

MURFREESBORO CITY COUNCIL
Regular Meeting Agenda
Council Chambers – City Hall – 6:00 PM
October 1, 2020

PRAYER

Vice Mayor Scales Harris

PLEDGE OF ALLEGIANCE

Consent Agenda

1. Inter-Local Agreement with Rutherford County for Digital Radio System (Police)
2. Total Organic Carbon Instrument Replacement (Water Resources)
3. Asphalt Purchases Report (Water Resources)
4. Water Resource Recovery Facility Task Order - Clarifier Repairs (Water Resources)
5. Water/Wastewater Mechanical/Electrical Services Contract Task Order No. 20-07 (Water Resources)
6. Water & Sewer Connection Fee Approval – Greenhouse Ministries (Water Resources)

Old Business

Land Use Matters

7. Ordinance 20-O-28 Amending the Sign Ordinance (2nd and final reading) (Building Codes)
8. Ordinance 20-OZ-01 Zoning of approximately 78 acres for property located along Northwest Broad Street (2nd and final reading) (Planning)

New Business

On Motion

9. Approve Design Build Contract with Morgan Construction for Replacement of Hangar 1 (Airport)
10. Shores Road City County Maintenance Agreement (Development Services)
11. Stormwater Fund Participation Request – Housing Authority; Oakland Court Project (Water Resources)
12. Salem Hwy (SR-99) Widening Ph. II – Wisner Eng. Design Proposal (Water Resources)

Licensing

Board & Commission Appointments

Payment of Statements

Other Business

Adjournment

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Inter-Local Agreement with Rutherford County for 700Mhz Digital Radio System

Department: Police

Presented by: Chief Michael Bowen

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Inter-local agreement with Rutherford County for the 700Mhz Digital Trunked Radio System.

Staff Recommendation

Approve the Inter-Local Agreement with Rutherford County for joint operations of the radio system.

Background Information

Council approved the purchase of the 700Mhz digital radio system in 2017 and the City began the implementation process at tower sites and Emergency Communications at Police Headquarters. Currently, there are four tower sites operational with approval for a fifth site coming soon. Rutherford County has agreed to add an additional five tower sites to the system along with additional channel capacity and system redundancy. This tower will provide County-Wide coverage and joint operation capabilities for both entities.

Council Priorities Served

Maintain public safety

The radio system allows for expanded service to Public Safety departments and will allow for other departments to use the system for enhanced operability in emergency situations.

Fiscal Impact

This agreement has no financial impact as both entities are responsible for their equipment and maintenance.

Attachments

1. Inter-Local Agreement Regarding Establishment and Operation of County-Wide 700 MHz Radio System

**INTER-LOCAL AGREEMENT REGARDING
ESTABLISHMENT AND OPERATION OF
COUNTY-WIDE 700 MHz RADIO SYSTEM**

THIS INTERLOCAL AGREEMENT (the “Agreement”) is entered into as of the ___ day of _____, 2020, by and between **RUTHERFORD COUNTY, a political subdivision of the State of Tennessee**, (the “County”) and the **CITY OF MURFREESBORO, a municipal corporation of the State of Tennessee** (the “City”).

WITNESSETH:

WHEREAS, the Tennessee Interlocal Cooperation Act, T.C.A. § 12-9-101 et seq., authorizes local governmental units to enter into interlocal agreements in accordance with the terms of that act with the goal of enabling local governments to make “the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities”; and

WHEREAS, the parties to this Agreement are committed to delivery of the highest possible level of fire, law enforcement, emergency medical and related services; and

WHEREAS, the parties to this Agreement believe that interoperability – the ability for public safety agencies and communication centers to seamlessly communicate with each other – is a critical component of public safety radio communications; and

WHEREAS, the parties to this Agreement are committed to participating in the use and support of interoperable public safety radio communications systems that:

- Provide for efficient and effective support of the delivery of public safety services to people who need help; and
- Provide the greatest support possible for firefighters, paramedics, law enforcement officers and others for whom reliable, interoperable communications can mean the difference between life and death; and

WHEREAS, in furtherance of the goals referenced above, the parties have agreed to cooperate in the establishment and operation of a county-wide 700 MHz radio system.

NOW THEREFORE, in consideration of the above-stated premises, the City and the County hereby agrees as follows:

TERMS AND CONDITIONS:

1. Purpose.

The parties agree that entering into this Agreement is to the mutual benefit of both parties. The objective of this Agreement is to provide a framework for cooperation between the parties in the establishment, implementation, and operation of a county-wide 700 MHz radio system. Under

this Agreement, the City will, at no cost to the County, allow the County to access and use the City's radio system located at 1004 N. Highland Ave., Murfreesboro, TN, and the County will provide a geo- redundant backup system. The City will provide the IT network security for the radio system.

2. Separate Entity.

The Agreement does not create a separate entity, nor should it be interpreted as creating a separate entity under any circumstances.

3. Cost to Each Party.

Unless otherwise provided in a subsequent interlocal agreement executed by all parties hereto, the parties agree that each party shall be financially responsible for its own costs and expenses in establishing, implementing, and operating a county-wide 700 MHz radio system, inclusive of hardware and software. The parties acknowledge that a subsequent interlocal agreement mutually agreed to by the parties may divide future joint costs among the parties on a basis to be determined.

4. Joint System Management.

The parties will cooperate in providing joint system management of a county-wide 700 MHz radio system. The parties each agree to designate party representatives responsible for administering joint system management. Joint system management includes, but is not limited to, determining the appropriate measures to be taken in establishing, maintaining, and operating a county-wide 700 MHz radio system; providing recommendations to the parties regarding the implementation and operation of the 700 MHz radio system; developing and implement guidelines for the effective and efficient use of the system; and overseeing and coordinating the efforts of the parties in establishing, operating, and maintaining the system. Any decisions regarding joint system management, including software or hardware upgrades or other maintenance issues that affect both parties' use of the radio system, shall be mutually agreed upon between the parties. Nothing in this Agreement, however, prohibits either party from conducting upgrades or maintenance to its own hardware, software, or other parts of the radio system that does not affect the other party's use of the radio system.

5. Term; Termination.

This Agreement is effective upon the dates signed and remains in effect until a party hereto provides notice of termination. Either party may terminate this Agreement for convenience at any time without cause upon no less than 180 days prior written notice to the other party. This Agreement may be terminated at any time by agreement of the parties.

6. Compensation.

Except as specifically provided herein, consideration for this Agreement shall consist of the mutual understandings contained herein. The parties agree that monetary compensation shall neither be expected nor received by either party.

7. Governing Law; Venue.

The validity, construction, and effect of this Agreement and any extension thereof and/or modifications thereto shall be governed by the laws of the State of Tennessee. Any Action between the parties arising from this Agreement shall be maintained in the courts of Rutherford County, Tennessee.

8. Conflict with Laws, Codes, and Ordinances.

Nothing in this Agreement is intended to conflict with current applicable laws or regulations. The parties agree to comply with any and all applicable federal, state, and local laws and regulations including, without limitation, those pertaining to public records, personal health information, and law enforcement investigations.

9. Entire Agreement; Modification.

This Agreement constitutes the entire agreement between the parties with respect to this subject matter hereof and shall govern the parties' respective duties and obligations. The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement. This Agreement may be modified upon the mutual written consent of the parties. No supplement, modification, or amendment to this agreement shall be binding unless evidenced by a writing signed by the party against whom it is sought to be enforced.

10. Independent Entities.

This Agreement is by and between two independent governmental agencies and is not intended to and shall not be construed to create a relationship of agent, servant, employee, or association. The parties hereto shall not hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act, or omission of any other party to this Agreement. Each party shall maintain its own identity in providing services. Each party is separately responsible for establishing its own policies and financing its own activities.

11. No Intended Third-Party Beneficiaries.

Nothing herein is intended nor shall be construed in any way to vest any other person other than the parties with any contractual or other rights. The parties have the exclusive right to bring suit to enforce this Agreement and no other person may bring suit, as a third-party beneficiary or otherwise to enforce this Agreement.

12. Force Majeure.

No party shall have any liability to any other party 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 Government, act of public enemy, epidemic, pandemic, or other cause of similar or dissimilar nature beyond its control.

13. Severability.

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

14. Discriminatory Practices.

Neither party shall subscribe to any policy or practice that permits or allows the refusal of services to individuals in need due to the individual's race, religion, color, national origin, age, sex, disability, or any other individual characteristic or class of people protected by applicable state or federal law.

15. Assignment.

Neither party may assign any right or obligation arising under this Agreement without the prior written consent of the other party.

16. Notices.

All notices relating to this Agreement shall be sent in writing to the addresses set forth below. Such notices will be deemed received at such address upon the earlier of (i) actual receipt or (ii) delivery in person, by overnight delivery, or by certified mail return receipt requested.

Notices to City of Murfreesboro shall be sent to:

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

Notices to Rutherford County shall be sent to:

Rutherford County
ATTN: County Mayor
Rutherford County Courthouse, Room 101
Murfreesboro, TN 37130

17. Waiver.

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making a waiver.

18. Assumption of Liability.

Each party shall be and remain liable for its actions as well as the actions of the respective party's employees, volunteers, agents, or officers. Nothing in this Agreement shall be construed to limit any party's governmental immunity.

19. Required Approvals.

Each party shall be responsible for receiving all approvals from the appropriate governing bodies prior to executing this Agreement as well as future required approvals in a diligent manner.

20. Miscellaneous.

The complete understanding between the parties is set out in this Agreement, and this Agreement supersedes and voids all prior and contemporaneous understandings, except as herein contained. The Headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provisions of this Agreement.

21. Authority.

By executing this Agreement, the parties warrant that their respective representatives signing below have been duly authorized by any necessary action of their respective governing bodies to enter into and execute this Agreement, and that this Agreement represents a legal, valid, and binding obligation of each party, enforceable upon each party in accordance with its terms and by application of equitable principles if equitable remedies are sought, except as enforceability may be limited by the U.S. Bankruptcy Code. This Agreement shall not be binding upon the parties until it is approved by the Murfreesboro City Council and the Rutherford County Commission and signed by the Mayor of the City of Murfreesboro and the Mayor of Rutherford County. When it has been so signed, this Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates recorded below.

**COUNTY OF RUTHERFORD,
TENNESSEE**

**CITY OF MURFREESBORO,
TENNESSEE**

Bill Ketron, County Mayor

Shane McFarland, County Mayor

Date: _____

Date: _____

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

County Attorney

City Attorney

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Total Organic Carbon Instrument Replacement

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

The Department requests to replace the existing Total Organic Carbon (TOC) instrument purchased in 2011. The replacement would be purchased from Suez WTS Analytical Instruments, Inc and they are the manufacturer and sole source provider of the instrument. Suez is providing a \$6,000 trade-in value for the existing instrument.

Staff Recommendation

Approve the purchase of the TOC instrument from Suez WTS Analytical Instruments, Inc. in accordance with their proposal and subject to Legal review of the contract.

Background Information

The existing Total Organic Carbon (TOC) analyzer was purchased in August 2011. The typical lifespan of an instrument is approximately ten years with care and maintenance. The Department has worked hard to maintain this instrument in accordance with manufacturer’s recommendations since its purchase. MWRD was notified by the manufacturer in August 2019, that the model 5310C TOC instrument, serial number: 1201-5429 is nearing obsolescence. This means that parts are limited for repairs and at some point, the unit can no longer be repaired. In 2011, the instrument cost \$29,902.

Council Priorities Served

Responsible budgeting

MWRD is exercising responsible budgeting through utilization of the trade-in value.

Maintain public safety

MWRD ensures that equipment is properly maintained to provide quality water to customers.

Fiscal Impact

The cost for replacing the TOC instrument is \$30,728 including the first year’s annual service fees. Funding is in the FY21 capital budget in the amount of \$40,000.

Attachments

Suez TOC Instrument Replacement Quote

Suez Sole Source Representative Letter



SUEZ WTS Analytical Instruments, Inc.
 6060 Spine Road
 Boulder, CO 80301, United States
 T 1 (303) 444-2009

Quotation

Murfreesboro Water Department	Date:	Wednesday, August 26, 2020
Kim Burritt	Quote Number :	UPW-00041730-20-6
Murfreesboro, TENNESSEE	Payment Terms:	Net 30, Subject to Credit Approval
UNITED STATES	Delivery Terms:	Ex Works, Boulder, CO USA
Phone : +1 (615) 848-3222	Expiration Date:	Tuesday, October 6, 2020
	Currency:	USD
	Shipment:	30 Days

Page 1 of 4

	Product Number	Unit Price	Qty	Ext. Price
Group 1				
M5310 C Lab TOC Analyzer, ICR	PRD 77120-01	24,700.00	1	24,700.00
M5310 C Laboratory TOC Analyzer with integrated ICR for monitoring TOC in municipal drinking waters, ranging from raw surface waters to finished drinking waters. INSTRUMENT NOT DESIGNED OR INTENDED FOR PHARMACEUTICAL APPLICATIONS. Included with analyzer: 300mL acid container, 150mL oxidizer container, Accessory Kit, Quick Start Guide, 12-Month Factory Warranty, and integrated ICR: Inorganic Carbon Remover (ICR). Used for removing high levels of Inorganic Carbon, improving instrument performance in applications where there is a high ratio of IC/TOC.				
Instrument Trade In	TRADE IN	(2,500.00)	1	(2,500.00)
Trade-in allowance - By accepting this trade-in offer the trade-in analyzer will become the property of Analytical Instruments 90 days after delivery of the new instrument. Buyer is responsible for packaging and shipping the trade-in analyzer to Analytical Instruments within 90 days of receipt of the new analyzer.				
Instrument Trade In	TRADE IN	(3,500.00)	1	(3,500.00)
Trade-in allowance - By accepting this trade-in offer the trade-in analyzer will become the property of Analytical Instruments 90 days after delivery of the new instrument. Buyer is responsible for packaging and shipping the trade-in analyzer to Analytical Instruments within 90 days of receipt of the new analyzer.				
M-Series USB Autosampler	PRD 77001-01	12,028.00	1	12,028.00
M-Series USB Autosampler using 40 mL vials. Accommodates 63 sample vials via three 21-position metal vial racks, 6-position standards rack to hold Certified Reference Standards. AS Accessory Kit is included with the following contents: needle, needle tubing, probe guide, DataPro2 software, USB cables, and power cord.				
Sub-Total USD :				30,728.00

Please refer to UPW-00041730-20 on your purchase order and email to Sievers.instruments.wts@suez.com
 Standard Terms and Conditions apply. Warranty valid in UNITED STATES only.

SUEZ WTS Analytical Instruments Inc.

Quotation

Murfreesboro Water Department	Date:	Wednesday, August 26, 2020
Kim Burritt	Quote Number :	UPW-00041730-20-6
Murfreesboro, TENNESSEE	Payment Terms:	Net 30, Subject to Credit Approval
UNITED STATES	Delivery Terms:	Ex Works, Boulder, CO USA
Phone : +1 (615) 848-3222	Expiration Date:	Tuesday, October 6, 2020
	Currency:	USD
	Shipment:	30 Days

Page 2 of 4

Product Number	Unit Price	Qty	Ext. Price
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Important Information

Shipping Charges Total : \$250.00

Jeffery Witmer, Northeast Region Manager, (317) 273-3054

*Please refer to UPW-00041730-20 on your purchase order and email to Sievers.instruments.wts@suez.com
Standard Terms and Conditions apply. Warranty valid in UNITED STATES only.*

SUEZ WTS Analytical Instruments Inc.



Water Technologies & Solutions
Analytical Instruments

Subject: Sole Source Representative

SUEZ WTS Analytical Instruments Inc. is the sole manufacturer of Sievers products, purchase of new products, OEM repair/replacement parts, repairs, and maintenance.

No other representative is authorized to sell OEM products, provide SUEZ WTS certified repair, OEM replacement parts, SUEZ WTS certified maintenance or field services, and SUEZ WTS authorized technical support.

Use of a third-party maintenance provider may null and void warranty. If a third-party is unable to complete any repair, for SUEZ to provide technical support, warranty, or repair, your instrument must be returned to the original condition using Sievers standards, OEM replacement parts and consumables, and SUEZ WTS certified repair.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin England".

Erin England
Global Aftermarket Sales Director
720- 622-0193

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

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, § 2-10 (E)(7) A purchase of perishable commodities made on the open market does not require public advertisement and competitive bids if a record is made by the person authorizing the purchase which specifies the amount paid, the items purchased and from whom the purchase was made in accordance with T.C.A. §6-56-304(7).

Council Priorities Served

Responsible budgeting

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

Maintain public safety

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

Fiscal Impacts

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

Attachments

Asphalt Purchases Report

MWRD - OPERATIONS & MAINTENANCE

Asphalt Quotes FY 2021

	Blue Water		Hawkins		Vulcan		Notes
	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	
Jul	\$65.00	\$75.00	\$54.50	\$62.50	\$55.22	\$63.13	
Aug	\$65.00	\$75.00	\$53.50	\$61.50	\$54.17	\$62.06	
Sep	\$65.00	\$75.00	\$53.50	\$61.50	\$54.03	\$61.97	
Oct							
Nov							
Dec							
Jan							
Feb							
Mar							
Apr							
May							
Jun							

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: WRRF Task Order - Clarifier Repairs

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Consider tasking John Bouchard & Sons (JB&S) with the repair of one of the WRRF's six Clarifiers.

Staff Recommendation

Approve Task Order 20-06 for the repair of #1 Clarifier at the WRRF's by John Bouchard & Sons Co. at a cost of \$9,750.

Background Information

In the course of Maintenance staff performing yearly Preventative Maintenance work on the WRRF's six Clarifiers, damage to the Auxiliary Scraper Arm Assembly on the #1 Clarifier was discovered. After draining the Clarifier for further inspection, it was found that some parts had failed and caused significant damage throughout the entire Scraper Arm Assembly.

The Task Order will be under the Department's standing Water-Wastewater Mechanical-Electrical services contract with JB&S.

Council Priorities Served

Maintain public safety

The infrastructure at the Water Resource Recovery Facility supports the discharge of excellent quality of water that safely enhances the public environment.

Fiscal Impact

The repair of the WRRF's clarifier is requested to be funded from the Department's working capital reserves in the amount of \$9,750.

Attachments

Task Order 20-06



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TASK ORDER NO. 20-06

September 11, 2020

BETWEEN

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

UNDER

Water/Wastewater System Mechanical/Electrical Services Contract

DATED

June 6, 2020 through June 6, 2021

FOR

WRRF #1 Clarifier Repairs

Task Order No. 20-06**WRRF #1 Clarifier Repairs****BACKGROUND**

In the course of Maintenance staff performing yearly Preventative Maintenance work on the WRRF's six Clarifiers, damage to the Auxiliary Scraper Arm Assembly on the #1 Clarifier was discovered. After draining the Clarifier for further inspection, it was found that some parts had failed and caused significant damage throughout the entire Scraper Arm Assembly.

SCOPE OF WORK

- Repair Scraper Arm and replace 30' attachment arm
- Replace the Upper Attachment configuration & reconnect the Arm Assembly to the Clarifier Bridge
- Repair bottom Scraper Assembly on each of the bottom corners
- Cut away the damaged metal, fabricate and galvanize new metal, and weld new back into the original structure.

Murfreesboro WRRF #1 Clarifier Repairs			
Description	Qty (hrs)	Rate	Extended
Project Mgr (RT)	5	\$75.00	\$375.00
Project Mgr (OT)		\$110.00	\$0.00
Superintendent (RT)		\$67.00	\$0.00
Superintendent (OT)		\$100.50	\$0.00
Pipefitter/Welder (RT)		\$52.00	\$0.00
Pipefitter/Welder (OT)		\$78.00	\$0.00
Sprinkler Fitter (RT)		\$44.00	\$0.00
Sprinkler Fitter (OT)		\$66.00	\$0.00
Electrician (RT)		\$52.00	\$0.00
Electrician (OT)		\$78.00	\$0.00
Apprentice/Helper (RT)		\$37.00	\$0.00
Apprentice/Helper (OT)		\$55.50	\$0.00
Expediter/Delivery (RT)		\$29.00	\$0.00
Expediter/Delivery (OT)		\$43.50	\$0.00
Machine Shop Millwright (RT)	90	\$60.00	\$5,400.00
Machine Shop Millwright (OT)		\$90.00	\$0.00
HVAC/Plb Service Tech (RT)		\$66.00	\$0.00
HVAC/Plb Service Tech (OT)		\$99.00	\$0.00
Air Compressor Tech (RT)		\$66.00	\$0.00
Air Compressor Tech (OT)		\$99.00	\$0.00
Laborer - Skilled (RT)		\$32.00	\$0.00
Laborer - Skilled (OT)		\$48.00	\$0.00
Laborer - Unskilled (RT)		\$23.00	\$0.00
Laborer - Unskilled (OT)		\$34.50	\$0.00

Equipment	Qty (hrs)	Rate/Hr	Extended
Welder	30	\$15.00	\$450.00
Power Threader		\$10.00	\$0.00
Mini/Midi Hammer		\$10.00	\$0.00
Variable Reach Forklift		\$27.00	\$0.00
Pickup Truck	15	\$15.00	\$225.00
Scissor Lift		\$19.00	\$0.00
Skid Steer		\$25.00	\$0.00
Boom Man Lift		\$29.00	\$0.00
Cat 420D Backhoe		\$34.00	\$0.00
Street Plate		\$7.00	\$0.00
185 CFM Compressor		\$15.00	\$0.00
ECM 350*		N/A	
Air Track Drill*		N/A	
Pipe Laser		\$21.00	\$0.00
Total Station EDM		N/A	
15 ton Boom Truck*		\$115.00	\$0.00
30-50 Ton RT Crane*		N/A	
80 Ton Crawler Crane*		N/A	
3" Submersible Pump		\$12.00	\$0.00
6" Hydraulic Pump		\$17.00	\$0.00
Materials & Subcontractors			
Materials			\$3,000.00
Markup on Material & Subcontractors		10.00%	\$300.00
TOTAL ESTIMATE			\$9,750.00

Contractor:
John Bouchard and Sons Company

City:
City of Murfreesboro

By: _____
Name: David Proctor
Title: Project Manager
Date: _____

By: _____
Name: Shane McFarland
Title: Mayor
Date: _____

Approved as to Form: _____
Adam Tucker, City Attorney

CONTRACTOR NOTICE CONTACT INFORMATION

CITY NOTICE CONTACT INFORMATION

John Bouchard and Sons Company
Mailing address 1024 Harrison St.
Nashville, TN 37203
Phone number 615-256-0112
Fax number 615-256-2427
Company Contact David Proctor
E-mail David.Proctor@jbouchard.com

Murfreesboro Water and Sewer Dept.
Mailing address 300 NW Broad St.
Murfreesboro, TN 37130
Phone number 615-890-0862
Fax number 615-896-4259
Company Contact Darren Gore
E-mail dgore@murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Water/Wastewater Mechanical/Electrical Services Contract Task Order No. 20-07

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Task Order for Water/Wastewater Mechanical/Electrical Services Contract to install three new floor drains in the upstairs pretreatment building, in the room housing the Lime Silos.

Staff Recommendation

Approve Task Order 20-07 for Water/Wastewater Mechanical/Electrical Services Contract.

Background Information

John Bouchard & Sons was asked to provide a task order to install three new floor drains in the upstairs pretreatment building. The estimate for the installation of three floor drains includes core drilling three 3" drains, 3" cast iron no-hub piping, hangers, material to tie into the existing 3" drain riser, and painting by Commercial Painting Inc.

Council Priorities Served

Responsible budgeting

MWRD is exercising responsible budgeting through utilization of existing contract.

Maintain public safety

MWRD ensures that equipment is properly maintained to provide quality water to customers.

Fiscal Impact

The cost for the project is \$11,902. The project is budgeted in the capital budget at \$15,000.

Attachments

JBS Task Order 20-07 New Floor Drains in Pretreatment Bldg



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TASK ORDER NO. - 20-07

August 21, 2019

BETWEEN

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

UNDER

Water/Wastewater System Mechanical/Electrical Services Contract

DATED

June 6, 2019 thru June 6, 2020

FOR

New Floor Drains in Pretreatment

Task Order - Unassigned
New Floor Drains in Pretreatment
Murfreesboro Water Plant

BACKGROUND

JBS has been asked to install three new floor drains in the upstairs Pretreatment room housing the Lime Silos. We have prepared an estimate for the installation of three (3) floor drains for your consideration. Budget pricing includes core drilling, three (3) 3" drains, 3" cast iron no-hub piping, hangers, material to tie into the existing 3" drain riser, and painting by Commercial Painting Inc.. In this budget price, we exclude the cost of floor scanning, which was priced separately to MWRD for a PO, and we exclude the cost of lift rental, as we were told to assume using the lift belonging to SRWTP. This work has been priced as straight time.

SCOPE OF WORK

Labor and materials by JBS to install three new floor drains as described above.

FISCAL IMPACT

Murfreesboro Service Contract Rate Sheet - 2019-2020			
Water Treatment Plant - Install Three (3) Floor Drains & Piping in Pretreatment			
Description	Qty (hrs)	Rate	Extended
Project Mgr (RT)	8	\$75.00	\$600.00
Project Mgr (OT)		\$110.00	\$0.00
Superintendent (RT)		\$67.00	\$0.00
Superintendent (OT)		\$100.50	\$0.00
Pipefitter/Welder (RT)	56	\$52.00	\$2,912.00
Pipefitter/Welder (OT)		\$78.00	\$0.00
Sprinkler Fitter (RT)		\$44.00	\$0.00
Sprinkler Fitter (OT)		\$66.00	\$0.00
Electrician (RT)		\$52.00	\$0.00
Electrician (OT)		\$78.00	\$0.00
Apprentice/Helper (RT)	56	\$37.00	\$2,072.00
Apprentice/Helper (OT)		\$55.50	\$0.00

Equipment	Qty (hrs)	Rate/Hr	Extended
Welder		\$15.00	\$0.00
Power Threader		\$10.00	\$0.00
Mini/Midi Hammer		\$10.00	\$0.00
Variable Reach Forklift		\$27.00	\$0.00
Pickup Truck	56	\$15.00	\$840.00
Scissor Lift		\$19.00	\$0.00
Skid Steer		\$25.00	\$0.00

Materials & Subcontractors		
Plumbing Materials	Ferguson	\$1,754.39
Painting Sub	CPI	\$2,250.00
Core Drilling Sub	Taylors	\$750.00
Mechanical Misc. Materials		\$225.00
Markup on Material & Subcontractors	10.00%	\$497.94

TOTAL ESTIMATE**\$11,901.33**

Contractor:

John Bouchard and Sons Company

City:

City of Murfreesboro Water and Sewer Dept.

By: David Proctor AV

By: _____

Name: David Proctor

Name: _____

Title: Project Manager

Title: _____

Date: 8/21/19

Date: _____

Approved as to Form: _____

Adam F. Tucker, City Attorney

CONTRACTOR NOTICE CONTACT INFORMATION

CITY NOTICE CONTACT INFORMATION

John Bouchard and Sons Company

Murfreesboro Water and Sewer Dept.

Mailing address 1024 Harrison St.
Nashville, TN 37203

Mailing address 300 NW Broad St.
Murfreesboro, TN 37130

Phone number 615-256-0112

Phone number 615-890-0862

Fax number 615-256-2427

Fax number 615-896-4259

Company Contact David Proctor

Company Contact Darren Gore

E-mail David.Proctor@jbouchard.com

E-mail dgore@murfreesborotn.gov

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Water & Sewer Connection Fee Approval – Greenhouse Ministries

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Charging Greenhouse Ministries water and sewer connection fees, using a hotel rate initially, reviewing the water usage after 18 months of operation and reevaluating the water and sewer connection fees to warrant whether additional fees are required.

Staff Recommendation

Approve the initial Water and Sewer Connection Fees of the 17 studio apartments, at the hotel rate of \$19,550 and re-evaluate the fees after 12 to 18 months of usage.

Background Information

Per City Code, Chapter 33, Sections 50(A) (2) and (3) below, the Board is to recommend to City Council the sewer connection fees associated with Building applications that do not fit into one of the designated categories as listed on the connection fee spreadsheet.

Section 50

- (2) When the applicant for sewer services does not fit into one of the foregoing categories, the connection fee shall be based on \$2,550.00 for each two hundred sixty gallons per average daily demand (gpd).
- (3) The sewer connection fee for sewer service to any industrial use, or commercial space exceeding thirty-five thousand square feet, shall be fixed and established by the City Council upon recommendation of the Board after considering and taking into account the location, size, extent, nature and requirements of such customer, and the estimated cost of furnishing such sewer service to the customer, and further considering the estimated usage, occupancy and plumbing fixtures to be installed.

The fees for the proposed Greenhouse Ministries were calculated and provided to them based on the different uses within the building. The 1st floor is intended for all office space, with the 2nd floor as 17 temporary one-bedroom housing units and one permanent apartment. At first, staff felt that the temporary housing units would be more like a hotel since each unit has one bedroom, a small kitchenet and did not have its own washer/dryer. However, during a recent meeting with Planning it was determined that the temporary housing units could have tenants stay up to 2 ½ years,

which is more similar to the length of stay of an apartment. The combined water and sewer connection fee for a hotel room is \$1,150 whereas the combined water and sewer connection fee for an apartment is \$3,750, which could have one bedroom or multiple bedrooms.

With this new information staff feels that it would be most fair to charge initial fees using the "hotel" charge since it had already been provided, however, determine the actual usage and connection fee charge from an average of 12 to 18 months of water usage once the new facility is open.

Staff has done this in the past with the Nissan Facility at Singer Road. We have also required facilities, where the difference in fees could be substantial, to sign an agreement and provide a LOC in the amount of the additional fees during this 12 to 18-month period. The additional fees are \$44,200 $((\$3750 - \$1150) * 17)$. If the usage comes back less than charged, then a portion of the initial fees would be returned.

Council Priorities Served

Responsible budgeting

Approving of the lower water and sewer connection fees initially will allow Greenhouse Ministries to connect at a more affordable cost, with time to budget the additional fees, if required, after averaging the water usage for 18 months.

Fiscal Impact

The water and sewer connection fees are deposited into the working capital reserves account. Evaluating the average water usage after 18 months could result in an additional fee deposit or perhaps a refund.

Attachments

Water and Sewer Connection Fees

WATER & SEWER TAP WORKSHEET

TAP # _____ DATE 9/3/2020 SO NUMBER _____
 NAME Greenhouse Ministrys
 ADDRESS 1 _____
 ADDRESS 2 315 S Academy
 COMMENTS _____
17 hotel suites and 1 manager apt.

G/L Account	Transaction Code	Water(H)	Size	Units	Charge	Amount
3104.252101	TPW2	SF RES Water Connection (2 of 2)	Size	-	300.00	-
3104.252101	TPWA	Water Service Line Stub	Size	-	325.00	-
3104.252101	TPWB	Complete 1" Tap & Meter	Size 5/8"	1.00	1,000.00	1,000.00
3104.252101	TPWC	Complete 2" Tap & Meter	Size 2"	1.00	3,750.00	3,750.00
WATER CONNECTION FEE (H)						
3104.252102	TPW1	SF RES Water (1 of 2)		-	1,200.00	-
3104.252102	TPWD	Retail Shop/Service Water Establishment		-	1,200.00	-
MULTI-FAMILY (H)						
3104.252102	TPWE	Apartments/Condos Water Connection		1.00	1,200.00	1,200.00
3104.252102	TPWF	Restaurant Water Connection (per seat)		-	65.00	-
3104.252102	TPWG	Hotel/Motel Water Connection (per room)		17.00	350.00	5,950.00
3104.252102	TPWH	Hospitals/Nursing Homes Water Connection (per bed)		-	540.00	-
3104.252102	TPWI	School Water Connection (per student)		-	16.00	-
3104.252102	TPWJ	Office Space Water Connection > 5K sq ft	SFU equal	3.40	1,200.00	4,080.00
3104.252102	TPWK	Commercial Space Water Connection > 35K sq ft	SFU equal	-	-	-
3104.252102	TPWL	Industrial Manufacturing Water Connection	SFU equal	-	1,200.00	-
3104.252103	TPWM	Water Outside City Charge		-	250.00	-
3104.252401	TPWN	Fire Hydrant Water Connection		-	-	-
3104.252401	TPWO	Main Line Water Tap 6" X 6"	Size	1.00	2,670.00	2,670.00
Other						
3104.252102	TPWQ	Water Irrigation Connection Fee Only	5/8"	1.00	300.00	300.00
3104.252102	TPWR	Laundry Water Connection Fee Only	SFU equal	-	1,200.00	-
3104.252102	TPWS	Car Wash Water Connection Fee Only	per bay	-	10,800.00	-
Repurified Water						
3104.252301	TPWT	Complete Taps	Size	-	-	-
3104.252301	TPWU	Repurified Water Service Line Stubs				-
3104.252301	TPWV	Repurified Meter Connection				-
TOTAL WATER						18,950.00

Note: This amount is only guaranteed for 30 days from date of worksheet or July 1, which ever comes first. Additional charges may apply.

TAP # _____ DATE _____ SO NUMBER _____
 NAME _____
 ADDRESS 1 _____
 ADDRESS 2 _____
 COMMENTS _____

G/L Account	Transaction Code	Sewer Connection Fees	Size	Units	Charge	Amount
3104.252201	TPS2	SF RES Sewer Connection (2 of 2) \$300				
3104.252202	TPS1	SF RES Sewer (1 of 2) \$2250		-	2,550.00	-
3104.252201	TPS6	Apartment/Condo Sewer Connection (2 of 2) \$300				
3104.252202	TPS5	Apartment/Condo Sewer (1 of 2) \$2250		1.00	2,550.00	2,550.00
3104.252201	TPS4	Retail Shop/Service Sewer Connection (2 of 2) \$300				
3104.252202	TPS3	Retail Shop/Service Est Sewer (1 of 2) \$2250		-	2,550.00	-
3104.252202	TPSA	Restaurant Sewer (15 sf per seat)		-	110.00	-
3104.252202	TPSC	Hotel/Motel Sewer Connection (per room)		17.00	800.00	13,600.00
3104.252202	TPSD	Hospital/Nursing Home Sewer Connection (per bed)		-	800.00	-
3104.252202	TPSE	School Sewer Connection (30 sf per student)		-	24.00	-
3104.252202	TPSF	Office Space Sewer Connection > 5K sq ft	SFU equal	3.40	2,550.00	8,670.00
3104.252202	TPSG	Commercial Space Sewer Connection > 35K sq ft	SFU equal	-	2,550.00	-
3104.252202	TPSH	Industrial Manufacturing Sewer Connection	SFU equal	-	2,550.00	-
3104.252202	TPSR	Laundry Sewer Connection Fee (only)	SFU equal	-	2,550.00	-
3104.252202	TPSS	Car Wash Sewer Connection Fee (only)	per bay	-	16,800.00	-
3104.252202	TPSM	Misc. Sewer Connection Fee Only	SFU equal	-	2,550.00	-
HOUSE SERVICE CHARGE (H)						
3104.252204	TPSI	Existing sewer service HSC		-	1,000.00	-
3104.252204	TPSJ	New Sewer Tap and Service by O&M	labor and mat.	-	-	-
3104.252226	TPOT	Outside City Sewer		-	450.00	-
3104.252226	TPOI	Outside City Plumbing Inspection		-	50.00	-
3104.252203	TPCO	Sewer Clean Out		1.00	100.00	100.00
ASSESSMENT DISTRICT FEES						
3104.252224	TPTR	Three Rivers	DUAL W/ S/B	-	900.00 ea	-
3104.252228	TPSV	South Church St		-	10,600.00 ea	-
3104.252214	TPOC	Overall Creek Sewer District (O/C)		-	1,000.00 ea	-
3104.252227	TPBD	Basin "D"	DUAL W/ S/B	-	925.00 ea	-
3104.252217	TPSB	Salem / Barfield Sewer District (S/B)		-	750.00 ea	-
3104.252218	TPSQ	US 41/Florence Rd Sewer District	DUAL W/ O/C	-	5,800.00 ac	-
3104.252220	TPOL	Osborne Lane Sewer District	VARIES	-		-
3104.252219	TPBE	Buchanan / Elam Road Sewer District		-	1,000.00 ea	-
3104.252222	TPST	Rockvale Sewer District	DUAL W/ O/C	-	1,550.00 ea	-
3104.252221	TPSU	Medical Center Pkwy Sewer District	DUAL W/ O/C	-	10,900.00 ac	-
3104.252223	TPPL	Pitts Lane Sewer District		-	2,350.00 ea	-
					TOTAL SEWER	24,920.00
					TOTAL WATER & SEWER CHARGES	43,870.00

Note: This amount is only guaranteed for 30 days from date of worksheet or July 1, which ever comes first. Additional charges may apply.

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Amending the Sign Ordinance
[Second Reading]

Department: Building and Codes

Presented by: Robert Holtz, Building and Codes Director

Requested Council Action:

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

Summary

Amendment to the Sign Ordinance.

Staff Recommendation

Amend the Sign Ordinance as requested.

The Planning Commission recommended approval of the Sign Ordinance amendment.

Background Information

The Building and Codes Department presented a request to amend Sections 25.2-2, 25.2-4, 25.2-23, 25.2-24, 25.2-25, and 25.2-26 of the Sign Ordinance [2020-802] for the purposes of: (1) adding a definition of "External Customer Transaction Portal" and allowing certain, limited electronic changeable signs at external locations such as ATMs, drive-thru lanes, and gasoline pumps; (2) decreasing the time a confiscated temporary sign can be claimed and increasing the fee of temporary signs picked up in the ROW; (3) prohibiting certain materials from use in signage; (4) reducing the maximum allowable size of temporary signs; and (5) allowing murals on more than two sides of a building. During its regular meeting on August 5, 2020, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On September 24, 2020 Council held a public hearing and approved this matter on First Reading.

Council Priorities Served

Improve economic development

Allowing newer sign technology to be used at drive-thru lanes will allow businesses more options.

Maintain public safety

Reducing temporary sign sizes will help reduce visual clutter and distractions.

Attachments:

Ordinance 20-O-28

ORDINANCE 20-O-28 amending Murfreesboro City Code, Chapter 25.2 Signs, Sections 25.2-2, 25.2-4, 25.2-23, 25.2-24, 25.2-25, and Section 25.2-26, for the purposes of: (1) adding a definition of “External Customer Transaction Portal” and allow certain, limited electronic changeable signs at external locations such as ATMs, drive-up windows and gasoline pumps, (2) allowing the immediate disposition of temporary signs picked up in the ROW, (3) prohibiting certain materials from use in signage, (4) reducing the maximum allowable size of temporary signs, and (5) allowing murals on more than two sides of a building.

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

SECTION 1. Section 25.2-2, Definitions; interpretation, of the Murfreesboro City Code is hereby amended at subsection (A) by adding the following definition in appropriate alphabetical order:

“External Customer Transaction Portal (ECTP)”: An exterior location where an activity or event that can be measured in terms of money and which affects the financial position or operations of the business entity. Examples include, but are not limited to: ATM machines, fuel dispensers, and DVD rental kiosks.

SECTION 2. Section 25.2-4, Violations; penalties, of the Murfreesboro City Code is hereby amended at subsection (B), *Signs Placed in Right of Way*, by deleting subsection (B)(1) and (B)(2) in their entirety and substituting in lieu thereof the following:

(B)(1) Signs five and one-half square feet and under - \$15.00 return fee. If the sign is not claimed within 5 business days, the City may consider it abandoned and destroy same.

(B)(2) Signs over five and one-half square feet - \$75.00 return fee. If the sign is not claimed within 5 business days, the City may consider it abandoned and destroy same.

SECTION 3. Section 25.2-23, Exemptions, of the Murfreesboro City Code is hereby amended at subsection (A)(6) by deleting the subsection in its entirety and substituting in lieu thereof the following:

(6) Murals placed on a side or rear wall or elevation. Murals placed on front elevation are prohibited. See Section 25.2-24.

SECTION 4. Section 25.2-24, Prohibited signs and other regulations, of the Murfreesboro City Code is hereby amended at subsections (A)(18) and (A)(23) by deleting the word ‘Reserved’ and substituting in lieu thereof the following:

- (18) Signs which are constructed from painted or unpainted tires; exposed razor or barbed wire; or wood, metal, or plastic pallets.
- (23) Murals placed on a front wall or elevation. For purposes of this subsection, the front wall or elevation of a building shall be the exterior wall or elevation that is substantially parallel to the public street or right of way reflected by the building's street address.

SECTION 5. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended at subsection (C)(12) by deleting subsections (C)(12)(b), (C)(12)(c), and (C)(12)(i) in their entirety and substituting in lieu thereof the following:

- (b) Size – sixteen (16) square feet maximum
- (c) Height – six (6) feet maximum
- (i) Other Limitations- On-site only. Multiple signs shall not be placed so as to appear to be one sign that exceeds sixteen (16) square feet.

SECTION 6. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended at subsection (D)(17) by deleting it in its entirety and substituting in lieu thereof the following:

- (17) Reserved.

SECTION 7. Section 25.2-25, Temporary Signs, of the Murfreesboro City Code is hereby amended by deleting subsection (F), Violations; penalties, in its entirety and marking as “Reserved.”

SECTION 8. Section 25.2-26, On-site permanent sign requirements, of the Murfreesboro City Code is hereby amended at subsection (C)(9), Allowable changeable signs, by adding the following subsection to the end thereof:

- (g) A ‘changeable sign-electronic graphic display’ or a ‘changeable sign-video display’ sign may be used at a point of sale or an automated External Customer Transaction Portal (ECTP), the location of which must be shown on a site plan and approved by the Planning Department, prior to the issuance of a sign permit pursuant to Chapter 25.2, subject to the following:

[1] At an External Customer Transaction Portal (ECTP)

- [aa] An External Customer Transaction Portal (ECTP) shall be allowed one ‘changeable sign-video display’ sign per station that is no greater than three (3) square feet.

[bb] The 'changeable sign-video display' sign can be no more than six (6) feet above the adjacent ground.

[cc] Signs must be equipped to automatically adjust to ambient light conditions.

[2] At Drive Thru Lanes and Point of Sale Sites

[aa] Drive Thru Lanes as shown on approved site plans shall be permitted the following signs at each drive lane.

- (i) One nine (9) square foot 'changeable sign- electronic graphic display' sign.
- (ii) One 'changeable sign- electronic graphic display' sign menu or reader board that is no more than twenty (20) square feet.
- (iii) One order station 'changeable sign- electronic graphic display' sign of no more than nine (9) square feet which can include no more than three (3) square feet of changeable sign-video display signage.
- (iv) Signs allowed by (i), (ii), and (iii) of this subsection (g)[2][aa];
 - a. Must be placed between the beginning of each drive lane (stacking lane) and the 1st pick up window.
 - b. Must be equipped to automatically adjust to ambient light conditions.
 - c. Shall have a maximum six (6) feet in overall height.

SECTION 9. That Section 5 of this Ordinance shall become effective [PLACEHOLDER: six months from the date of passage]. The remainder of this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

Shane McFarland, Mayor

1st reading _____

2nd reading _____

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

DocuSigned by:
Adam F. Tucker

Adam F. Tucker
City Attorney

SEAL

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Zoning for property located along Northwest Broad Street
[Second Reading]

Department: Planning

Presented By: Matthew Blomeley, AICP, Assistant Planning Director

Requested Council Action:

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

Summary

Zoning of approximately 78 acres located along Northwest Broad Street.

Staff Recommendation

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the zoning request.

Background Information

D.R. Horton, Inc. presented to the City a zoning application [2019-424] for approximately 78 acres located along Northwest Broad Street to be zoned PUD (Planned Unit District). During its regular meeting on November 6, 2019, the Planning Commission conducted a public hearing on this matter and then voted to defer action. At its regular meeting on January 14, 2020, the Planning Commission considered the zoning request under "Old Business" and then voted to recommend its approval.

The City Council conducted a public hearing on this matter on April 30, 2020, as well as a public hearing regarding the companion annexation and plan of services. At that meeting, Council voted to approve the annexation and plan of services but voted to defer action on the PUD zoning request. On September 24, 2020 Council approved this matter on First Reading.

Council Priorities Served

Improve Economic Development

This rezoning will enable the development of several proposed commercial outparcels, generating sales tax revenues for the City.

Attachments:

Ordinance 20-OZ-01

ORDINANCE 20-OZ-01 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 65 acres along Northwest Broad Street as Planned Unit Development (PUD) District simultaneous with annexation and to rezone approximately 13 acres along Northwest Broad Street from Single-Family Residential Fifteen (RS-15) District and Light Industrial (L-I) District to Planned Unit Development (PUD) District (River Landing PUD), D.R. Horton, Inc., applicant [2019-424].

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

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

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map be zoned and approved as Planned Unit Development (PUD) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and the conditions and stipulations referenced in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

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

Passed:

Shane McFarland, Mayor

1st reading _____

2nd reading _____

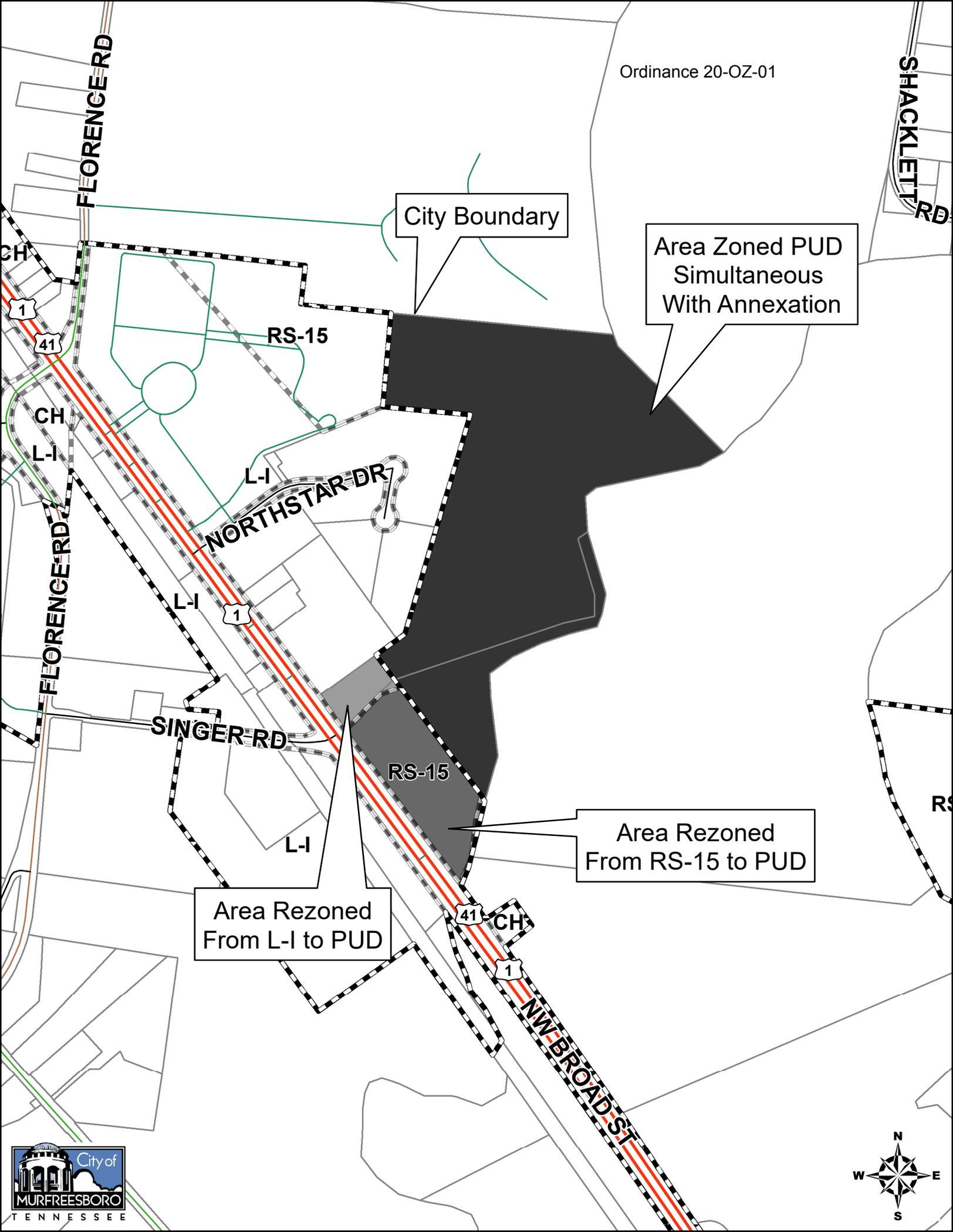
ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

Adam F. Tucker
City Attorney

SEAL



City Boundary

Area Zoned PUD
Simultaneous
With Annexation

Area Rezoned
From L-I to PUD

Area Rezoned
From RS-15 to PUD



CITY COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Approve Design Build Contract with Morgan Construction for Replacement of Hangar 1

Department: Airport

Presented by: Chad Gehrke, Airport Manager

Requested Council Action:

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

Summary

Construction contract with Morgan Construction for replacement of Hangar 1.

Staff Recommendation

Approve Agreement Contract with Morgan Construction to build the replacement of Hangar 1.

Background Information

The City has been awarded a \$2m Economic Development Grant to demolish the Quonset hut style hangar currently at the Airport and build a 19,000 square foot modern facility with a four-bay hangar, office area, and shop and storage area. The construction of a new major hangar at the Airport not only modernizing the Airport's facility but serves the creation of jobs. The prime tenant of the new hangar will be Mike Jones Aircraft Sales (MJAS).

MJAS is known worldwide for the conversions on the Piper Navajo aircraft and employees 16 mechanics, avionics technicians, and office administrators. The new hangar will allow MJAS to expand their expertise and notoriety with conversions on other makes and models of aircraft and adding approximately 15 new jobs. A lease for the new hangar with MJAS will be coming to Council in the coming weeks.

The new hangar will be constructed through the Murfreesboro Public Building Authority (PBA). The PBA is permitted under state statute to use a design-build project delivery method, which is the process used to construct the terminal and is well suited for the hangar project. The PBA received proposals from eight teams. Two teams were qualified for a competitive selection process based on proposed designs, budgets, and schedules.

Morgan Construction was selected by the PBA and negotiations resulted in the proposed construction contract in amount is \$4.2m. Construction is scheduled to begin in early November and the expected completion date is the Summer of 2021.

The balance of the cost of the project will be funded through hangar rent collected at the Airport.

Council Priorities Served

Responsible budgeting

Securing TDOT grants for development of the Airport's infrastructure allows the City to leverage its matching funds in a cost-effective manner. Use of the design-build construction delivery method project is an effective way to secure a cost-efficient project budget and beneficial delivery schedule for certain types of projects.

Improve economic development

The new hanger project will expand the Airport infrastructure with the construction of a new modern and versatile hangar facility allowing for one or more tenants and providing for the creation of highly skilled jobs within the City.

Operational Issues

Safety planning has been incorporated into the construction plans. Barriers, fencing, and other measures will be used to mitigate impact to Airport operations and protect aircraft located near the construction site.

Fiscal Impact

The \$4.2m construction costs be funded through a \$2m Tennessee Airport Economic Development Grant. The remaining amount will be fund through the CIP, which will be supported by the rent collected from the hangar.

Attachments

Construction Contract with Morgan Construction

Conceptual Drawings of Hangar 1

AIA[®] Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the ____ day of _____ in the year 2020
(In words, indicate day, month and year.)

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

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

and the Design-Builder:
(Name, legal status, address and other information)

Morgan Construction Company, Inc. a Tennessee corporation
P.O. Box 4404
690 Manufacturers Road
Chattanooga, TN 37405-4404

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

Murfreesboro Airport Hangar # 1 Replacement
1930 Memorial Blvd.
Murfreesboro, TN 37130

The Owner and Design-Builder 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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

§ 1.1.7 The Owner's design and construction milestone dates:

- .1 Design phase milestone dates:

- .2 Submission of Design-Builder Proposal:

- .3 Phased completion dates:

- .4 Substantial Completion date:

- .5 Other milestone dates:

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

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(List name, legal status, address and other information.)

.1 Architect

Allen & Hoshall
Glen R. Heath, P.E. – Sr. Vice President
5811 Lee Highway
Suite 401
Chattanooga, TN 37421

.2 Consultants

.3 Contractors

Morgan Construction Company, Inc.
Walter L. Ford, Jr. – President
690 Manufacturers Road
Chattanooga, TN 37405

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

Greg McKnight, Project Development Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
gregmcknight@murfreesborotn.gov
(629) 219-6369

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

Gary Whitaker, Assistant City Manager, gwhitaker@murfreesborotn.gov, (616) 849-2629

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- [X] Arbitration pursuant to Section 14.4
- [] Litigation in a court of competent jurisdiction
- [] Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. In the event of any conflict, inconsistency or other discrepancy between any of the Design-Build Documents, the Design-Build Documents shall be given priority in the following order: (1) executed Change Orders and Amendments with those executed most recently given priority; (2) the Scope of Work; (3) the Drawings and the Specifications, and (4) the Agreement

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **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-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 **Knowledge.** The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall be interpreted to mean that which the Design-Builder knows, recognizes, and discovers. Analogously, the expression "reasonably inferable" and similar terms in the Design-Build Documents shall be interpreted to mean reasonably inferable by a design-builder familiar with the Project and exercising ordinary and reasonable care and skill.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
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§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, 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;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder’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 Design-Builder.

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

%

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder’s performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

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§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

(Paragraphs deleted)

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, within thirty (30) days after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Following development and submittal of the construction schedule, the Design-Builder shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner.

§ 3.1.9.3 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each major phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Agreement.

§ 3.1.9.4 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Design-Build Documents due to the fault of the Design-Builder, the Owner shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction.

§ 3.1.9.5 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Design-Builder shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.1.9.5 may be grounds for an extension of the Contract Time and a Change Order for any costs incurred by Design-Builder as a result of the postponement, rescheduling, or performance of the Work, if permitted under Section 8.2, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Design-Builder in compliance with the requirements of the Design-Build Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner. Owner shall not unreasonably deny a request made by Design-Builder in accordance with this section for an extension of Contract Time and/or a Change Order.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

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§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner ten (10) business days for Owner to review submittals from time of receipt to review Submittals, and (3) be periodically updated to reflect the progress of the Work.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty.

§ 3.1.12.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or materials or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.2 For a period of one year from the date of the issuance of the certificate of occupancy, final or conditional, the Design-Builder shall furnish and install, without cost to the Owner, any and all kinds of work which proves defective in materials and or workmanship.

§ 3.1.12.3 The Design-Builder agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work to the extent reasonably possible in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Design-Builder may retain the right or the Owner may require Design-Builder to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

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§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees (collectively "Indemnitees"), 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Notwithstanding the above, Design-Builder shall not be liable for any claims, damages, losses and expenses to the extent caused by Owner's, or any of Owner's employees' or agents' actions or omissions. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 The Design-Builder's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Design-Builder, a Contractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Design-Builder, a Contractor, or any person or entity for whom either is responsible except for any permit or approval from the Federal Aviation Administration. The Owner shall be responsible to obtain any and all approvals or permits required from the Federal Aviation Administration

§ 3.1.14.4 The Design-Builder shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Design-Builder's defense, indemnity, and hold-harmless obligations under this Contract.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

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§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;

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- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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 the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

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§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder 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.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may

direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Design-Builder. The Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 5.9.2 Owner will permit Design Builder to erect a sign identifying the Design-Builder's business on the Project site at a location approved by Owner readily visible to construction and public traffic.

§ 5.9.3 Without prior approval of the Owner, the Design-Builder shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, and toilets other than those designated by the Owner.

1 The Design-Builder shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building to the extent that said requirements are provided to Design-Builder in writing prior to commencement of construction.

2 With the exception of members of the Project Team identified in Section 1.2, the Owner will not allow Owner's employees, contractors, agents, or invitees within the work area of the Project without first obtaining approval of the Design-Builder. This paragraph shall in no way, however, limit the ability and authority of members of the City of Murfreesboro's Police Department, Fire Rescue Department, and Building and Codes Departments from accessing the work area in connection with their official government duties.

3 If Owner takes partial occupancy of the building prior to completion: (i) Owner shall change all public utilities accounts, including, but not limited to water, gas, and electric, to Owner and Owner shall be responsible for payment of the same; (ii) Owner shall be responsible to maintain workers compensation insurance for all of the City's employees on the site; (iii) maintain liability insurance coverage meeting the minimum requirements set forth in the Tennessee Governmental Tort Liability Act; (iv) assume financial responsibility for any damage to the work of Design-Builder to the extent caused by the City or its employees or agents, (v) maintain property insurance for the portion of the building to be occupied; and (v) be responsible to clean the portion of the project for which Owner has taken partial occupancy.

4 Owner is responsible for the securing and relocation of the AWOS or WAAS equipment, and Design-Builder shall have no obligation to secure or relocate the same.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Design-Builder's Work, shall be patched, repaired, or replaced by the Design-Builder to the satisfaction of the Owner, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event Design-Builder fails to perform necessary repairing and patching, the Design-Builder shall abide by pay for such work to be performed by Owner's own forces or a separate contractor.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Owner may need access to or use of certain areas of the site or Work prior to the Design-Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Design-Builder shall not enter any Owner-occupied and accepted area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Design-Builder shall afford the Owner's own forces, and the Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Design-Build Documents.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.13.1.5 The Design-Builder accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Design-Build Documents. Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements except for items for which Allowances are established. All warranty and correction of the Work obligations under the Design-Build Documents shall also apply to any pre-purchased items, unless the Design-Build Documents specifically provide otherwise.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. Except as permitted in Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Design-Build Documents or a change in any time period provided for in the Design-Build Documents.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

All Change Orders must be on the AIA G701 – 1987 form. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

(Paragraphs deleted)

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's

lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

(Paragraph deleted)

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review, but no longer than ten (10) business days. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a thirty-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 Extent of Owner Rights.

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The rights stated in this Article 2 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Design-Build Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Design-Build Documents.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

(Paragraph deleted)

§ 9.2.1 Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.2.2 The Design-Builder and each Contractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work, (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 The Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work on the 25th of each month for all work completed up to and including the 25th. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Design-Builder's lien waiver and duly executed and acknowledged sworn statement showing all Contractors and material suppliers with whom the Design-Builder has entered into subcontracts, the amount of each such subcontract, the amount requested for any Contractor and material supplier in the requested progress payment, and the amount to be paid to the Design-Builder from such progress payment, together with similar sworn statements from all such Contractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Contractors and, when appropriate, from material establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The Design-Builder shall also comply with the following specific requirements:

.1 Except for steel, the aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.

.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner.

.3 With each Application for Payment, the Design-Builder shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Design-Builder shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the

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Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

.1 The Design-Builder further expressly undertakes to defend the Indemnitees (previously defined in Section 3.1.14.1), at the Design-Builder's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Design-Builder, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Design-Builder hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Design-Builder obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than One Hundred Ten percent (110%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Design-Builder shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Design-Builder and shall not be part of, or cause any adjustment to, the Contract Sum.

.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Design-Builder or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1. If, subsequent to issuing any certificate pursuant to this Section 9.4, the Owner should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then the Owner shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Design-Builder as well as the reason for such revision.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner 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 to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, 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; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment to the extent

Init.

necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Design-Builder or any Contractor; or (z) 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 (ii) 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 Design-Builder, or (iii) if the Design-Builder or any Contractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Design-Builder 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 judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's 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 Design-Builder so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Design-Builder shall be liable for the difference and pay the same to the Owner.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment by the 10th of the month following the month the application for payment is submitted as outlined in Article 9.3.1. If the Owner fails to make any such payment in full when due, the Design-Builder shall be entitled to a late fee of 1.5% of the outstanding balance on the Certificate for Payment. Such late fee shall be imposed on the day after payment is due and in addition to the original contract sum.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

Init.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 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 Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

§ 9.7.1 If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Design-Builder fails to timely make any payment due the Owner, in no event more than twenty (20) business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (ii) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the earlier of: (a) the first business day after the Owner has received a conditional certificate of occupancy issued by the City of Murfreesboro's Chief Building Official; or (b) the date the Owner takes partial occupancy of the Work as provided in Section 9.9.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

Init.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build 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.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.7 Acceptance of final payment by Design-Builder shall constitute a waiver of any claim by Design-Builder arising under this Agreement other than those claims previously communicated in writing by Design-Builder to Owner as unsettled before or at the time the Design-Builder makes application for payment for Substantial Completion and claims for any retainage due to Design-Builder at final acceptance.

§ 9.8.8 The Design-Builder shall be responsible for collecting, identifying, indexing and collating the following materials from the Contractors, and will deliver the finished document to the Owner to verify completeness.

§ 9.8.8.1 Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.9 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Design-Builder and/or Contractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than ten (10) hours of instructions to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

.1 All warranties and guarantees required under or pursuant to the Design-Build Documents shall be assembled and delivered by the Design-Builder to the Owner as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Owner until all warranties and guarantees have been received by the Owner. The Design-Builder's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion AIA G704 – Certificate of Substantial Completion. Any items required by the Design-Build Documents not previously submitted shall accompany the final Application for Payment.

.2 The Owner will make only one inspection at no cost to Design-Builder to determine Final Completion. If this inspection determines that the work is not finally complete, Design-Builder shall bear the actual cost (hourly inspection fees plus expense) of any successive inspections requested by the Design-Builder, provided, however, that such costs shall not exceed \$500 per inspector per day.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Design-Builder on AIA Document G706 or a form approved by the Owner and Design-Builder. Contractors and materials suppliers' lien releases may be provided by the Design-Builder.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 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 Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents; or
- .4 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner or its agents, employees or representatives because of acts or omissions on the part of the Design-Builder, any Contractor, or any of their employees, agents or representatives.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 The Design-Builder shall require all of its employees and the employees of Contractors 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. The Design-Builder shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Design-Builder shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Design-Builder hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.3 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Design-Builder shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat. At the end of each day's work, cover new work likely to be damaged. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect.
- .3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.
- .4 Protect, maintain and restore any benchmarks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and 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 Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder 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 or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Design-Builder.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel. In the event the use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Design-Builder shall give the Owner reasonable advance notice.

Init.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, other than a force majeure, the Design-Builder shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause. If suspension was caused by Owner, the Owner shall reimburse the Design-Builder for the reasonable cost of protecting the Work.

§ 10.2.10 The Design-Builder shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, 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 Design-Builder, any Contractor,

any material supplier, or any entity for whom any of them is responsible. The Design-Builder 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.

§ 10.3.3 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 Design-Builder, the Architect, Consultants, and Contractors, 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 the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, 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), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Owner reserves all rights, privileges, and immunities under the Tennessee Governmental Tort Liability Act and other applicable laws, and nothing herein shall be construed as a waiver of Owner's sovereign immunity in whole or in part.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder 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 Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. If prior to the date of Substantial Completion, the Design-Builder, a Contractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Design-Builder shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Design-Builder, a Contractor, a subcontractor, or anyone directly or indirectly employed by any of them,

or anyone for whose acts they may be liable and for which the Design-Builder is responsible. Notwithstanding the above, the Design-Builder shall not be responsible for any damages to the extent caused by any acts or omissions of Owner, or Owner's employees, agents or contractors.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. For purposes of the preceding sentence, Design-Builder shall correct such Work promptly if Design-Builder commences such correction within ten days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 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.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, 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 Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder 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.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the 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, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its 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. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor 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 alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, 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 alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

§ 13.1.4 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.

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

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, 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.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 13.2.4.3 Upon such termination, the Design-Builder shall recover as its sole remedy payment for: (i) Work properly performed prior to the effective date of termination, inclusive of any profit and overhead, in accordance with the Schedule of Values; and (ii) for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Design-Builder hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead associated with Work not completed prior to termination. The Owner shall be credited for (i) payments previously made to the Design-Builder for the terminated portion of the Work, (ii) claims that the Owner has against the Design-Builder under the Contract, and (iii) the reasonable resale value of the materials, supplies, equipment, or other items that may be resold by the Design-Builder that are part of the Contract Sum.

.1 Any such payment to Design-Builder pursuant to this Section 14.4.3 constitutes the exclusive remedy Design-Builder may have against Owner for its work on the Project once Owner has terminated Design-Builder for

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convenience, and is in place of any other claim or recovery Design-Builder may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time 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 Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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. ; provided, however, that the claimant shall use its best efforts to furnish the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were above the NOAA (10) year average for the last ten (10) previous years for the location of the project for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. 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

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- 2 damages incurred by the Design-Builder 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 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents. In no event shall this mutual waiver be deemed to preclude (i) an adjustment to the Contract Sum; or (ii) the obligation to reimbursement the Owner for any fines from governmental entities or additional costs and expenses for consultants or separate contractors arising out of any act or omission of the Design-Builder.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 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 the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 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 Agreement. 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. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, 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 its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 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 would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose 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.

§ 14.4.2 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.

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

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 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).

§ 14.4.4.2 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.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

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§ 14.4.4.4 Notwithstanding anything to the contrary in this Section 14.4.4, neither the Owner nor Design-Builder may be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Design-Builder.

§ 14.4.4 Exceptions

§ 14.4.4.1 The Owner or Design-Builder may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.

§14.4.4.2 Article 14 does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

§14.4.4.2 Either party may immediately bring a proceeding seeking preliminary and temporary injunctive relief in a court having jurisdiction thereof which shall remain in effect until a final determination is made in the arbitration, which may include an award of money damages, permanent injunctive relief, or any other form of equitable relief.,

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Design-Builder, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Design-Builder shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build 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.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense. The Design-Builder also agrees the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Design-Builder.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential 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 Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 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.

§ 15.10 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.

§ 15.11 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.

§ 15.10 Notices Regarding Liens

§ 15.10.1 Design-Builder shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law.

Design-Builder shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 15.10.2 Design-Builder shall provide Owner with copies of all notices received by Design-Builder from Contractors, subcontractors, and/or suppliers to Design-Builder.

§ 15.13 Utility Service

The Design-Builder shall provide and maintain at his own expense any water, electric, or other utility service used in the construction of the work.

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

- .6 Other:

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

CITY OF MURFREESBORO, TENNESSEE

[INSERT DESIGN-BUILDER NAME]

OWNER *(Signature)*

DESIGN-BUILDER *(Signature)*

Shane McFarland, Mayor
(Printed name and title)

(Printed name and title)

Approved as to form:

Adam F. Tucker, City Attorney

Init.

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PAGE 1

AGREEMENT made as of the _____ day of _____ in the year 2020

...

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

...

Morgan Construction Company, Inc. a Tennessee corporation
P.O. Box 4404
690 Manufacturers Road
Chattanooga, TN 37405-4404

...

Murfreesboro Airport Hangar # 1 Replacement
1930 Memorial Blvd.
Murfreesboro, TN 37130

PAGE 4

Allen & Hoshall
Glen R. Heath, P.E. – Sr. Vice President
5811 Lee Highway
Suite 401
Chattanooga, TN 37421

...

Morgan Construction Company, Inc.
Walter L. Ford, Jr. – President
690 Manufacturers Road
Chattanooga, TN 37405

...

Greg McKnight, Project Development Manager
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
gregmcknight@murfreesborotn.gov

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(1182155061)

(629) 219-6369

...

Gary Whitaker, Assistant City Manager, gwhitaker@murfreesborotn.gov, (616) 849-2629

PAGE 5

[] Arbitration pursuant to Section 14.4

...

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. In the event of any conflict, inconsistency or other discrepancy between any of the Design-Build Documents, the Design-Build Documents shall be given priority in the following order: (1) executed Change Orders and Amendments with those executed most recently given priority; (2) the Scope of Work; (3) the Drawings and the Specifications, and (4) the Agreement

PAGE 6

§ 1.4.16 Knowledge. The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall be interpreted to mean that which the Design-Builder knows, recognizes, and discovers. Analogously, the expression "reasonably inferable" and similar terms in the Design-Build Documents shall be interpreted to mean reasonably inferable by a design-builder familiar with the Project and exercising ordinary and reasonable care and skill.

PAGE 7

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, ~~plus an administrative fee of _____ percent (____%) of the expenses-incurred.~~

...

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder'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 Design-Builder.

PAGE 9

- ~~1~~ Design Builder's work force report;
- ~~2~~ Equipment utilization report; and
- ~~3~~ Cost summary, comparing actual costs to updated cost estimates.

...

§ 3.1.9.1 The Design-Builder, ~~promptly~~ within thirty (30) days after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Following development and submittal of the construction schedule, the Design-Builder shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have

affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner.

§ 3.1.9.3 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each major phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Agreement.

§ 3.1.9.4 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Design-Build Documents due to the fault of the Design-Builder, the Owner shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction.

§ 3.1.9.5 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Design-Builder shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.1.9.5 may be grounds for an extension of the Contract Time and a Change Order for any costs incurred by Design-Builder as a result of the postponement, rescheduling, or performance of the Work, if permitted under Section 8.2, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Design-Builder in compliance with the requirements of the Design-Build Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner. Owner shall not unreasonably deny a request made by Design-Builder in accordance with this section for an extension of Contract Time and/or a Change Order.

PAGE 10

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner ~~reasonable time~~ ten (10) business days for Owner to review submittals from time of receipt to review Submittals, and (3) be periodically updated to reflect the progress of the Work. ~~If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.~~

...

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or materials or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered

defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.2 For a period of one year from the date of the issuance of the certificate of occupancy, final or conditional, the Design-Builder shall furnish and install, without cost to the Owner, any and all kinds of work which proves defective in materials and or workmanship.

§ 3.1.12.3 The Design-Builder agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work to the extent reasonably possible in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Design-Builder may retain the right or the Owner may require Design-Builder to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.
PAGE 11

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and ~~employees,~~ employees (collectively "Indemnitees"), 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Notwithstanding the above, Design-Builder shall not be liable for any claims, damages, losses and expenses to the extent caused by Owner's, or any of Owner's employees' or agents' actions or omissions. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

...

§ 3.1.14.3 The Design-Builder's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Design-Builder, a Contractors, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Design-Builder, a Contractors, or any person or entity for whom either is responsible except for any permit or approval from the Federal Aviation Administration. The Owner shall be responsible to obtain any and all approvals or permits required from the Federal Aviation Administration

§ 3.1.14.4 The Design-Builder shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Design-Builder's defense, indemnity, and hold-harmless obligations under this Contract.

PAGE 16

§ 5.9.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Design-Builder. The Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 5.9.2 Owner will permit Design Builder to erect a sign identifying the Design-Builder's business on the Project site at a location approved by Owner readily visible to construction and public traffic.

§ 5.9.3 Without prior approval of the Owner, the Design-Builder shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, and toilets other than those designated by the Owner.

1 The Design-Builder shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building to the extent that said requirements are provided to Design-Builder in writing prior to commencement of construction.

2 With the exception of members of the Project Team identified in Section 1.2, the Owner will not allow Owner's employees, contractors, agents, or invitees within the work area of the Project without first obtaining approval of the Design-Builder. This paragraph shall in no way, however, limit the ability and authority of members of the City of Murfreesboro's Police Department, Fire Rescue Department, and Building and Codes Departments from accessing the work area in connection with their official government duties.

3 If Owner takes partial occupancy of the building prior to completion: (i) Owner shall change all public utilities accounts, including, but not limited to water, gas, and electric, to Owner and Owner shall be responsible for payment of the same; (ii) Owner shall be responsible to maintain workers compensation insurance for all of the City's employees on the site; (iii) maintain liability insurance coverage meeting the minimum requirements set forth in the Tennessee Governmental Tort Liability Act; (iv) assume financial responsibility for any damage to the work of Design-Builder to the extent caused by the City or its employees or agents, (v) maintain property insurance for the portion of the building to be occupied; and (v) be responsible to clean the portion of the project for which Owner has taken partial occupancy.

4 Owner is responsible for the securing and relocation of the AWOS or WAAS equipment, and Design-Builder shall have no obligation to secure or relocate the same.

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Design-Builder's Work, shall be patched, repaired, or replaced by the Design-Builder to the satisfaction of the Owner, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event Design-Builder fails to perform necessary repairing and patching, the Design-Builder shall abide by pay for such work to be performed by Owner's own forces or a separate contractor.

PAGE 17

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site. The Owner may need access to or use of certain areas of the site or Work prior to the Design-Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Design-Builder shall not enter any Owner-occupied and accepted area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Design-Builder shall afford the Owner's own forces, and the Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Design-Build Documents.

...

§ 5.13.1.5 The Design-Builder accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Design-Build Documents. Contract Sum

includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements except for items for which Allowances are established. All warranty and correction of the Work obligations under the Design-Build Documents shall also apply to any pre-purchased items, unless the Design-Build Documents specifically provide otherwise.

PAGE 18

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. Except as permitted in Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Design-Build Documents or a change in any time period provided for in the Design-Build Documents.

...

All Change Orders must be on the AIA G701 – 1987 form. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 6.3 Change Directives

~~§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.~~

~~§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.~~

~~§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:~~

- ~~.1 — Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~
- ~~.2 — Unit prices stated in the Design-Build Documents or subsequently agreed upon;~~
- ~~.3 — Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~
- ~~.4 — As provided in Section 6.3.7.~~

~~§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.~~

~~§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.~~

~~§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the~~

Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

~~§ 6.3.7~~ If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- ~~1~~— Additional costs of professional services;
- ~~2~~— Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- ~~3~~— Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- ~~4~~— Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- ~~5~~— Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- ~~6~~— Additional costs of supervision and field office personnel directly attributable to the change.

~~§ 6.3.8~~ The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

~~§ 6.3.9~~ Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

~~§ 6.3.10~~ When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

PAGE 19

~~§ 7.2.10~~ The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. review, but no longer than ten (10) business days. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means,

methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

PAGE 20

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ~~ten-day~~thirty-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order ~~shall~~may be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 Extent of Owner Rights.

The rights stated in this Article 2 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Design-Build Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Design-Build Documents.

PAGE 21

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable ~~time as the Owner may determine.~~time.

...

~~Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.~~

§ 9.2.1 Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.2.2 The Design-Builder and each Contractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work, (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3.1 ~~At least ten days before the date established for each progress payment, the~~ The Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work on the 25th of each month for all work completed up to and including the 25th. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of

requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

PAGE 22

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Design-Builder's lien waiver and duly executed and acknowledged sworn statement showing all Contractors and material suppliers with whom the Design-Builder has entered into subcontracts, the amount of each such subcontract, the amount requested for any Contractor and material supplier in the requested progress payment, and the amount to be paid to the Design-Builder from such progress payment, together with similar sworn statements from all such Contractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Contractors and, when appropriate, from material establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The Design-Builder shall also comply with the following specific requirements:

.1 Except for steel, the aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.

.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner.

.3 With each Application for Payment, the Design-Builder shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Design-Builder shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.

PAGE 23

.1 The Design-Builder further expressly undertakes to defend the Indemnitees (previously defined in Section 3.1.14.1), at the Design-Builder's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Design-Builder, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Design-Builder hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Design-Builder obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than One Hundred Ten percent (110%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Design-Builder shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Design-Builder and shall not be part of, or cause any adjustment to, the Contract Sum.

.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing

the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Design-Builder or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

...

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1. If, subsequent to issuing any certificate pursuant to this Section 9.4, the Owner should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then the Owner shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Design-Builder as well as the reason for such revision.

...

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

PAGE 24

§ 9.5.4 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Design-Builder or any Contractor; or (z) 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 (ii) 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 Design-Builder, or (iii) if the Design-Builder or any Contractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Design-Builder 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 judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's 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 Design-Builder so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Design-Builder shall be liable for the difference and pay the same to the Owner.

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents by the 10th of the month following the month the application for payment is submitted as outlined in Article 9.3.1. If the Owner fails to make any such payment in full when due, the Design-Builder shall be entitled to a late fee of 1.5% of the outstanding balance on the Certificate for Payment. Such late fee shall be imposed on the day after payment is due and in addition to the original contract sum.

PAGE 25

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents. § 9.7.1 If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately

and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Design-Builder fails to timely make any payment due the Owner, in no event more than twenty (20) business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (ii) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the ~~date certified by the Owner in accordance with this Section 9.8~~ earlier of: (a) the first business day after the Owner has received a conditional certificate of occupancy issued by the City of Murfreesboro's Chief Building Official; or (b) the date the Owner takes partial occupancy of the Work as provided in Section 9.9.

PAGE 26

§ 9.8.7 Acceptance of final payment by Design-Builder shall constitute a waiver of any claim by Design-Builder arising under this Agreement other than those claims previously communicated in writing by Design-Builder to Owner as unsettled before or at the time the Design-Builder makes application for payment for Substantial Completion and claims for any retainage due to Design-Builder at final acceptance.

§ 9.8.8 The Design-Builder shall be responsible for collecting, identifying, indexing and collating the following materials from the Contractors, and will deliver the finished document to the Owner to verify completeness.

§ 9.8.8.1 Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.9 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Design-Builder and/or Contractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than ten (10) hours of instructions to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

PAGE 27

.1 All warranties and guarantees required under or pursuant to the Design-Build Documents shall be assembled and delivered by the Design-Builder to the Owner as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Owner until all warranties and guarantees have been received by the Owner. The Design-Builder's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion AIA G704 – Certificate of Substantial Completion. Any items required by the Design-Build Documents not previously submitted shall accompany the final Application for Payment.

.2 The Owner will make only one inspection at no cost to Design-Builder to determine Final Completion. If this inspection determines that the work is not finally complete, Design-Builder shall bear the actual cost (hourly inspection fees plus expense) of any successive inspections requested by the Design-Builder, provided, however, that such costs shall not exceed \$500 per inspector per day.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Design-Builder on AIA Document G706 or a form approved by the Owner and Design-Builder. Contractors and materials suppliers' lien releases may be provided by the Design-Builder.

...

- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents; or
- .4 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner or its agents, employees or representatives because of acts or omissions on the part of the Design-Builder, any Contractor, or any of their employees, agents or representatives.

PAGE 28

~~The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.~~ § 10.1.1 The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 The Design-Builder shall require all of its employees and the employees of Contractors 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. The Design-Builder shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Design-Builder shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Design-Builder hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.3 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Design-Builder shall:

- .1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.
- .2 Provide protection for the work against wind, storms, cold or heat. At the end of each day's work, cover new work likely to be damaged. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect.

.3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.

.4 Protect, maintain and restore any benchmarks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

...

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Design-Builder.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel. In the event the use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Design-Builder shall give the Owner reasonable advance notice.

PAGE 29

§ 10.2.9 When all or a portion of the Work is suspended for any reason, other than a force majeure, the Design-Builder shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause. If suspension was caused by Owner, the Owner shall reimburse the Design-Builder for the reasonable cost of protecting the Work.

§ 10.2.10 The Design-Builder shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

...

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, 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 Design-Builder, any Contractor, any material supplier, or any entity for whom any of them is responsible. The Design-Builder 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.

§ 10.3.3 ~~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 Design-Builder, the Architect, Consultants, and Contractors, 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 the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, 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), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Owner reserves all rights, privileges, and immunities under the Tennessee Governmental Tort Liability Act and other applicable laws, and nothing herein shall be construed as a waiver of Owner's sovereign immunity in whole or in part.

PAGE 30

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. If prior to the date of Substantial Completion, the Design-Builder, a Contractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Design-Builder shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Design-Builder, a Contractor, a subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Design-Builder is responsible. Notwithstanding the above, the Design-Builder shall not be responsible for any damages to the extent caused by any acts or omissions of Owner, or Owner's employees, agents or contractors.

PAGE 31

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. For purposes of the preceding sentence, Design-Builder shall correct such Work promptly if Design-Builder commences such correction within ten days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. ~~Design-Builder.~~ If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

...

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this ~~Section 11.2.~~Section 11.2

PAGE 34

§ 13.2.4.3 Upon such termination, the Design-Builder shall recover as its sole remedy payment for: (i) Work properly performed prior to the effective date of termination, inclusive of any profit and overhead, in accordance with the Schedule of Values; and (ii) for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Design-Builder hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead associated with Work not completed prior to termination. The Owner shall be credited for (i) payments previously made to the Design-Builder for the terminated portion of the Work, (ii) claims that the Owner has against the Design-Builder under the Contract, and (iii) the reasonable resale value of the materials, supplies, equipment, or other items that may be resold by the Design-Builder that are part of the Contract Sum.

.1 Any such payment to Design-Builder pursuant to this Section 14.4.3 constitutes the exclusive remedy Design-Builder may have against Owner for its work on the Project once Owner has terminated Design-Builder for

convenience, and is in place of any other claim or recovery Design-Builder may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

PAGE 35

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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. ; provided, however, that the claimant shall use its best efforts to furnish the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim.

...

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were ~~abnormal~~ above the NOAA (10) year average for the last ten (10) previous years for the location of the project for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

PAGE 36

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents. In no event shall this mutual waiver be deemed to preclude (i) an adjustment to the Contract Sum; or (ii) the obligation to reimburse the Owner for any fines from governmental entities or additional costs and expenses for consultants or separate contractors arising out of any act or omission of the Design-Builder.

PAGE 38

§ 14.4.4.4 Notwithstanding anything to the contrary in this Section 14.4.4, neither the Owner nor Design-Builder may be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Design-Builder.

§ 14.4.4 Exceptions

§ 14.4.4.1 The Owner or Design-Builder may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.

§14.4.4.2 Article 14 does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

§14.4.4.2 Either party may immediately bring a proceeding seeking preliminary and temporary injunctive relief in a court having jurisdiction thereof which shall remain in effect until a final determination is made in the arbitration, which may include an award of money damages, permanent injunctive relief, or any other form of equitable relief.,

...

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Design-Builder, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment

shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Design-Builder shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

PAGE 39

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense. The Design-Builder also agrees the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Design-Builder.

PAGE 40

§ 15.9 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.

§ 15.10 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.

§ 15.11 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.

§ 15.10 Notices Regarding Liens

§ 15.10.1 Design-Builder shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Design-Builder shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 15.10.2 Design-Builder shall provide Owner with copies of all notices received by Design-Builder from Contractors, subcontractors, and/or suppliers to Design-Builder.

§ 15.13 Utility Service

The Design-Builder shall provide and maintain at his own expense any water, electric, or other utility service used in the construction of the work.

PAGE 41

CITY OF MURFREESBORO, TENNESSEE

[INSERT DESIGN-BUILDER NAME]

...

Shane McFarland, Mayor

...

Approved as to form:

Adam F. Tucker, City Attorney

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, 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 13:10:29 ET on 09/24/2020 under Order No. 3414833268 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, 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)



City of
MURFREESBORO
TENNESSEE





COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Shores Road City County Maintenance Agreement

Department: Development Services

Presented by: Sam Huddleston, Executive Director

Requested Council Action:

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

Summary

Road Maintenance Agreement for Shores Road at Veterans Parkway between City of Murfreesboro and Rutherford County.

Staff Recommendation

Approve the draft of the Shores Road Maintenance Agreement subject to final approval of the City Attorney of minor edits required after review by Rutherford County and authorize the Mayor to execute the Agreement on behalf of the City.

Background Information

The Westlawn PUD continues to develop and following the approved Master Plan, Shores Road is currently being realigned to a new intersection at Veterans Parkway. With the realignment, approximately 1,250 feet of Shores Road that remains outside the City will be impacted and modified. Rutherford County has requested that the City work with them to accommodate these proposed roadway improvements and road name changes. One element of that working arrangement is the proposed Shores Road Maintenance Agreement which provides that the City manage proposed roadway improvements in the affected County portion and provide for its maintenance.

Council Priorities Served

Improve economic development

This proposal allows continued development envisioned along Veterans Parkway creating opportunities for business and services to locate in the area.

Expand infrastructure

The realignment of Shores Road will provide an opportunity for signalization and improved traffic management in this growing corridor.

Maintain public safety

Realigning Shores Road improves traffic operations in the Veterans Parkway corridor.

Fiscal Impact

Operation and Maintenance costs for the portion of Shores Road covered by the agreement will be paid from State Street Aid or Stormwater Utility Fund. Annualized roadway maintenance costs are estimated at approximately \$3,000 per year.

Attachments

Draft Shores Road Maintenance Agreement and Exhibit

**AGREEMENT BETWEEN
RUTHERFORD COUNTY AND CITY OF MURFREESBORO
REGARDING THE SHORES ROAD PROJECT**

This Agreement (“Agreement”) made and entered into this the ____ day of _____, 2020, by and between the City of Murfreesboro, a municipal corporation located in Rutherford County, Tennessee, hereinafter referred to as "City" and Rutherford County, Tennessee, a political subdivision of the State of Tennessee, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the following facts exist:

A. The realignment, construction, reconstruction, replacement, and maintenance described herein and as reflected on the attached Exhibit 1 shall be known as the “Shores Road Project”; and

B. Land known generally as “Westlawn”, as shown on Exhibit 1 attached hereto, including approximately 5,000 linear feet (“l.f.”) adjacent to the Northern right of way of Shores Road, has been annexed into the City and is being developed with commercial, residential, and medical facilities;

C. The Northeasterly approximate 350 l.f. of Shores Road (identified as “A” on Exhibit 1) has been annexed into the City;

D. The City and County agree that the point where Shores Road terminates into Veterans Parkway should be realigned to approximately 1,000 l.f. closer to the I-840 / Veterans Parkway Interchange (identified as “B” on Exhibit 1), which will allow the same to become a signalized intersection, and that existing Shores Road, at the point at which it currently intersects with Veterans Parkway (identified as “A” on Exhibit 1), should be reconstructed into a cul-de-sac (identified as “__F” on Exhibit 1) with no access onto Veterans Parkway;

E. The realignment of Shores Road (identified as “B” to “C” on Exhibit 1), including the construction of a link (identified as “D” on Exhibit 1) from realigned Shores Road onto the portion of Shores Road to be renamed, to be constructed on land previously annexed into the City will be accomplished by the developers of projects within Westlawn and/or the City, under the supervision of the City Engineer;

F. The realignment of Shores Road will require adjustments to and limited reconstruction and replacement of portions of Shores Road that remain within the jurisdiction of Rutherford County;

G. The road beginning from the link from realigned Shores Road onto the existing Shores Road (as identified as “D” on Exhibit 1) and continuing to the East to the cul-de-sac (as identified as “F_” on Exhibit 1)) will need to be renamed; and

H. The City and the County desire and intend for this Agreement to establish a means whereby the above described realignment of Shores Road, as well as the reconstruction and replacement of a portion of Shores Road, may be accomplished to the benefit of the City, the County, the property owners, and all persons who will travel it.

NOW, THEREFORE, for and in consideration of the mutual benefits accruing to the City and the County and others, the City and County agree as follows:

1. The foregoing recitals are incorporated herein by reference.
2. The City and / or the developers of property within Westlawn, including but not limited to, the developers of Westlawn residential portions, Westlawn Commercial Subdivision, and/or the developers of an approximate 24 acre undeveloped tract northwest of Westlawn Commercial and realigned Shores Road and adjacent to Veterans Parkway, shall fund,

oversee, and construct the above described realignment of Shores Road, including acquisition of any required Right of Way and / or easements and such adjustments and / or reconstruction of Shores Road within the jurisdiction of Rutherford County as described herein to connect the new portions of Shores Road to the existing Shores Road, at no cost to the County. The County hereby authorizes the City and contractors under the City supervision, to work in and on portions of Shores Road within the Jurisdiction of the County in order to accomplish such connections.

3. The City will oversee the entire road design and construction process of the Shores Road Project and will enter into and be responsible for all contracts for the Shores Road Project.
4. Completion of this road project may require the relocation of utilities, some of which may be in the County's right of way. The County hereby directs and authorizes such relocation as necessary and feasible for reconstruction of the road. Completion of this road project may require the temporary closure of portions of County roads. The County hereby authorizes such temporary closures as are necessary. City's contractor shall notify both City and County prior to any such closure.
5. Completion of this road project will require installation of new road signage, and possibly the replacement of some existing road signage. All new or replacement road signage shall be provided by the City and shall be MUTCD compliant.

6. City and County agree to cooperate with one another as needed to complete the Shores Road Project as promptly and economically as possible and, if necessary to do so other than as specified in this Agreement, shall share information and grant one another necessary authorizations and approvals.

7. All portions of Shores Road that are not constructed on property that has been annexed into the City shall remain included in the County's Road Book. Care and maintenance of the portions of the Shores Road that are within the City Limits shall be the responsibility of the City. The City shall also be responsible for the perpetual care and maintenance of the portion of existing Shores Road from a point approximately 835 feet east of the centerline of Westlawn Boulevard (identified as "E") eastward to the eastern terminus of the present Shores Road (as identified as the proposed cul-de-sac, "F" on Exhibit 1) that will be renamed after completion of this project, whether such portion is located within or without the jurisdictional boundaries of the City. County may notify City of any maintenance it believes to be necessary.

8. The City shall be responsible to ensure that all construction, reconstruction, replacement, realignment, and maintenance associated with the Shores Road Project conforms with all applicable federal, state, and local laws and regulations.

9. The City assumes and shall be fully and irrevocably responsible and liable for any and all damage or injury, whether in contract or tort, arising out of or resulting from any construction, reconstruction, replacement, realignment, and maintenance associated with

the Shores Road Project and any rights-of-way within the jurisdiction of the City or for which the City is obligated to care and maintain pursuant to this Agreement specifically including, without limitation, any damage or injury incurred by the third-parties and shall, to the extent allowable under applicable state law, hold the County harmless from the same.

10. Enforcement of traffic laws on the Shores Road shall be the responsibility of the City for that portion within the City and the responsibility of the County for that portion within the County.
11. The disposition of excess rights-of-way, including the excess right-of-way between points “C” and ”D”, shall be the responsibility of the City within annexed portions and of the County within County portions. City and County agree to confer with each other where excess rights-of-way, if any, are to be abandoned and transferred to private parties. However, the right to abandon and transfer rights-of-way to private parties shall be exclusive to each.
12. This Agreement represents the entire agreement of the parties with respect to the Shores Road Project and may not be amended except in writing approved by both.
13. This Agreement shall be constructed under the laws of the State of Tennessee. The prevailing party to any litigation to enforce this Agreement shall be entitled to its attorney’s fees and costs, in addition to any damages.

14. Any required notice shall be in writing and delivered via certified mail, return receipt requested, overnight delivery by a nationally recognized courier or delivery service, or by hand delivery as follows:

If to the City:

City Engineer

111 w. Vine Street

Murfreesboro TN 37130

With a copy to:

City Manager

111 West Vine Street

Murfreesboro TN 37130

If to the County:

Road Superintendent

1510 Rutledge Way

Murfreesboro TN 37129

County Mayor

County Courthouse

Murfreesboro TN 37130

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first above written above.

Attest:

CITY OF MURFREESBORO

Melissa Wright, City Recorder

By: _____
Shane McFarland, Mayor

Approved as to form.

Adam F. Tucker, City Attorney

Attest:

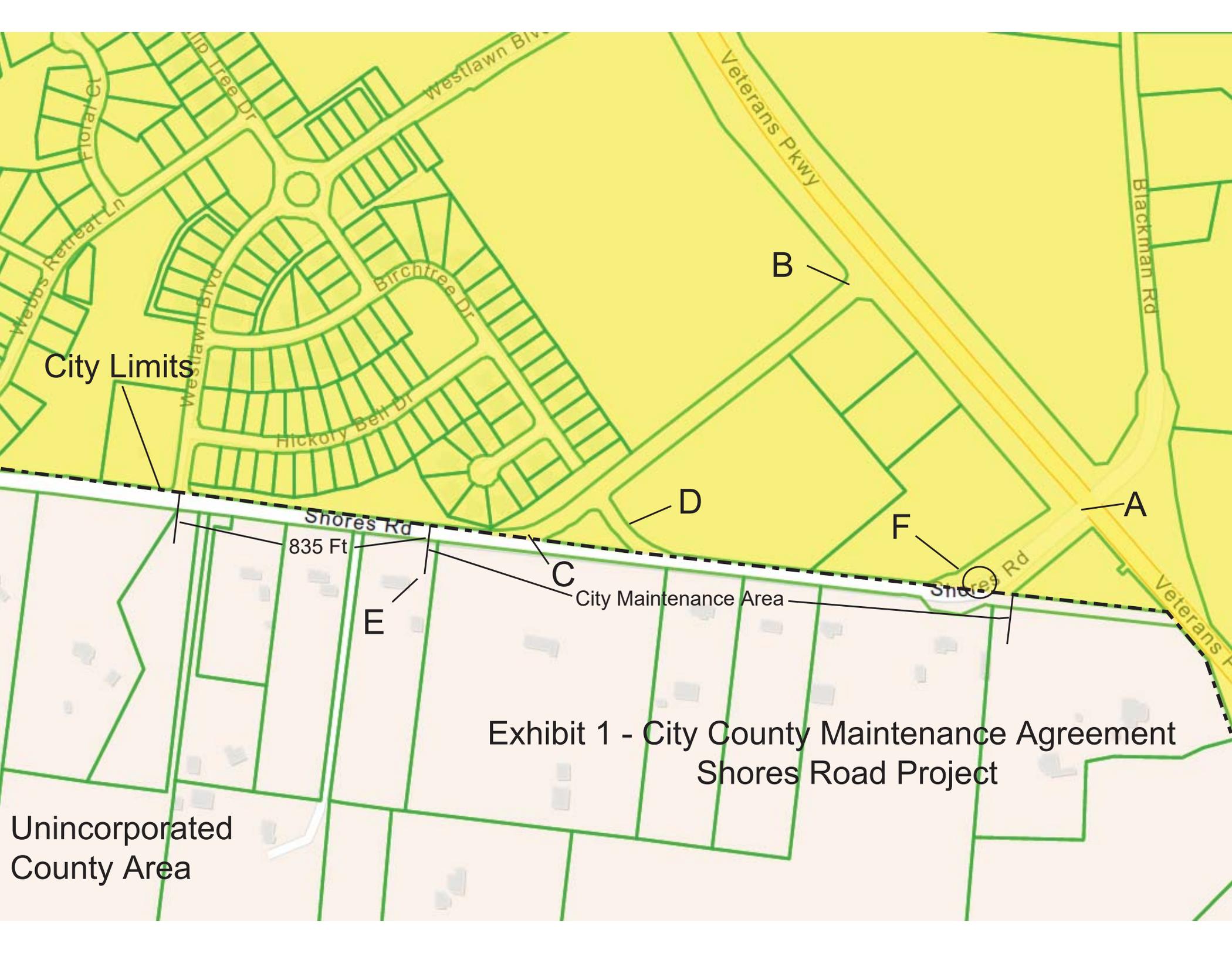
RUTHERFORD COUNTY

Lisa Crowell, County Clerk

By: _____
Bill Ketron, County Mayor

Approved as to form.

Nick C. Christiansen, County Attorney



City Limits

835 Ft

City Maintenance Area

Exhibit 1 - City County Maintenance Agreement Shores Road Project

Unincorporated
County Area

B

D

C

E

F

A

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Stormwater Fund Participation Request – Housing Authority;
Oakland Court Project

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Stormwater fund participation for retrofits involving street-side rain gardens (planter boxes) in conjunction with the redevelopment of the City housing project on North Academy Street and Oakland Court.

Staff Recommendation

Approval to reimburse the Housing Authority for the extra construction cost associated with stormwater control measures up to \$150,000 from the City’s stormwater fund.

Background Information

The Murfreesboro Housing Authority is redeveloping Oakland Court, a 20-acre property next to Oaklands Mansion where 76 one to five-bedroom units have existed since the 1960s. Demolition for Phase I has begun. In addition to replacing housing units, the project includes new water lines, sewer lines, streets and stormwater treatment and drainage infrastructure.

City staff encouraged the development team to include green stormwater infrastructure in the design. The team did so, planning for rain gardens within the North Academy Street right-of-way, and the Housing Authority is requesting the City to pay the extra cost of those features.

Staff advocated for green infrastructure for a couple of reasons. One, Oakland Court is in a priority drainage catchment – that is one with a relatively large area of imperviousness (hard surfaces) and a low amount of tree canopy and that drains to a quality-impaired stream (Sinking Creek in this case). Staff have targeted these catchments for stormwater retrofits. Two, we would like to see a pilot installation of street side rain gardens. Also referred to as planter boxes, there are not any of these in Murfreesboro, but we believe that they can serve as useful retrofits in priority catchments.

In the case of this project, the rain gardens will add, we estimate, benefit to the stormwater management system: 10-15% benefits to stormwater quality, quantity, and reduction to the long-term maintenance burden. In addition, green stormwater infrastructure presents a more pleasant physical environment for residents.

Council Priorities Served

Establish strong City brand

Redevelopment of the downtown area with rain gardens on streetscapes in conjunction with the City's new housing project reinforces the high standards of development the City expects involving aesthetics and water quality infrastructure.

Expand infrastructure

Constructing stormwater control measures that treat stormwater runoff to improve water quality entering the City's waterways and streams is a long-term strategy that affords the City potential growth opportunities involving adherence to antidegradation criteria and Total Maximum Daily Loading (TMDL) in our receiving stream.

Fiscal Impact

The stormwater capital projects budget includes retrofits to streets and stormwater outfalls in this watershed at \$210,000 for the two fiscal years 2020 and 2021.

Attachments

- Photos, examples of Right-of-Way Rain Gardens
- Oakland Court, existing condition and planned redevelopment
- North Downtown Planter Box Study Area, staff report



April 24, 2020



April 24, 2020

Examples, Right-of-Way Rain Gardens



August 14, 2020



August 17, 2020

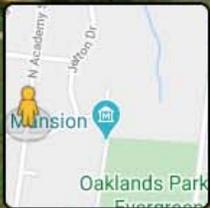
Examples, Right-of-Way Rain Gardens

907 N Academy St
Murfreesboro, Tennessee



Google

Street View



Google

N Academy St





MASTERPLAN

PLANNED RESIDENTIAL DISTRICT

	1 BR UNIT - 32
	2 BR UNIT - 60
	3 BR UNIT - 40
	4 BR UNIT - 14
	5 BR UNIT - 4
TOTAL	150





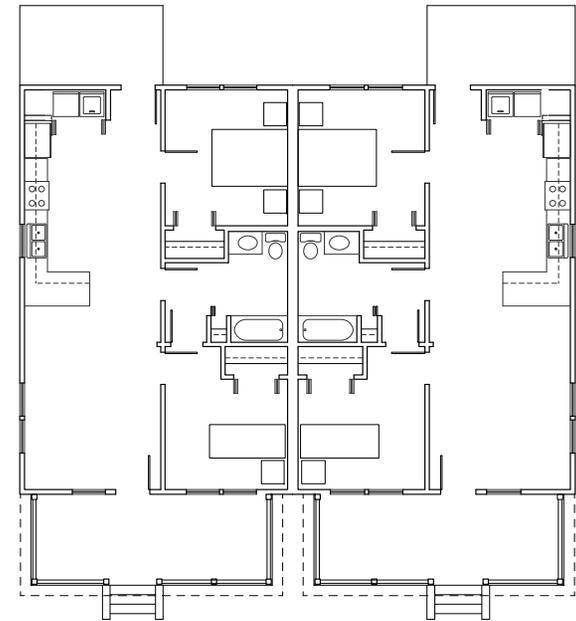
CRAFTSMAN 1 AND 2 BEDROOM DUPLEX

PLAN - 2 BEDROOM UFAS/875 SF/1-STORY DUPLEX/TRIPLEX

McCARTY HOLSAPLE McCARTY | MHA|LHP OAKLAND COURT



Craftsman Elevation



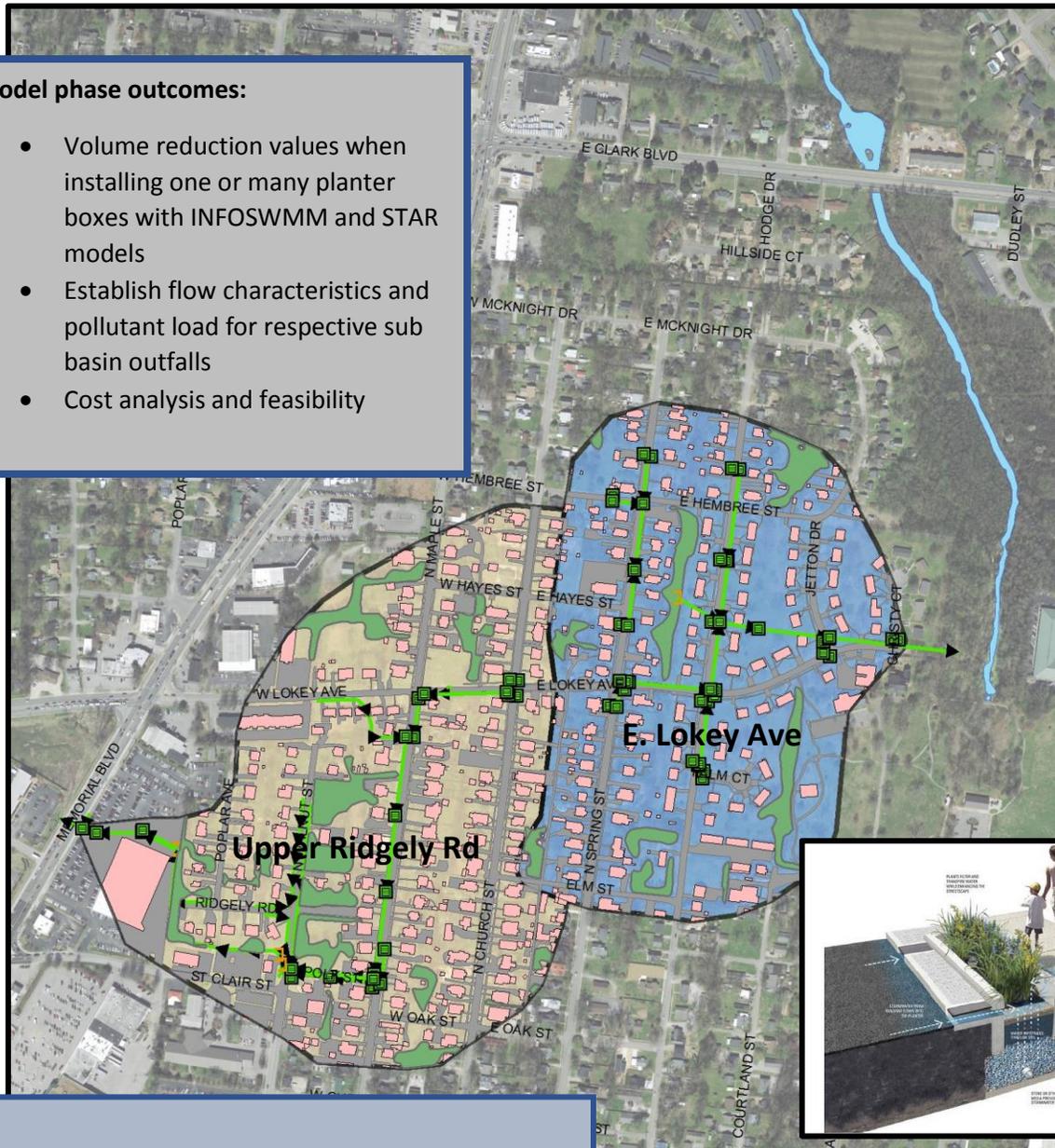
1ST FLOOR

North Downtown Planter Box Project Study Area

East Lokey Avenue (Sinking Creek) and Ridgely Road (Lytle Creek) Sub basins

Model phase outcomes:

- Volume reduction values when installing one or many planter boxes with INFOSWMM and STAR models
- Establish flow characteristics and pollutant load for respective sub basin outfalls
- Cost analysis and feasibility



Project goals:

- Reduce runoff volume to TMDL listed streams Sinking and Lytle Creeks
- Aid downtown revitalization through planter boxes
- Beautify urban streets
- Satisfy concerns of stakeholders

Sub basin characteristics:

	E. Lokey Ave	Ridgely Rd
Basin size	48.6 acres	55.4 acres
Total imperviousness	34%	47%
Tree canopy	6.7%	8.6%

COUNCIL COMMUNICATION

Meeting Date: 10/01/2020

Item Title: Salem Hwy (SR-99) Widening Ph. II – Wiser Eng. Design Proposal

Department: Water Resources

Presented by: Darren Gore

Requested Council Action:

- Ordinance
 - Resolution
 - Motion
 - Direction
 - Information
-

Summary

Staff requested Wiser Company (Wiser) submit a proposal for the redesign of the water and sewer relocations associated with the Tennessee Department of Transportation (TDOT) widening project along New Salem, between Old Fort Parkway and I-24.

Staff Recommendation

Approve the Engineering proposal from Wiser Company.

Background Information

At the February 4, 2010 meeting, the Council approved Wiser Company to prepare water and sewer relocation plans in preparation of the Tennessee Department of Transportation (TDOT) construction project for widening New Salem Hwy (SR-99) from Old Fort Pkwy to Cason Lane. Since this time, TDOT phased the project into two phases. The first being from I-24 to Cason Lane and phase two being from Old Fort Parkway to I-24. Phase I is currently under construction.

Since the project was split into two phases, in 2017 Wiser used the remaining monies in their original proposal to separate the projects into two sets of plans, cost estimates and the required TDOT forms and resubmitted this information to TDOT.

Even though water main relocation plans were submitted to TDOT in 2017, with the water main located within the roadway for this upcoming Phase II, staff just recently learned that TDOT will not allow utilities within the roadway except where absolutely necessary. This requirement constitutes a significant change, and it not only required a redesign of the plans but will also require the Department to purchase easements.

It is the Departments preference either be inside the road or outside the right of way in an easement with our mains. We would rather not have the water and sewer mains in between this area, because all of the other utilities such as storm drainage lines, gas, electric, cable, etc. are located here. Being in the area, between the roadway and right of way, with other utilities within close proximity, will make future maintenance difficult and sometimes dangerous.

Because of this redesign and the need for easements, staff requested a proposal for this Phase II of the project. The proposal is in an amount not to exceed \$30,450 and

includes assistance with easement descriptions and exhibits necessary for water easements. Currently there will be the need to purchase easements for approximately 9-12 properties.

At this time, staff is of the understanding that engineering design does not qualify for reimbursement from TDOT, but that portions of MWSD's utility relocation construction cost may qualify for reimbursement.

A proposal from an appraisal company will follow to assist in appraising the properties so easement offers can be prepared for locations where the water line must be outside of the right of way.

Council Priorities Served

Expand infrastructure

The Department has opportunity, with the widening of New Salem Highway, to expand its water infrastructure and make interconnections that would have been otherwise difficult to construct.

Maintain public safety

The Department has opportunity, with the widening of New Salem Highway, to improve the fire protection along this corridor that would have been otherwise difficult to construct.

Fiscal Impact

It is recommended this work, not to exceed \$30,450, be paid from Working Capital Reserves.

Attachments

Engineering Supplement Proposal – Wiser Design



1620 Gateway Blvd. Ste. 201
Murfreesboro, TN 37129

W wiserconsultants.com

P 615-278-1500

F 615-217-8130

September 15, 2020

Valerie Smith, PE
Murfreesboro Water and Sewer Department
300 NW Broad Street
Murfreesboro, Tennessee 37130

RE: Proposal for Engineering Services – Water & Sewer Relocation Plans for TDOT Roadway Widening Project SR-99 (New Salem Hwy.), from I-24 to SR 96 (Old Fort Pkwy.) Murfreesboro, Tennessee

Dear Mrs. Smith,

Wiser Consultants is pleased to submit to you our scope of work and fee proposal for professional services related to the relocation of water and sewer lines in conjunction with the above referenced roadway widening project. Wiser will develop the required construction drawings to be incorporated into the roadway widening plans. Scope of Services shall include the development of preliminary plans, final construction plans, specifications, and cost estimates for approximately 4,650 LF of 16", 60 LF of 12", 230 LF of 8", 170 LF of 6" water lines and appurtenances, and approximately 140 LF of 8" sanitary sewer lines and appurtenances.

In addition, Wiser will also provide legal descriptions and legal sized exhibits for each of the properties where easements will be required.

We propose to provide the scope of work as outlined above on a Lump Sum Not to Exceed basis in the amount of **\$30,450**.

As always, Wiser Consultants looks forward to working with you and your staff on this project.

Sincerely,

WISER CONSULTANTS, LLC

A handwritten signature in blue ink that reads "Eric S. Brock".

Eric S. Brock, P.E.

Salem Hwy Widening Phase 2, Utility Design by Wiser Consultants

