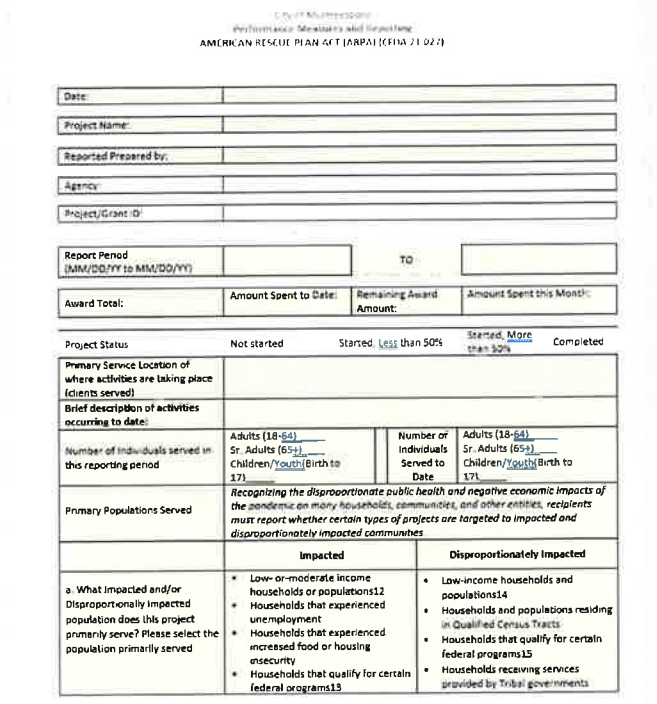
PERFORMANCE MEASURES AND REPORTING

Performance measure reports are to be completed using the form below and in accordance with the following schedule. The performance measure reporting form will be furnished as an excel template and provided to the Subrecipient upon execution of this Agreement. The Subrecipient shall answer all questions and provide all requested supporting documentation in accordance with the Agreement (Part A).

Performance Measures and Reporting (PMR) Schedule

Report	Required Frequency	Report Period Start Date	Report Period End Date	Reporting Due Date
PMR August 2022	Monthly	8/1/22	8/31/22	10/15/22
PMR September 2022	Monthly	9/1/22	9/30/22	11/15/22
PMR October 2022	Monthly	10/1/22	10/31/22	12/15/22
PMR November 2022	Monthly	11/1/22	11/30/22	1/15/23
PMR December 2022	Monthly	12/1/22	12/31/22	2/15/23
PMR January 2023	Monthly	1/1/23	1/31/23	3/15/23
PMR February	Monthly	2/1/23	2/28/23	4/15/23
PMR March 2023	Monthly	3/1/23	3/31/23	5/15/23
PMR April 2023	Monthly	4/1/23	4/30/23	6/15/23
PMR May 2023	Monthly	5/1/23	5/31/23	7/15/23
PMR June 2023	Monthly	6/1/23	6/30/23	8/15/23
PMR July 2023 ***	Monthly	7/1/23	7/31/23	9/15/23

*** remainder of grant period August 2023 to June 30, 2024 will follow same reporting periods and guidelines with applicable 2023 and 2024 dates for the remaining months.



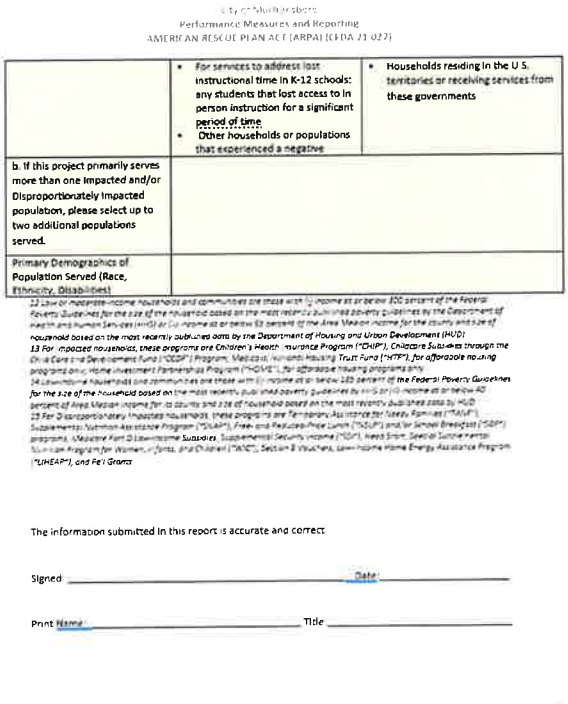
City of Minneapolis
Performance Measures and Reporting
AMERICAN RESCUE PLAN ACT (ARPA) (CFDA 21.027)

Date:	
Project Name:	
Reported Prepared by:	
Agency:	
Project/Grant ID:	

Report Period (MM/DD/YY to MM/DD/YY)		TO	
Award Total:	Amount Spent to Date:	Remaining Award Amount:	Amount Spent this Month:

Project Status	Not started	Started. Less than 50%	Started. More than 50%	Completed
Primary Service Location of where activities are taking place (clients served)				
Brief description of activities occurring to date:				
Number of individuals served in this reporting period	Adults (18-64) Sr. Adults (65+) Children/Youth(Birth to 17)		Number of Individuals Served to Date	Adults (18-64) Sr. Adults (65+) Children/Youth(Birth to 17)
Primary Populations Served	*Recognizing the disproportionate public health and negative economic impacts of the pandemic on many households, communities, and other entities, recipients must report whether certain types of projects are targeted to impacted and disproportionately impacted communities*			

	Impacted	Disproportionately Impacted
a. What impacted and/or Disproportionally impacted population does this project primarily serve? Please select the population primarily served	• Low-or-moderate income households or populations12 • Households that experienced unemployment • Households that experienced increased food or housing insecurity • Households that qualify for certain federal programs13	• Low-income households and populations14 • Households and populations residing in Qualified Census Tracts • Households that qualify for certain federal programs15 • Households receiving services provided by Tribal governments



City of Minneapolis
Performance Measures and Reporting
AMERICAN RESCUE PLAN ACT (ARPA) (CFDA 21.027)

	• For services to address lost instructional time in K-12 schools: any students that lost access to in person instruction for a significant period of time • Other households or populations that experienced a negative	• Households residing in the U.S. territories or receiving services from these governments
b. If this project primarily serves more than one impacted and/or Disproportionately impacted population, please select up to two additional populations served.		
Primary Demographics of Population Served (Race, Ethnicity, Disabilities)		

12 Low or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 65 percent of the Area Median Income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD)
13 For impacted households, these programs are Children's Health Insurance Program ("CHIP"), Childcare Subsidies through the Child Care and Development Fund ("CCDF") Program, Medicaid, Homeless Housing Trust Fund ("HTF"), for affordable housing programs only, Home Investment Partnerships Program ("HOME"), for affordable housing programs only
14 Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or (ii) income at or below 40 percent of Area Median Income for its county and size of household based on the most recently published data by HUD
15 For disproportionately impacted households, these programs are Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP"), Free and Reduced-Price Lunch ("NSLP") and/or Seamless Breakfast ("SBP") programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income ("SSI"), Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants

The information submitted in this report is accurate and correct

Signed: _____ Date: _____

Print Name: _____ Title _____

PART F

FINANCIAL DRAWDOWNS AND REPORTING

Financial drawdowns and reports are to be completed using the form below and in accordance with the following schedule. The financial reporting form will be furnished as an excel template and provided to the Subrecipient upon execution of this Agreement. The Subrecipient shall answer all questions and provide all requested supporting documentation in accordance with the Agreement (Part A).

Financial Drawdowns and Reporting (FDR) Schedule

Report	Required Frequency	Report Period Start Date	Report Period End Date	Reporting Due Date
FDR August 2022	Monthly	8/1/22	8/31/22	10/15/22
FDR September 2022	Monthly	9/1/22	9/30/22	11/15/22
FDR October 2022	Monthly	10/1/22	10/31/22	12/15/22
FDR November 2022	Monthly	11/1/22	11/30/22	1/15/23
FDR December 2022	Monthly	12/1/22	12/31/22	2/15/23
FDR January 2023	Monthly	1/1/23	1/31/23	3/15/23
FDR February	Monthly	2/1/23	2/28/23	4/15/23
FDR March 2023	Monthly	3/1/23	3/31/23	5/15/23
FDR April 2023	Monthly	4/1/23	4/30/23	6/15/23
FDR May 2023	Monthly	5/1/23	5/31/23	7/15/23
FDR June 2023	Monthly	6/1/23	6/30/23	8/15/23
FDR July 2023 ***	Monthly	7/1/23	7/31/23	9/15/23

*** remainder of grant period August 2023 to June 30, 2024 will follow same reporting periods and guidelines with applicable 2023 and 2024 dates for the remaining months. FINAL DRAWDOWN AND CLOSEOUT REPORT must be submitted by JULY 15, 2024

PART G

DUPLICATION OF BENEFITS CERTIFICATION

To be submitted by the Subrecipient with its reimbursement requests.

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

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

Per Schedule in Part F
Month of Reimbursement Request

Signature of Murfreesboro City Schools,
Signing Agent

Dr. Bobby N. Duke, III
Printed Name

Director of Schools
Title

August 5, 2022