

**AGENDA  
CITY OF MORRISTOWN, TENNESSEE  
CITY COUNCIL MEETING  
JULY 19, 2016 – 5:00 P.M.**

**1. CALL TO ORDER**

Mayor Gary Chesney

**2. INVOCATION**

Mike Cutshaw, Chaplain, Morristown Police Department

**3. PLEDGE OF ALLEGIANCE**

**4. ROLL CALL**

**5. APPROVAL OF MINUTES**

1. July 5, 2016

**6. PROCLAMATIONS/PRESENTATIONS**

**7. CITIZEN COMMENTS ABOUT AGENDA ITEMS ONLY  
(Other than items scheduled for public hearing.)**

**8. OLD BUSINESS**

**8-a. Public Hearings & Adoption of Ordinances/Resolutions**

1. Ordinance No. 3556

An Ordinance to Amend the Municipal Code of the City of Morristown, Tennessee, Appendix B. {Rezoning of property located at 119 Evans Avenue; Hamblen County Tax Parcel ID#0320341O00100 from Medium Density Residential (R-2) to Local Business (LB).}

**9. NEW BUSINESS**

**9-a. Resolutions**

1. Resolution No. \_\_\_\_\_

A Resolution Authorizing the City of Morristown to Participate in The Pool's "Safety Partners" Matching Grant Program.

**9-b. Introduction and First Reading of Ordinances**

1. Ordinance No. \_\_\_\_\_  
An Ordinance to Amend the Municipal Code of the City of Morristown, Tennessee, Appendix B and Official Zoning Map. {Rezoning of property currently addressed as 619 Howell Road from Agricultural District (A1) to Intermediate Business (IB).}  
**{Public Hearing August 2, 2016}**
2. Ordinance No. \_\_\_\_\_  
An Ordinance to Amend the Municipal Code of the City of Morristown, Tennessee, Appendix B and Official Zoning Map. {Rezoning of property adjacent to Merchants Greene Boulevard from Agricultural District (A1) to Intermediate Business (IB).}  
**{Public Hearing August 2, 2016}**
3. Ordinance No. \_\_\_\_\_  
An Ordinance to Amend Ordinance Number 3555, the City of Morristown, Tennessee, Annual Budget for the Fiscal Year 2016-2017 and Appropriate the Sum of \$270,000 Specifically for Paving of Lochmere Development. The additional appropriation from reserves is necessary due to the timing of performance bond proceeds.  
**{Public Hearing August 2, 2016}**

**9-c. Awarding of Bids/Contracts**

1. Approval of Contract for Demolition of Former Morristown College to NorthStar Demolition and Remediation, LP, in the amount of \$707,400, subject to City Attorney review.
2. Approval of State of Tennessee Department of Transportation Aeronautics Division Airport Maintenance Grant for FY17 in the amount of \$39,600, this is a TDOT 50/50 grant with a match from the State and the City in the amount of \$19,800 each.
3. Approval of Tennessee Housing Development Agency (THDA) Emergency Solutions Grant Program (ESG) in the amount of \$50,850, this is a Federal Grant with no match required.
4. Approval of Pitney Bowes Lease Agreement, for the on-site automated postage machine, in the annual amount of \$3,949.32.

5. Approval of Fire House Software Agreement for Application Hosting and Technology Support Services for the Morristown Fire Department in the annual amount of \$6,390, subject to City Attorney review.
6. Approval of Contract Amendment #2 – Archaeology Study for Freddie Kyle Trail and Turkey Creek Greenway Trail Phase 5 to McGill Associates in the lump sum amount of \$8,065. (Should any of the sites yield artifacts of archaeological significance, more intensive testing will be required and an additional fee of \$2,010 per site will be assessed.)
7. Approval of reauthorization of Staff Augmentation Services with Strategic Services Company, LLC (SSC) in the not to exceed amount \$5,000 per month.
8. Approval of purchase of HVAC units from Cook's Air Conditioning and Heating, Inc. in the amount of \$38,105.
9. Approval of purchase of License Agreement from ESRI in the amount of \$50,000
10. Approval of Stormwater Management/BMP Facilities Maintenance Agreement between BEHM, LLC (B&W Enterprises Lot 5rb) and the City of Morristown.
11. Approval for the Morristown Police Department to accept a donation from Wal-Mart Store #6370 of weapon ammunition valued at \$161.33.

**9-d. Board/Commission Appointments**

1. City Council's consideration of Mayor Chesney's nomination to the Morristown Utility Commission for a five year term to expire on July 31, 2021. {Term expiring: George McGuffin.}

**9-e. New Issues**

1. Fire Department hiring of one (1) Entry-level Firefighter.

**10. CITY ADMINISTRATOR'S REPORT**

**10-a. Recess for Executive Session**

**11. COMMUNICATIONS/PETITIONS**

**This is the portion of the meeting where members of the audience may speak subject to the guidelines provided.**

**12. COMMENTS FROM MAYOR/COUNCILMEMBERS/COMMITTEES**

**13. ADJOURN**

**City Council Meeting/Holiday Schedule:**

**Regular City Council Meeting with Work Session**

August 2, 2016	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
August 5-6, 2016	(Fri.) noon-5:00 p.m. (Sat.) 8 a.m. - noon	City Council Annual Planning Retreat Meadowview Conference Center, Kingsport, TN
August 16, 2016	(Tues) 4:00 p.m.	Finance Committee Meeting
August 16, 2016	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
September 5, 2016	(Monday)	City Employee's Holiday Labor Day
September 6, 2016	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
September 20, 2016	(Tues) 4:00 p.m.	Finance Committee Meeting
September 20, 2016	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
September 22, 2016	(Thurs) 7:00 p.m.	City Council Roundtable – Rose Center
October 4, 2016	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
October 18, 2016	(Tues) 4:00 p.m.	Finance Committee Meeting
October 18, 2016	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session



## **WORK SESSION AGENDA**

**July 19, 2016**

**5:00 p.m.**

- 1. Municipal Code Title 10 (Animal Control) and Title 11 (Municipal Offenses) Review.**

**STATE OF TENNESSEE  
COUNTY OF HAMBLLEN  
CORPORATION OF MORRISTOWN  
JULY 5, 2016**

The City Council for the City of Morristown, Hamblen County, Tennessee, met in regular session at the regular meeting place of the Council in the Morristown City Center at 5:00 p.m., Tuesday, July 5, 2016, with the Honorable Mayor Gary Chesney, presiding and the following Councilmembers present: Bob Garrett, Kay Senter, Dennis Alvis, Ken Smith and Tommy Pedigo, absent; Chris Bivens.

Craig Price led in the invocation and Councilmember Alvis led in the "Pledge of Allegiance".

Councilmember Smith made a motion to approve the June 21, 2016, minutes as circulated. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Councilmember Pedigo made a motion to approve Resolution No. 10-16. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

**RESOLUTION NO. 10-16  
BEING A RESOLUTION TO ADOPT THE FY2016-2017  
POLICY/PROCEDURES MANUAL, FOR THE CITY OF  
MORRISTOWN FAÇADE GRANT PROGRAM.**

WHEREAS, the City of Morristown is a recipient of Entitlement Funds for the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the City of Morristown has an adopted Consolidated Plan, approved by HUD in effect through June 30, 2019; and

WHEREAS, \$60,000 00 was allocated in the approved Action Plan for FY 16-17 and is awaiting approval by HUD to continue the City's effort in assisting local business properties with exterior building rehabilitation and façade improvements; and

WHEREAS, it is the desire of the City to continue to utilize these funds to improve upon situations of urban blight and neighborhood stabilization through the façade grant program; and

WHEREAS, the 2016-17 Façade Grant Program is available to business properties within the defined Crossroads Downtown Partnership area and those properties having street frontage along South Cumberland Street between Morris

Blvd. and Hwy 160 and the Buffalo Trail corridor between West/East 3<sup>rd</sup> North St. and Hartman Rd., as depicted in the attached Exhibit A , Exhibit B; and Exhibit C.

NOW, THEREFORE, BE IT RESOLVED, that The City of Morristown shall hereby adopt the 2016-17 Guidelines for the City of Morristown Façade Grant Program as shown on the attached Exhibit A, Exhibit B and Exhibit C;

**BE IT FURTHER RESOLVED** that this Resolution shall become effective upon its passage and approval.

Adopted during regular session of the Morristown City Council this the 5<sup>th</sup> day of July, 2016.

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MAYOR

ATTEST:

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CITY ADMINISTRATOR

Councilmember Senter made a motion to approve Ordinance No. 3556 on first reading and schedule a public hearing relative to final passage of said ordinance for July 19, 2016. Councilmember Pedigo seconded the motion and upon roll call; all voted “aye”.

**ORDINANCE NO.3556**

**ENTITLED AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF MORRISTOWN, TENNESSEE, APPENDIX B.**

**{Rezoning of property located at 119 Evans Avenue, Hamblen County Tax Parcel ID # 032034I O 00100 from Medium Density Residential (R-2) to Local Business (LB).**

Councilmember Smith made a motion to approve the bid/contract for Wayfinding Signage Project to Rite Lite Signs, Inc. in the amount of \$329,815. Signs will be installed for the City of Morristown, Jefferson City, White Pine, and Hamblen County, with each participant paying its share of the project costs. Tennessee Department of Transportation (TDOT) is funding eighty (80) percent of the work, with the local participants responsible for the remaining twenty (20) percent. Councilmember Alvis seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to approve the agreement between the City of Morristown, Tennessee, Hamblen County, Tennessee, and Morristown-Hamblen Humane Society. Councilmember Pedigo seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve change order #2 for a net increase of \$2,842.42 for the Hangar Rehabilitation Project bringing total amount from \$309,023.75 to \$311,866.17 to Andrews Construction, Inc. Councilmember Alvis seconded the motion and upon roll call; all voted “aye”.

Councilmember Smith made a motion to approve the amendment #2 with McGill Associates to continue their Professional Engineering Services for FY 2016/2017 in the amount of \$40,000. Councilmember Pedigo seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve the purchase of Geographic Information System (GIS) Software – GeoEvent Extension is licensed annually through our current GIS software provider in the amount of \$3,000. Councilmember Garrett seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to approve the purchase of HVAC units from Cook’s Air Conditioning and Heating, Inc. in the amount of \$48,100. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to approve the request for proposal (RFP) – Morristown College Demolition and recommendation to approve City Administrator Tony Cox to enter into contract negotiations with NorthStar Demolition and Remediation, LP. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to approve the Stormwater Management/BMP Facilities Maintenance Agreement between Crobar, LLC (Pals Sudden Service) and the City of Morristown. Councilmember Pedigo seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to approve the Fire Department promotion of Brian Shephard to Battalion Chief. Councilmember Senter seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve the Fire Department promotion of David Large to Captain. Councilmember Pedigo seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to approve the Fire Department promotion of David Hall to Lieutenant. Councilmember Pedigo seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve the Fire Department promotion of Matthew Brooks to Driver/Engineer. Councilmember Alvis seconded the motion and upon roll call; all voted “aye”.

Mayor Chesney adjourned the July 5, 2016, City Council meeting at 5:39 p.m.

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MAYOR

ATTEST:

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CITY ADMINISTRATOR



Department of Community Development  
100 West 1<sup>st</sup> North Street  
Morristown, TN 37814  
(423)585-4620

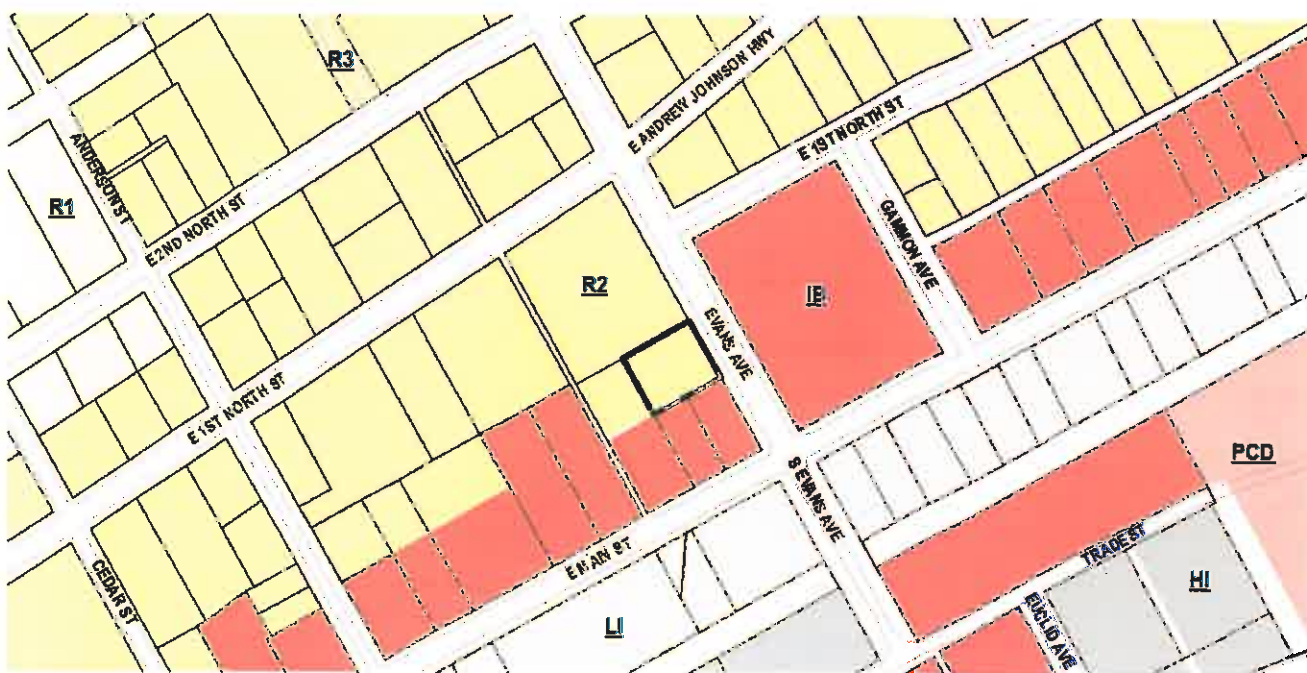
TO: City Council  
FROM: Lori Matthews, Senior Planner  
DATE: July 5th, 2016  
SUBJECT: Rezoning Request

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## REQUEST -

A rezoning request has been received by the Planning Department for property located at 119 Evans Avenue located between E. 1st North Street and E. Main Streets. The property owner, Mr. Helms, has requested a zoning designation of LB (Local Business) in order to accommodate an antique retail shop.

The property has historically been used for professional offices, most recently for that of a physician's and home healthcare office. Properties adjoining which front E Main Street are zoned IB (Intermediate Business) and have been so zoned since 1975. Single family residential homes adjoin the property to the north with Home Trust bank to the east and vacant (grassed) lots to the south and west. Cedarwood Apartments lie just northwest of the site.



The existing structure located on site was originally constructed with no kitchen or bath facilities. (No documentation regarding the building of this structure could be readily located.) Any future owner would be obligated to renovate the structure and include these types of facilities in order to renovate the building to a 'habitable' living quarters.

The property owner hopes the transitioning of the existing residential district into a low impact but stringent use commercial district such as our LB or Local Business zone will add value to the now vacant property and add value to a neighborhood in decline.

City Staff sees this rezoning as good planning practice and that an LB (Local Business) district will provide protection to the R-2 neighborhood to the north and IB along the south. Local business uses

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are unanimous with smaller scale retail and should deflect any large increase to traffic or noise. The property already has a thick stand of trees surrounding the structure which will provide a barrier to surrounding properties. Staff sees the rezoning of this property as a possible impetus for rezoning of other properties along that corridor as there have been other owners in the area requesting information for their property.

Placement of a less intense and more stringent commercial district between the residences to the north is sound planning as uses allowed under LB are less severe to residential communities with regard to traffic and noise and that this use will mitigate what could become a blighted parcel of land.

The Regional Planning Commission voted unanimously at their meeting of June 14th to forward the request as submitted to City Council for approval.

#### **OPTIONS:**

1. Approve rezoning request.
2. Deny rezoning request.



ORDINANCE NO.3556

ENTITLED AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF MORRISTOWN, TENNESSEE, APPENDIX B.

{Rezoning of property located at 119 Evans Avenue, Hamblen County Tax Parcel ID # 032034I O 00100 from Medium Density Residential (R-2) to Local Business (LB).

SECTION I. WHEREAS, the Morristown Planning Commission has recommended to the City Council of the City of Morristown that a certain amendment be made to Ordinance No. 2092, known as the Zoning Ordinance for the City of Morristown, Appendix B;  
NOW, THEREFORE, in order to carry into effect the said amendment:

SECTION II. BE IT RESOLVED by the City Council of the City of Morristown that Ordinance No. 2092 be and the same hereby is amended so as to provide that the following described real estate be rezoned from Medium Density Residential (R-2) to Local Business (LB).

*That parcel of land currently having been assigned as 119 Evans Avenue and having Hamblen County Tax ID # 032034I O 00100 and being located approximately 135 feet northwest of the intersection of E. Main Street and Evans Avenue.*

SECTION III. BE IT FURTHER ORDAINED that all maps, records and necessary minute entries be changed so as to effect the amendment as herein provided, to the extent that the area herein above described shall be permitted to be used for Local Business (LB).

SECTION IV. BE IT FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith be, and the same are, repealed to the extent of such conflict but not further or otherwise.

SECTION V. BE IT FURTHER ORDAINED that this ordinance takes effect from and after the date of its final passage, the public welfare requiring it.

Passed on first reading this the 5<sup>th</sup> day of July, 2016.

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MAYOR

ATTEST:



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CITY ADMINISTRATOR

Passed on second and final reading this the 19<sup>th</sup> day of July, 2016.

ATTEST:

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MAYOR

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CITY ADMINISTRATOR

**RESOLUTION NO. \_\_\_\_\_**  
**A RESOLUTION AUTHORIZING THE CITY OF MORRISTOWN TO PARTICIPATE IN The Pool's "Safety Partners" *Matching Grant Program*.**

WHEREAS, the safety and well being of the employees of the City of Morristown is of the greatest importance; and

WHEREAS, all efforts shall be made to provide a safe and hazard-free workplace for the City of Morristown employees; and

WHEREAS, The Pool seeks to encourage the establishment of a safe workplace by offering a "Safety Partners" Matching Grant Program; and

WHEREAS, the City of Morristown now seeks to participate in this important program.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MORRISTOWN, TENNESSEE the following:

SECTION 1. That the City of Morristown is hereby authorized to submit application for a "Safety Partners" *Matching Grant Program* through the Pool.

SECTION 2. That the City of Morristown is further authorized to provide a matching sum to serve as a match for any monies provided by this grant.

Resolved this the 19<sup>th</sup> day of July in the year of 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

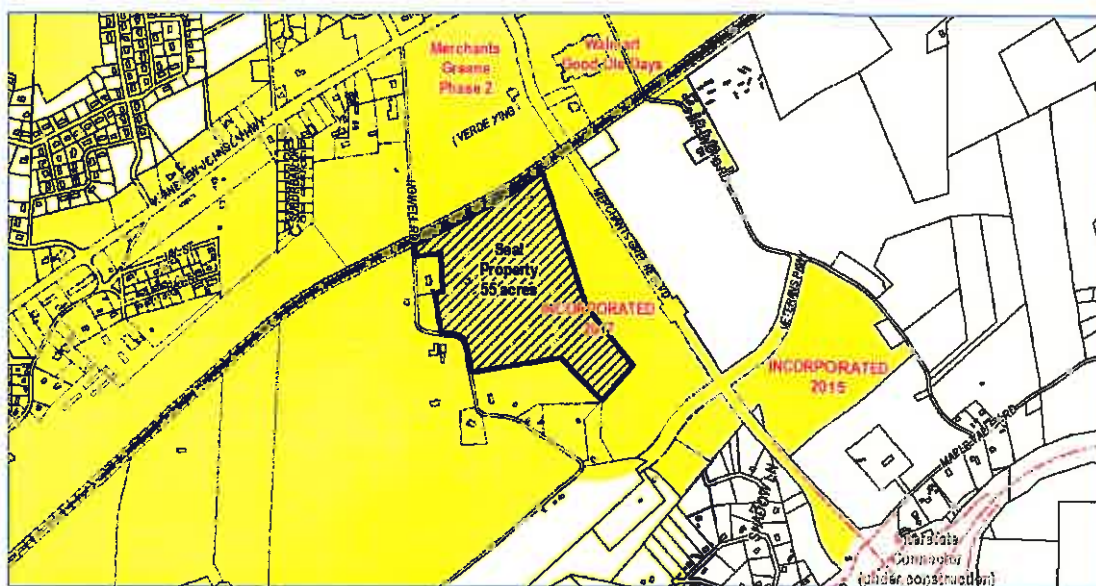
\_\_\_\_\_  
CITY ADMINISTRATOR



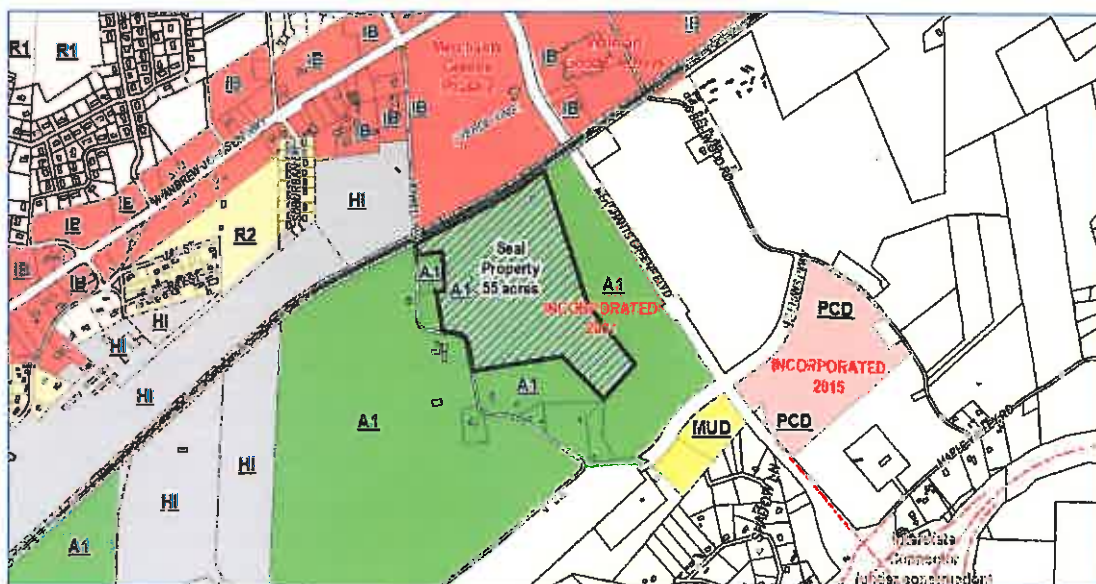
Department of Community Development  
100 West 1<sup>st</sup> North Street  
Morristown, TN 37814  
(423)585-4620

TO: Morristown City Council  
FROM: Lori Matthews, Senior Planner  
DATE: June 19th, 2016  
SUBJECT: Rezoning Request for 619 Howell Road

A rezoning request has been received by the Planning Department by Kenneth and Wanda Seals for their property for their property located at 619 Howell Road which adjoins the Norfolk-Southern Railway right of way between Merchants Greene Boulevard (State Highway 474) and Howell Road. Acting on his behalf will be Mr. Paul Lebel.



The Seal's property, approximately 55 acres in size, (Hamblen County Tax ID # 032 048 05800), contains one single family residence with barn, the northern property line running parallel to the railroad for roughly 1,500 feet and its eastern property line being shared with the John Bell property which is also under consideration for rezoning. This tax parcel was originally assigned its 'holding place' zoning designation of A-1 (Agricultural) when incorporated in 2007.



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Land uses and zoning which adjoin this request include the following:

North:	Norfolk-Southern Railway, Merchants Greene Phase II Zoned IB (Intermediate Business)
South:	vacant/vegetated lands Zoned A-1 (Agricultural)
East:	vacant/vegetated lands Zoned A-1 (Agricultural)
West:	vacant lands/sparse single family residences Zoned A-1 (Agricultural)



The Seals had forwarded a letter to Staff stating their preference for IB (Intermediate Business) zoning to accommodate potential commercial retail in the future and immediate office type uses. As a formal site plan has not yet been formalized, Staff is in agreement that the acreage as a whole, because of its proximity to major streets (Veterans Parkway, Merchants Greene, I-81 connector to Exit 4) is best suited for Intermediate Business zoning at this point.

This continuation of Intermediate Business along the Merchants Greene thoroughfare is an acceptable land use designation without a formal master plan as pertinent information associated with any large-scale commercial development, such as traffic impact studies, pedestrian walkways, sidewalks, etc. are in place for any commercial designation within the City of Morristown.

The Regional Planning Commission at their regular meeting of July 12th voted unanimously to forward this request to City Council as submitted for approval of the rezoning from A-1 (Agricultural) to IB (Intermediate Business). Staff's recommendation is the same.

**CITY COUNCIL OPTIONS:**

1. Approve rezoning request as submitted;
2. Approve rezoning request with stipulations;
3. Table rezoning request;
4. Deny rezoning request

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF MORRISTOWN TENNESSEE, APPENDIX B AND OFFICIAL ZONING MAP. (Rezoning of property currently addressed as 619 Howell Road from Agricultural District (A-1) to Intermediate Business (IB) in the First Civil District of Hamblen County.)**

BE IT ORDAINED BY THE CITY OF MORRISTOWN AS FOLLOWS:

SECTION I. WHEREAS, the Morristown Regional Planning Commission has recommended to the City Council of the City of Morristown that a certain amendment be made to Ordinance No. 2092, known as the Zoning Ordinance for the City of Morristown, Appendix B;

NOW, THEREFORE, in order to carry into effect the said amendment:

SECTION II. BE IT RESOLVED by the City Council of the City of Morristown that Ordinance No. 2092 be and the same hereby is amended so as to provide that the following described real estate be rezoned from A-1, Agricultural District to IB, Intermediate Business District.

*That parcel of land currently having been assigned as 619 Howell Road and having Hamblen County Tax Map ID # 032048 05800 containing 55 +/- acres;*

SECTION III. BE IT FURTHER ORDAINED that all maps, records and necessary minute entries be changed so as to effect the amendment as herein provided, to the extent that the area herein above described shall be permitted to be used for Intermediate Business (IB).

SECTION IV. BE IT FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith be, and the same are, repealed to the extent of such conflict but not further or otherwise.

SECTION V. BE IT FURTHER ORDAINED that this ordinance takes effect from and after the date of its publication and final passage, the public welfare requiring it.

Passed on first reading this the 19th day of July, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY ADMINISTRATOR

Passed on second and final reading this the 2<sup>nd</sup> day of August, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY ADMINISTRATOR

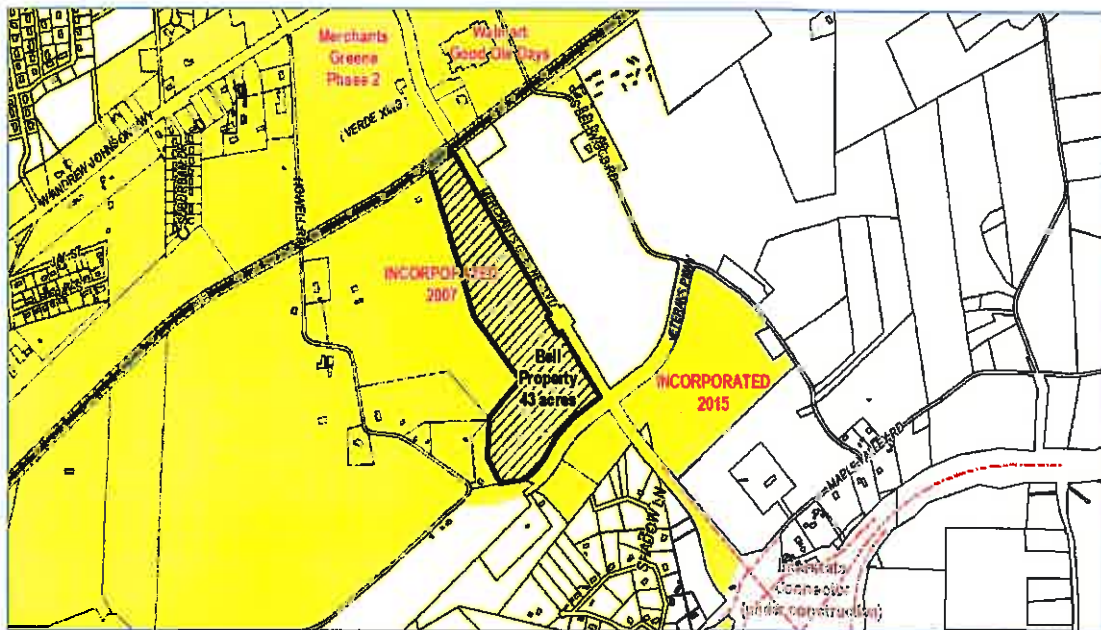




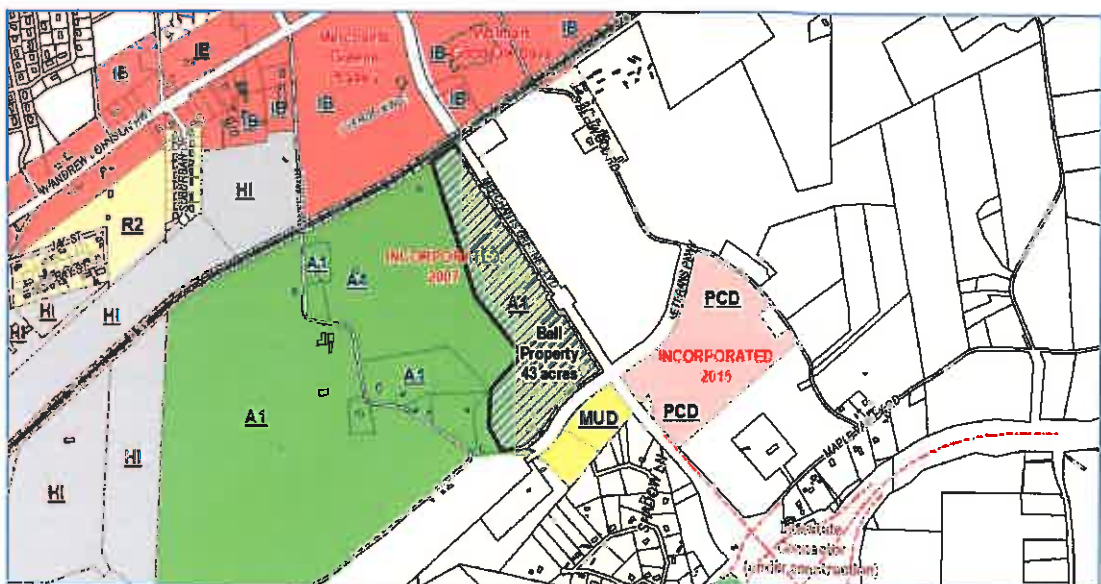
Department of Community Development  
100 West 1<sup>st</sup> North Street  
Morristown, TN 37814  
(423)585-4620

TO: Morristown City Council  
FROM: Lori Matthews, Senior Planner  
DATE: June 19th, 2016  
SUBJECT: Rezoning Request for Merchants Greene and Veterans Parkway

A rezoning request has been received by the Planning Department by Mr. John Bell for his property adjacent to Merchants Greene Boulevard (State Highway 474) and Veterans Parkway just south of the Norfolk Southern Railway. Acting on his behalf will be Mr. Paul Lebel.



Mr. Bell's property, 43 acres in size (Hamblen County Tax ID # 032 048 05907), is comprised of vegetated rocky terrain with 2,600 linear feet of street frontage along Merchants Greene Boulevard and 1,200 linear feet along Veterans Parkway. It appears an entrance has over time been cut into the property (from Veterans Parkway) for loading and dumping of trucks but this is not an approved driveway cut. Currently no structures exist on site. This tax parcel was originally assigned its 'holding place' zoning designation of A-1 (Agricultural) when it was annexed by the City of Morristown in 2007.



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Land uses and zoning which adjoin this request include the following:

North:	Norfolk-Southern Railway, Merchants Greene Phase II Zoned IB (Intermediate Business)
South:	Veterans Parkway/forested lands Zoned A-1 (Agricultural)/MUD
East:	Merchants Greene (State Highway 441) Zoned A-1 (Agricultural)
West:	Howell Road, sparse single family residences Zoned A-1 (Agricultural)

Mr. Bell had forwarded a letter to Staff stating his preference for IB (Intermediate Business) zoning to accommodate potential commercial retail in the future and immediate office type uses. As a formal site plan has not yet been formalized, Staff is in agreement that the acreage as a whole, as it fronts two major arterials, is best suited for Intermediate Business zoning at this point.



This continuation of Intermediate Business along the Merchants Greene thoroughfare is an acceptable land use designation without a formal master plan as pertinent information associated with any large-scale commercial development, such as traffic impact studies, pedestrian walkways, sidewalks, etc. are in place for any commercial designation within the City of Morristown.

The Regional Planning Commission at their regular meeting of July 12th voted unanimously to forward this request to City Council as submitted for approval of the rezoning from A-1 (Agricultural) to IB (Intermediate Business). Staff's recommendation is the same.

#### CITY COUNCIL OPTIONS:

1. Approve rezoning request as submitted;
2. Approve rezoning request with stipulations;
3. Table rezoning request;
4. Deny rezoning request.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF MORRISTOWN TENNESSEE, APPENDIX B AND OFFICIAL ZONING MAP. (Rezoning of property adjacent to Merchants Greene Boulevard from Agricultural District (A-1) to Intermediate Business District (IB) in the First Civil District of Hamblen County.)**

BE IT ORDAINED BY THE CITY OF MORRISTOWN AS FOLLOWS:

SECTION I. WHEREAS, the Morristown Regional Planning Commission has recommended to the City Council of the City of Morristown that a certain amendment be made to Ordinance No. 2092, known as the Zoning Ordinance for the City of Morristown, Appendix B;

NOW, THEREFORE, in order to carry into effect the said amendment:

SECTION II. BE IT RESOLVED by the City Council of the City of Morristown that Ordinance No. 2092 be and the same hereby is amended so as to provide that the following described real estate be rezoned from A-1, Agricultural District to IB, Intermediate Business District.

*That parcel of land having Hamblen County Tax Map ID # 032048 05907 containing 43 +/- acres; and to include that portion of Merchants Greene right of way which begins upon crossing over the Norfolk-Southern railway and ends at Veterans Parkway, the whole of the right of way being within the corporate limits of the City of Morristown as of the effective date of this Ordinance.*

SECTION III. BE IT FURTHER ORDAINED that all maps, records and necessary minute entries be changed so as to effect the amendment as herein provided, to the extent that the area herein above described shall be permitted to be used for Intermediate Business (IB).

SECTION IV. BE IT FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith be, and the same are, repealed to the extent of such conflict but not further or otherwise.

SECTION V. BE IT FURTHER ORDAINED that this ordinance takes effect from and after the date of its publication and final passage, the public welfare requiring it.

Passed on first reading this the 19th day of July 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY ADMINISTRATOR

Passed on second and final reading this the 2<sup>nd</sup> day of August 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY ADMINISTRATOR

## APPROPRIATION ORDINANCE

Ordinance Number: 3555.01

AN ORDINANCE TO AMEND ORDINANCE NUMBER 3555, THE CITY OF MORRISTOWN, TENNESSEE ANNUAL BUDGET FOR THE FISCAL YEAR 2016-2017 AND APPROPRIATE THE SUM OF \$270,000 SPECIFICALLY FOR PAYING OF LOCHMERE DEVELOPMENT. THE ADDITIONAL APPROPRIATION FROM RESERVES IS NECESSARY DUE TO THE TIMING OF RECEIVING PERFORMANCE BOND PROCEEDS.

Be it ordained by the Council of the City of Morristown Tennessee that Ordinance Number 3555 identifying the revenue and expenditure accounts of the City of Morristown contained in the annual budget for the fiscal year 2016-2017 is hereby amended and funds are herewith appropriated or adjusted as presented.

FUND	DEPARTMENT	CODE	ACCOUNT DESCRIPTION	RESERVES		EXPENDITURES	
				Increase	Decrease	Increase	Decrease
General (#110)	Fund Balance	26250	Restricted - Public Works		\$ 271,000		
General (#110)	PW - Pavement Management System	110-43300-958	Street Infrastructure Improvements			\$ 271,000	
			Totals	\$ -	\$ 271,000	\$ 271,000	\$ -

PASSED ON FIRST READING THIS \_19th\_ Day of July 2016

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Administrator

PASSED ON SECOND READING THIS \_2nd\_ Day of August 2016

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Administrator

# DRAFT AIA® Document A201™ - 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« » Demolition of Former Morristown College  
« » 117 N. James Street, Morristown, TN 37814

THE OWNER:

(Name, legal status and address)

« » City of Morristown, Office  
« » P.O. Box 1498, Morristown, TN 37815

THE ARCHITECT:

(Name, legal status and address)

« » Not applicable  
« »

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### 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.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 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 Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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



**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions 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.

### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract 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.

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

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

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties 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 already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor 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.

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor 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 Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor 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 Contractor.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order 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 Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

## **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

## **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

## **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other



facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

### **§ 3.5 WARRANTY**

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

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract 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 Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume



the operations. The Contractor 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 15.

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor'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 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such 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 Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor 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 Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect 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 Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.



## § 3.18 INDEMNIFICATION

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

#### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such 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, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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



§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect 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 Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; 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 a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** 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 Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** 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 Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor 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 Contractor, separate contractors and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

##### **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor 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 Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so 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 Contractor's Work, except as to defects not then reasonably discoverable.

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

**§ 6.2.4** The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, 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 the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 GENERAL**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect 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; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction 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 and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, 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 Contract 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 7.3.7.

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

**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect 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 in the Contract Sum, 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 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. 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.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

## **§ 7.4 MINOR CHANGES IN THE WORK**

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

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

### § 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

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

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, 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 Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.



**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, 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 Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment 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 Contractor 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.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work 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 Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

## **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**§ 9.6.5** Contractor 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 Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor 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 Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## **§ 9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, 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 Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## **§ 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 Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

## **§ 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 Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 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 Contractor 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 Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor 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 Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect 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 Contract Documents.

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect



will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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 a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, 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 Contract 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 Contractor to the Architect prior to certification of such 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 Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall 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 notifying owners and users of adjacent sites and utilities.

**§ 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 Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

**§ 10.2.7** The Contractor 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 either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such 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.

#### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor'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 Contractor 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 Contract Documents, the Owner shall furnish in writing to the Contractor and Architect 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 Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have 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 Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.



§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact 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.

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

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor 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 Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### **§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the



Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense 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.

#### **§ 12.2 CORRECTION OF WORK**

##### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, 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 Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 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.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract 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 13 MISCELLANEOUS PROVISIONS

### § 13.1 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 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, 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.

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

### § 13.3 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.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor 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 there under, except as may be specifically agreed in writing.



## **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect 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 Contractor.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **§ 13.6 INTEREST**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor 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 final dispute resolution method selected in the Agreement 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 Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 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.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

## **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

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

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

## **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** 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 14.3.1. 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 Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor 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 subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor 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.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 CLAIMS**

##### **§ 15.1.1 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 Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

##### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

##### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** 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 for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.



#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party 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 Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of 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.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 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.



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

§ 15.2.8 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.

### § 15.3 MEDIATION

§ 15.3.1 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 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 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 thereof.

### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with 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.

§ 15.4.1.1 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. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 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 thereof.

§ 15.4.3 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.

### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 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).

§ 15.4.4.2 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.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

TELAD

DRAFT

# AIA Document A101™ - 2007

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the « 11th » day of « July » in the year « 2016 »  
(In words, indicate day, month and year.)

### BETWEEN the Owner:

(Name, legal status, address and other information)

« » « City of Morristown, Owner »  
« » « P.O. Box 1499 »  
« » « Morristown, TN 37815 »  
« »

### and the Contractor:

(Name, legal status, address and other information)

« » « NorthStar Demolition & Remediation, LP »  
« » « 1624 Toal Street »  
« » « Charlotte, NC 28206 »  
« »

### for the following Project:

(Name, location and detailed description)

« » « Demolition of Former Morristown College »  
« » « 417 N. James Street »  
« » « Morristown, TN 37814 »

### The Architect:

(Name, legal status, address and other information)

« » « (Not applicable) »  
« »  
« »  
« »

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
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- 9 ENUMERATION OF CONTRACT DOCUMENTS
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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

~~«The date of commencement of the Work will be fixed in a notice to proceed from the Owner, and will be contingent upon the Owner acquiring possession and all rights and title to the property during condemnation proceedings.»~~

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

~~« Not applicable »~~

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than « 180 » ( « calendar » ) days from the date of commencement, or as follows:



(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« ~~Not applicable~~ »

**Portion of Work**

« ~~Structure Demolition and Site Restoration~~ »

**Substantial Completion Date**

~~December 31, 2016~~

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« ~~Liquidated damages will not be applied to this contract.~~ »

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « ~~seven hundred and seven thousand, four hundred dollars~~ » (\$ « ~~707,400.00~~ »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

« ~~None~~ »

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
« <del>None</del> »	<del>N/A</del>	<del>N/A</del>

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
« <del>None</del> »	<del>N/A</del>

**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

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

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the « ~~25th~~ » day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the « ~~15th~~ » day of the « ~~following calendar~~ » month. If an Application for Payment is received by the ~~Architect~~ **Owner** after the application date fixed above, payment shall be made by the Owner not later than « ~~30~~ » ( « ~~calendar~~ » ) days after the ~~Owner~~ **Architect** receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of « zero » percent ( « 0 » %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of « zero » percent ( « 0 » %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

**§ 5.1.7** The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

**§ 5.1.8** Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

« Not applicable »

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## **§ 5.2 FINAL PAYMENT**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

« No later than 30 days after the issuance of the Owner's final Certificate for Payment »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect-Owner will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« Not applicable. »

« »

« »

« »

### § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

[ ☒ ] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

[ ☐ ] Litigation in a court of competent jurisdiction

[ ☐ ] Other *(Specify)*

« »

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

« ☒ » % « five percent »

§ 8.3 The Owner's representative:

*(Name, address and other information)*

« » Jody Bernard

« » Finance/Purchasing Manager

« » City of Morrisown

« » P.O. Box 1492

« » Morrisown, IN 37515

« »

**§ 8.4 The Contractor's representative:**  
(Name, address and other information)

« » Joseph Nottmeyer  
« » Branch Manager/Project Executive  
« » 1624 Toal Street  
« » Charlotte, NC 28206  
« »  
« »

**§ 8.5** Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

**§ 8.6** Other provisions:

« None »

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

**§ 9.1.1** The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

**§ 9.1.2** The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 9.1.3** The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<u>+ Exhibit A →</u>	<u>Bid Submittal Package</u>	<u>June 14, 2016</u>	<u>114</u>
<u>Exhibit B</u>	<u>Scope Clarifications</u>	<u>July 11, 2016</u>	

**§ 9.1.4** The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« None »

Section	Title	Date	Pages
« <u>N/A</u> »	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

**§ 9.1.5** The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« None »

Number	Title	Date
« <u>N/A</u> »	<u>N/A</u>	<u>N/A</u>

**§ 9.1.6** The Addenda, if any:

Number	Date	Pages
« <u>Addenda #1</u> »	<u>June 8, 2016</u>	<u>12 including attachments</u>

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.



§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

« »

- .2 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

« »

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

Type of insurance or bond

Limit of liability or bond amount (\$0.00)

« »

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

« »

**OWNER (Signature)**

« Joey Barnard » « Finance/Purchasing Manager »

*(Printed name and title)*

« »

**CONTRACTOR (Signature)**

« Joseph Strimmar » « Branch Manager »

*(Printed name and title)*



**NorthStar Demolition and Remediation, LP**

1624 Toal Street • Charlotte, NC 28206-1522

Phone: 704.333.0231 • Fax: 704.333.5448

License #65179 [www.northstar.com](http://www.northstar.com)

**July 11, 2016**

Joey Barnard  
City of Morristown  
P.O. Box 1499  
Morristown, TN 37815

Re: Morristown College Demolition Project:  
Exhibit "B"; Supplemental Asbestos Scope Clarification

Mr. Barnard:

Part of NorthStar's detailed bid submittal package included pricing breakdowns for various asbestos and environmental services necessary for the successful completion of the Morristown College Demolition project. Included in our scope of services is the cost of performing a comprehensive asbestos bulk sampling survey to identify and quantify asbestos-containing materials, as no survey was previously conducted for the property.

During NorthStar's site visit, we were able to identify building materials that historically have contained asbestos and as such, we were able to estimate the approximate quantities of these presumed asbestos-containing materials (PACMs). That said, it should be understood by both parties that subject to the results of the asbestos bulk sampling survey, some additional building materials may be determined to contain asbestos, which may incur unforeseen cost changes to the asbestos abatement portion of the base bid work.

NorthStar will work closely with the City of Morristown and make every effort to minimize this and any other potential cost impacts to the project. We greatly look forward to partnering with your team.

Sincerely,

Christian Billotto

NorthStar Demolition & Remediation, LP



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION  
AERONAUTICS DIVISION  
607 HANGAR LANE, BLDG. 4219  
P.O. BOX 17326  
NASHVILLE, TENNESSEE 37217**

**MEMORANDUM**

**TO: Airport Sponsor/Manager**

**FROM: Belinda Hampton, Program Monitor 2  
TDOT – Aeronautics Division**

**DATE: June 28, 2016**

**SUBJECT: Airport Maintenance Grant for FY17**

---

**Attached is your FY 17 Airport Maintenance Grant.**

**When returning your signed unexecuted grant, remember to email a notification to [aero.grants@tn.gov](mailto:aero.grants@tn.gov) once you have uploaded to BlackCat**

**When submitting an invoice for payment, please use the correct TAD Project number on documentation. Your TAD project number is located in the top right corner of the Contract Summary page.**

**All invoices should be submitted every 60 days from the last day of the month they were incurred for payment through the BlackCat system.**

**Please see *Updated Invoice Requirements* for processing ALL invoices.**

**Should you have any questions, please contact me at 615-741-3208.**

*This memo is also uploaded on "Funding Request Letter" under the Funding tab*

# Important Grantee Information

(Effective July 1, 2016)

## Airport Improvement Grants (Revisions)

- C.5. Invoicing Requirements b(4) 60 day invoice submission (new paragraph)
- C.6. Budget Line-Items will allow line amounts to be moved upon notification in writing to your project manager without an amendment (as long as the amount of the total grant doesn't changed)

## Airport Improvement Grants (Reminders)

- A.4. Federally funded projects require the Federal Award Identification Worksheet to be completed and updated every six (6) months until the project is completed
- E.4. Federal Funding Accountability and Transparency Act (FFATA); this references the Federal Accountability (Duns Number and FAI Worksheet)
- E.10. No Retainage Allowed: The Grantee may not withhold retainage on progress payments from the prime contractor and the prime contractor may not withhold retainage from their subcontractors.

If a grant requires an amendment, this paragraph will be amended into your current grant and you will be required to bring the project into compliance. (If you began a construction project in 2016, please contact your Project Manager as soon as possible)

## General Information

- Grant Parent/Child Information "Attachment Three" is a once a year submission
- All Attachments (where applicable) **MUST** be completed or the grant will be returned unexecuted for completion.
- If a Grantee's share is required, it must be deposited with the State prior to receipt of an executed grant
- Grants must be returned within the 15 day period in order for the Commissioner to sign prior to the effective date of the grant (2017 Maintenance will be excluded this year) otherwise a new grant will be issued with a new effective date
- No reimbursement will be made under the Airport Maintenance Grants for mowing by city, county or airport employees, or by contract (Lawn Care Service) if Ground Maintenance Equipment has been purchased with a state grant; fuel and repairs are allowed
- If you as the Grantee need to be set up as an EFT (paid electronically) from the State of Tennessee for your invoices, please contact Belinda Hampton 615-741-3208 or [belinda.hampton@tn.gov](mailto:belinda.hampton@tn.gov)



# Important Grantee Information

(Effective July 1, 2016)

## BlackCat

- Grantee signed Grants/Amendments must be uploaded into “Documents Tab” BlackCat with notification to [Aero.Grants@tn.gov](mailto:Aero.Grants@tn.gov); subject titled “*Unexecuted Sponsor Signed Grant*” with the TAD project number listed
- Payment Summary Sheets are located on every payment attached to individual paid invoices in BlackCat
- Project Approval Letters and Required Grantee Share Letters are found under Funding Request, click appropriate Title and then Contract Tab

## Items to be returned with the 2017 Maintenance Grant

- ❖ Signed Grant
- ❖ New W-9 Form
- ❖ Parent Child Information Form (Attachment Three)

## Important Addresses

### Unexecuted/Executed Grant Notifications


[Aero.Grants@tn.gov](mailto:Aero.Grants@tn.gov)

### Physical Address **(PO BOX CLOSED JULY 1, 2016)**

TDOT-Aeronautics Division  
607 Hangar Lane, Building 4219  
Nashville, TN 37217  
615-741-3208

### Grantee Local Share **(Check to be made out to: State of Tennessee)**

TDOT Finance Division  
Attn: Lacey Bryant  
505 Deaderick Street  
Suite 800, James K. Polk Building  
Nashville, TN 37243-0329

 <b>GOVERNMENTAL GRANT CONTRACT</b> (cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)					
<b>Begin Date</b> 07/01/2016		<b>End Date</b> 06/30/2017		<b>Agency Tracking #</b> 40100-22617	
				<b>Edison ID</b> 49231	
<b>Grantee Legal Entity Name</b> City of Morristown					<b>Edison Vendor ID</b> 4108
<b>Subrecipient or Contractor</b> <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor			<b>CFDA # N/A</b>  <b>Grantee's fiscal year end: June</b>		
<b>Service Caption (one line only)</b> 2017 General Aviation Airport Maintenance Program					
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Grant Contract Amount</b>
2017	\$19,800.00				\$19,800.00
<b>TOTAL:</b>	<b>\$19,800.00</b>				<b>\$19,800.00</b>
<b>Grantee Selection Process Summary</b>					
<input checked="" type="checkbox"/> Competitive Selection			For every project, the airport owner, sponsor or educational program must submit a letter of request and an application to the Aeronautics Division. The Aeronautics Division staff reviews all project requests monthly. The review is based on the Division's established criteria and policies. The review results are presented to the Commissioner for approval. Grant award amounts will be based upon available funds and the amount requested, and such funding will be continued in order of application approval.		
<input type="checkbox"/> Non-competitive Selection			Describe the reasons for a non-competitive grantee selection process.		
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				CPO USE - GG	
<b>Speed Chart (optional)</b>		<b>Account Code (optional)</b> 71302			

VENDOR ADDRESS: 1

LOCATON CODE: MAIN

**GRANT CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF MORRISTOWN**

This grant contract ("Grant Contract"), by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" or the "Grantor State Agency" and City of Morristown, hereinafter referred to as the "Grantee," is for the provision of an airport improvement project, as further defined in the "SCOPE OF SERVICES AND DELIVERABLES."

Grantee Edison Vendor ID # 4108

**A. SCOPE OF SERVICES AND DELIVERABLES:**

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. The purpose of this grant shall be to provide financial assistance to a publicly-owned airport. Pursuant to the provisions of Tennessee Code Annotated 42-2-23, assistance shall be for eligible maintenance work items or improvements as described but not limited to as shown in Attachment One. The Grantee shall provide a fifty percent (50%) participation of actual costs.

**B. TERM OF CONTRACT:**

- B.1. This Grant Contract shall be effective on **July 1, 2016** ("Effective Date") and extend for a period of **Twelve (12) months** after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed **Nineteen Thousand Eight Hundred Dollars and No Cents (\$19,800.00)** ("Maximum Liability"). The Grant Budget, attached and incorporated as Attachment Two is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice/Reference Number (assigned by the Grantee).
- (2) Invoice Date.
- (3) Invoice Period (to which the reimbursement request is applicable).
- (4) Grant Contract Number (assigned by the State).
- (5) Grantor: Department of Transportation-Aeronautics Division.
- (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
- (7) Grantee Name.
- (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
- (9) Grantee Remittance Address.
- (10) Grantee Contact for Invoice Questions (name, phone, or fax).
- (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
  - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
  - ii. The amount reimbursed by Grant Budget line-item to date.
  - iii. The total amount reimbursed under the Grant Contract to date.
  - iv. The total amount requested (all line-items) for the Invoice Period.

- b. The Grantee understands and agrees to all of the following.

- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
- (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
- (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- (4) An invoice under this Grant Contract shall be presented to the State within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. The State will not deem such Grantee costs to be allowable and reimbursable by the State unless, at the sole discretion of the State, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it must be signed by a Grantee agent that would be authorized to sign this Grant Contract.

- C.6. **Budget Line-items.** Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to one percent (1%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the



total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.

- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date, in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
  - b. The State shall not be responsible for the payment of any invoice submitted to the State after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
  - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the State as required by this Grant Contract shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the State pursuant to this Grant Contract.
  - d. The Grantee must close out its accounting records at the end of the Term in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.

C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following, properly completed documentation.

- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once this form is received by the State, all payments to the Grantee under this or any other grant contract will be made by automated clearing house ("ACH").
- b. The Grantee shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Grantee's Federal Employer Identification Number or Social Security Number referenced in the Grantee's Edison registration information.

**D. STANDARD TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.

D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.

D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.

- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
  - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:
- The State:

Belinda Hampton, GA III  
TN Department of Transportation-Aeronautics Division  
P.O. Box 17326  
Nashville, TN 37217  
Telephone: 615-741-1901  
Email: [belinda.hampton@tn.gov](mailto:belinda.hampton@tn.gov)

The Grantee:

Gary Chesney, City Mayor  
City of Morristown  
PO Box 1499  
Morristown, TN 37816-1499  
Telephone: 423-581-0100

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.
- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
  - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.
- D.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:



NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.
- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.
- The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.
- In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.
- Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.
- The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.
- The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.
- Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.
- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.

- D.18. Annual and Final Reports. The Grantee shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Grantee shall submit a final report within three (3) months of the conclusion of the Term. For grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Grantee shall submit annual and final reports to the Grantor State Agency and the Department of Finance and Administration ("F&A"). Send electronic copies of annual and final reports to F&A at [fa.audit@tn.gov](mailto:fa.audit@tn.gov). At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.
- D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law.
- If the Grantee is subject to an audit under this provision, then the Grantee shall complete Parent/Child Information Document, Attachment Three.
- When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.
- A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.
- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, procurements by the Grantee shall be competitive where practicable. For any procurement for which reimbursement is paid under this Grant Contract, the Grantee shall document the competitive procurement method. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification for the decision and for the use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.318—200.326 when procuring property and services under a federal award.
- The Grantee shall obtain prior approval from the State before purchasing any equipment or motor vehicles under this Grant Contract.
- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.
- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.23. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.
- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. **Reserved**
- D.27. State Interest in Equipment. The Grantee shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this Grant Agreement, subject to the Grantor State Agency's equitable interest therein, to the extent of its *pro rata* share, based upon the Grantor State Agency's contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and no matter what the acquisition cost shall be.

As authorized by the provisions of the terms of the Tennessee Uniform Commercial Code — Secured Transaction, found at Title 47, Chapter 9 of the *Tennessee Code Annotated*, and the provisions of the Tennessee Motor Vehicle Title and Registration Law, found at Title 55, Chapter 1 of the *Tennessee Code Annotated*, an intent of this Grant document and the parties hereto is to create and acknowledge a security interest in favor of the Grantor State Agency in the equipment and/or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant document. A further intent of this Grant document is to acknowledge and continue the security interest in favor of the Grantor State Agency in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grants between the Grantor State Agency and the Grantee.

The Grantee hereto grants the Grantor State Agency a security interest in said equipment. This agreement is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the Grantor State Agency a security interest in said equipment. The Grantee agrees that the Grantor State Agency may file this Grant Agreement or a reproduction thereof, in any appropriate office, as a

financing statement for any of the equipment herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the Grantor State Agency, upon the Grantor State Agency's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Agreement in such form as the Grantor State Agency may require to perfect a security interest with respect to said equipment. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the Grantor State Agency may reasonably require. Without the prior written consent of the Grantor State Agency, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Agreement, including the covenants to pay when due all sums secured by this Grant Agreement, the Grantor State Agency shall have the remedies of a secured party under the Uniform Commercial Code and, at the Grantor State Agency's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Agreement. The Grantee shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Grant Agreement and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;
- g. Location within the Grantee's operations where the equipment is used;
- h. Condition of the property or disposition date if Grantee no longer has possession;
- i. Depreciation method, if applicable; and
- j. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment with an identification number which is cross referenced to the equipment item on the inventory control report. The Grantee shall inventory equipment annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment purchased with funding through this agreement within thirty (30) days of the Grant Agreement end date and in form and substance acceptable to the Grantor State Agency. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the Grantor State Agency, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Grantee shall be responsible to the Grantor State Agency for the *pro rata* amount of the residual value at the time of loss based upon the Grantor State Agency's original contribution to the purchase price.

Upon termination of the Grant Agreement, where a further contractual relationship is not entered into, or at another time during the term of the Grant Agreement, the Grantee shall request written approval from the Grantor State Agency for any proposed disposition of equipment purchased with Grant funds. All equipment shall be disposed of in such a manner as parties may agree from among alternatives approved by Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.



- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: [http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.33. Prevailing Wage Rates. All grants and contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*

## **E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
- E.2. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

- d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.3. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Grantee to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Grantee shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Grant Contract.

- E.4. Airport Assurances from Sale or Disposal of Land, Properties, Structures or Materials Related to Airport. The airport owner shall not sell or otherwise dispose of the property identified herein without the express prior written consent of the State, which consent will not be unreasonably withheld. In the event that the State grants permission to sell or otherwise dispose of all or a portion of the forgoing property in perpetuity, the airport owner shall be liable to pay the State a portion of the proceeds at fair market value as determined herein, resulting from the agreed upon sale price or fair market value. The funds collected from the sale of the property or fair market value will be divided in the same proportion as defined in this Grant Contract with said State funds reinvested into airport property in accordance with State funding policies and procedures.

Nothing herein shall prohibit the parties hereto from agreeing to the reinvestment of said proportion of the proceeds or fair market value for rehabilitation or improvements in any remaining airport properties or structures or at a new airport site.

All properties purchased with assistance of this Grant must include in the property deed a clause that states that **"This property was purchased with the assistance of State and/or Federal funds, and may not be sold or otherwise disposed of without all agencies express written consent."**

- E.5. Airport Operations. For all grants that total fifty thousand dollars (\$50,000.00) or more, as consideration for receiving this Grant from the State, the Grantee agrees to operate and maintain the Airport for a period of twenty (20) years from the effective date of this Grant Contract.
- E.6. Compliance with FAA Regulations. For all grants involving federal funds, the Grantee agrees to accomplish the project in compliance with the terms and conditions contained in the U. S. Department of Transportation Federal Aviation Administration *Terms and Conditions of Accepting Airport Improvement Program Grants* hereby incorporated into this document by reference. Said document is on file in the Tennessee Department of Transportation, Aeronautics Division Office. These assurances can also be located on the FAA Website at [www.faa.gov/airports/aip/grant\\_assurances](http://www.faa.gov/airports/aip/grant_assurances)
- E.7. No Retainage Allowed. The Grantee may not withhold retainage on progress payments from the prime contractor and the prime contractor may not withhold retainage from their subcontractors.
- E.8. Printing Authorization. The Grantee agrees that no printing/publication shall be printed pursuant to this Grant Agreement without the prior authorization of the State even if printing costs are included in the budget line items, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement. The Grantee and its employees may publish the results of the

research in whole or in part as they deem appropriate without authorization by the State if it is at no cost to the Grantor State Agency.

**IN WITNESS WHEREOF,**

**CITY OF MORRISTOWN:**

**32-0458-17**

\_\_\_\_\_  
**GRANTEE SIGNATURE**

\_\_\_\_\_  
**DATE**

**GARY CHESNEY, CITY MAYOR**

\_\_\_\_\_  
**PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)**

\_\_\_\_\_  
**GRANTEE LEGAL COUNSEL'S SIGNATURE**

\_\_\_\_\_  
**DATE**

**DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_  
**JOHN C. SCHROER, COMMISSIONER**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**JOHN REINBOLD, GENERAL COUNSEL  
APPROVED AS TO FORM AND LEGALITY**

\_\_\_\_\_  
**DATE**

The following are examples of eligible\* and ineligible\* items for use with your FY16 Airport Maintenance grant.

Eligible Uses:

1. Preventive maintenance, repair or replacement of maintenance buildings, equipment, navigational aids, lighting systems, pavements and other property or facilities necessary for the safe and efficient functioning of the airport
2. Purchase of mowing equipment
3. Maintenance services such as landscaping or other related work on airport property (i.e. services contracted by airport sponsor, county/city grounds service – journal vouchered for the time worked on airport maintenance only)
4. Fuel/Repairs used for maintenance equipment ONLY, with valid receipt showing purchase price/gallons ONLY
5. Unicom and other radio equipment
6. Airport signage
7. Fire extinguishers including inspection fees
8. Safety-related equipment: (i.e. gloves, safety vests, safety eyewear, earplugs)
9. Installation and subscription to an aviation flight planning satellite weather system, i.e., D.T.N., W.S.I. or Pan Am Weather Systems
10. Testing or inspection of underground fuel storage tanks, and associated fees (as necessary to comply with federal and/or state regulations)
11. Sales tax on eligible items
12. Professional uniform service (to be used solely for work at the airport)
13. Cleaning supplies, cleaning service, including waste removal

Ineligible Uses:

1. Food or drink
2. Utility or telephone bills (including cellular / "land line")
3. Maintenance of facilities or equipment not owned or located on the airport property
4. Purchase or maintenance of aircraft, automobiles, pickup trucks or other passenger vehicles including courtesy cars
5. Services performed by a Fixed Based Operator (FBO), by anyone employed or contracted by the FBO, or employees of the airport sponsor, for any type of airport operational duties or functions that would normally be required of their job. This will not be reimbursed.
6. Insurance of any type
7. Computers, computer software, computer peripherals, or Internet Service (unless otherwise noted above)
8. Office supplies, including toner and copy paper
9. Furniture (including cabinetry of any type)
10. Television/Cable
11. Office Equipment (unless otherwise noted above)
12. Repairs of office equipment
13. Registration, travel or expenses for conferences or seminars
14. Purchase (or repair) of appliances
15. Local Project Matching Funds for projects

\* All items listed above are to be used as a reference and not all inclusive. Any questionable items will be reviewed on a case-by-case basis and may be deducted from your total invoice\*\*\*



GRANT BUDGET				
City of Morristown: 2017 Airport Maintenance Program			AERM-17-143-00	
The Grant Budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable Period: BEGIN: July 1, 2016			END: June 30, 2017	
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY <sup>1</sup>	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award <sup>2</sup>	\$19,800.00	0.00	\$19,800.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11, 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest <sup>2</sup>	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation <sup>2</sup>	0.00	0.00	0.00
18	Other Non-Personnel <sup>2</sup>	0.00	0.00	0.00
20	Capital Purchase <sup>2</sup>	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	GRAND TOTAL	\$19,800.00	0.00	\$19,800.00

<sup>1</sup> Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.* (posted on the Internet at: <http://www.state.tn.us/finance/act/documents/policy3.pdf>).

<sup>2</sup> Applicable detail follows this page if line-item is funded.

## GRANT BUDGET LINE-ITEM DETAIL:

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
2017 General Aviation Airport Maintenance Program	\$19,800.00
TOTAL	\$19,800.00

Project 32-0458-17

Project Breakdown: \$19,800.00 50% State 50% Local Participation

Notwithstanding any provision contained herein, grantee agrees to fund at least five (5%) of the total project cost.

### Parent Child Information

*The Grantee should complete this form and submit it with the Grant Contract. The Grantee should submit only one, completed "Parent Child Information" document to the State during the Grantee's fiscal year.*

"Parent" means an entity whose IRS filing contains the information of **at** least one other entity.

"Child" means an entity whose information is contained in another entity's IRS filing.

Grantee's Edison Vendor ID number:

Is **Grantee Legal Entity Name** a parent? Yes ☐ No ☐

If yes, provide the name and Edison Vendor ID number, if applicable, of any child entities.

Is **Grantee Legal Entity Name** a child? Yes ☐ No ☐

If yes, complete the fields below.

Parent entity's name: \_\_\_\_\_

Parent entity's tax identification number: \_\_\_\_\_

Note: If the parent entity's tax identification number is a social security number, this form must be submitted via US mail to:

Central Procurement Office, Grants Program Manager  
3<sup>rd</sup> Floor, WRS Tennessee Tower  
312 Rosa L Parks Avenue  
Nashville, TN 37243

Parent entity's contact information

Name of primary contact person: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Parent entity's Edison Vendor ID number, if applicable: 4108



# GRANT CONTRACT

(cost reimbursement grant contract with an individual, business, non-profit, or governmental entity of another state or country)

<b>Begin Date</b> July 1, 2016	<b>End Date</b> June 30, 2017	<b>Agency Tracking #</b> 31620-	<b>Edison ID</b> 49103
<b>Grantee Legal Entity Name</b> City of Morristown			<b>Edison Vendor ID</b> 62-6000369
<b>Subrecipient or Contractor</b> <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor		<b>CFDA # 14.231</b>	<b>THDA Contract #: ESG-16-43</b>
<b>Grantee's fiscal year end: June 30, 2017</b>			
<b>Service Caption (one line only)</b>			
<b>Funding —</b>			
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>
2016		\$50,850	
<b>TOTAL:</b>		<b>\$50,850</b>	
<b>Other</b>			
<b>TOTAL Grant Contract Amount</b> \$50,850			
<b>Ownership/Control</b>			
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input checked="" type="checkbox"/> Government <input type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other: Non-Profit Organization			
<b>Grantee Selection Process Summary</b>			
<input type="checkbox"/> Competitive Selection		Sixty-two (62%) of the Emergency Solution Grant (ESG) funding is awarded competitively based on program design, applicant capacity, financial information and completeness of budget, performance, and coordination with local Continuums of Care to meet the needs of the homeless in the locality as described in the 2016 ESG Program Description.	
<input checked="" type="checkbox"/> Non-competitive Selection		Thirty-eight (38%) of the ESG funding is awarded on a formula basis to the 12 Small City Entitlement communities that do not receive a direct allocation of ESG funding but are expected to address homelessness through the "Continuum of Care" described in their Consolidated Plans. These cities are: Bristol, Clarksville, Cleveland, Franklin, Hendersonville, Jackson, Johnson City, Kingsport, Knoxville, Morristown, Murfreesboro, & Oak Ridge.	
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.		<b>CPO USE – GR</b>	
<b>Speed Chart (optional)</b>	<b>Account Code (optional)</b>		



**GRANT CONTRACT ESG-16-43**  
**BETWEEN THE STATE OF TENNESSEE,**  
**Tennessee Housing Development Agency**  
**AND**  
**City of Morristown**

This Grant Contract, by and between the State of Tennessee, **Tennessee Housing Development Agency**, hereinafter referred to as the “State” or “THDA” and City of Morristown, hereinafter referred to as the “Grantee,” is for the provision of services to the homeless and those at risk for homelessness under the Emergency Solutions Grant Program (“ESG”), as further described under “Scope of Services and Deliverables” (the “SCOPE OF SERVICES”).

The Grantee is a Government.

Grantee Place of Incorporation or Organization: **Tennessee**

Grantee Edison Vendor ID # **62-6000369**

**A. SCOPE OF SERVICES AND DELIVERABLES:**

- A.1. The Grantee shall provide all services and deliverables (“Scope”) as required, described, and detailed in this Grant Contract.
- A.2. To maintain and operate emergency homeless shelters; to provide essential services, street outreach and rapid re-housing to the homeless and prevention services to individuals and families at risk for homelessness as specified in ATTACHMENT A: DESCRIPTION OF ACTIVITIES, ATTACHMENT B: IMPLEMENTATION PLAN, AND ATTACHMENT C: BUDGET.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantees duties, responsibilities, and performance hereunder, these terms shall govern in order of precedence below:
  - a. Title 24 Code of Federal Regulations, Part 576 and Part 91, of the Emergency Solutions Grants Program authorized by Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11371-11378) Interim Regulations, (the “Federal ESG Regulations”).
  - b. The United States Department of Housing and Urban Development ESG Desk Guide for Program and Eligibility Policies and Procedures.
  - c. The THDA ESG Program Description and ESG Manual (the “THDA ESG Requirements”).
- A.4. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as ATTACHMENT D, is incorporated in this Grant Contract.
- A.5. To comply with the Eligibility Activity Requirements of 24 CFR Part 576, Subpart B, and Part 91 as applicable to the type of project assisted.
- A.6. To comply with the Program Requirements of 24 CFR Part 576, Subpart E, and Part 91 as applicable to the type of project assisted.

- A.7. To maintain records adequate to document compliance with 24 CFR Part 576, along with such other records the State determines necessary to enable the State to fulfill its responsibilities in the ESG Program. All records will be retained for a three (3) year period in accordance with the requirements of 24 CFR Part 576.
- A.8. To furnish to the State all reports required to be filed in accordance with any directives of the State and within the time period prescribed by the State for such reports.
- A.9. To comply with the required consultation with the local Continuum of Care and HMIS reporting requirements of the ESG Program.

**B. TERM OF GRANT CONTRACT:**

- B.1. Grant Term. This Grant Contract shall be effective on **July 1, 2016** ("Effective Date") and extend for a period of twelve (12) **months** after the Effective Date to June 30, 2017 ("Term"). The State shall have no obligation for goods or services provided by the Grantee prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed FIFTY THOUSAND EIGHTY HUNDRED FIFTY AND 00/100 DOLLARS (\$50,850) ("Maximum Liability"). The Grant Budget, attached and incorporated hereto as Attachment **C**, shall constitute the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the Term and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices, in form and substance acceptable to the State, with all necessary supporting documentation, prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the THDA based on an approved payment schedule, using the forms and all necessary supporting documentation specified by the THDA ESG Requirements, and present such to:

**Tennessee Housing Development Agency**  
**Andrew Jackson Building, Third Floor**  
**501 Deaderick Street, Nashville, TN 37243**  
**Attn: Community Programs Division**

- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line item amount(s) detailed. Any change in Grant Budget line items shall require an amendment of this Grant Contract.
- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date, in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by Section C of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
  - b. The State shall not be responsible for the payment of any invoice submitted to the State after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
  - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the State as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
  - d. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of

audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute non-allowable costs.

- C.12. State's Right to Set Off. The State reserves the right to deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or any other contract between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.
- C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following, properly completed documentation.
- a. The Grantee shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once this form is received by the State, all payments to the Grantee under this or any other grant contract will be made by automated clearing house ("ACH").
  - b. The Grantee shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Grantee's Federal Employer Identification Number or Social Security Number referenced in the Grantee's Edison registration information.

#### **D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services, in compliance with Federal ESG Regulations and the THDA ESG Requirements, completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Grantee violates any terms of this Grant Contract

("Breach Condition"), the State shall have the right to immediately terminate the Grant Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Grant Contract. Upon such termination, the Grantee shall have no claim to any ESG funds remaining under this Grant Contract.

- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.

The Grantee acknowledges, understands, and agrees that this Grant Contract shall be null and void if the Grantee is, or within the past six months has been, an employee of the State of Tennessee or if the Grantee is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
  - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.



- D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:

The State/THDA:

Don Watt, Director of Community Programs  
Tennessee Housing Development Agency  
Andrew Jackson Building, Third Floor  
502 Deaderick Street, Nashville, TN 37243  
Email Address: DWatt@thda.org  
Telephone # 615-815-2030  
FAX # 615-564-1292

The Grantee:

Gary Chesney, Mayor  
City of Morristown  
100 West First North Street, Morristown, TN 37814  
Email Address: gchesney@mymorristown.com  
Telephone # 423-581-0100

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Grantee agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information

Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Grant Contract.

- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Grant Contract.
- b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Grant Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Grantee will indemnify the State and hold it harmless for any violation by the Grantee or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER’S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Tennessee Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Tennessee Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, “This project is funded under a an agreement with the Tennessee Housing Development Agency through the U.S. Department of Housing and Urban Development.” All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

- D.14. Licensure. The Grantee and its employees and all sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by THDA, the Tennessee Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification, Public Company Accounting Oversight Board (PCAOB) Accounting Standards Codification, or Governmental Accounting Standards Board (GASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Audit Requirements, and Cost Principles for Federal Awards*.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Tennessee Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of THDA, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Tennessee Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Reports. The Grantee shall submit all reports with form, substance and deadlines as specified in the Federal ESG Regulations and the THDA ESG Requirements. The Grantee shall submit, within two (2) months of the conclusion of the Term, an ESG annual report to THDA.
- D.19. Audit Report. For purposes of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury ("Comptroller") if during the Grantee's fiscal year, the Grantee: (1) expends seven hundred fifty thousand dollars (\$750,000) or more in direct and indirect federal financial assistance and the State is a pass-through entity; (2) expends seven hundred fifty thousand dollars (\$750,000) or more in state funds from the State; or (3) expends seven hundred

fifty thousand dollars (\$750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Grantee shall complete **ATTACHMENT E: NOTICE OF AUDIT** to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed document during the Grantee's fiscal year. Any Grantee that is subject to an audit and so indicates on Attachment E shall complete **ATTACHMENT F: PARENT CHILD INFORMATION**. If the Grantee is subject to an audit, Grantee shall obtain the Tennessee Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Grantee may contact the Tennessee Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

The audit contract between the Grantee and the Auditor shall be on a contract form prescribed by the Comptroller. The Grantee shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. The Grantee shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.318—300.326 when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.



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

- D.23. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.
- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.
- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. Reserved.
- D.27. State Interest in Equipment or Motor Vehicles. The Grantee shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant contract, subject to the THDA's, equitable interest therein, to the extent of its *pro rata* share, based upon, THDA's, contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition costs which equals or exceeds five thousand dollars (\$5,000). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant contract to create a security interest in favor of THDA



in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant contract. A further intent of this Grant contract is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grant contracts between THDA, and the Grantee.

The Grantee grants THDA a security interest in all equipment or motor vehicles acquired in whole or in part by the Grantee under this Grant contract. This Grant contract is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment or motor vehicles herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants THDA a security interest in said equipment or motor vehicles. The Grantee agrees that THDA may file this Grant contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment or motor vehicles herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to THDA, upon THDA's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant contract in such form as THDA may require to perfect a security interest with respect to said equipment or motor vehicles. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements THDA may reasonably require. Without the prior written consent of THDA, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment or motor vehicles, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant contract, including the covenants to pay when due all sums secured by this Grant contract, THDA shall have the remedies of a secured party under the Uniform Commercial Code and, at the THDA's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant contract. The Grantee shall maintain a perpetual inventory system for all equipment or motor vehicles purchased with funds provided under this Grant contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;
- g. Location within the Grantee's operations where the equipment or motor vehicles is used;
- h. Condition of the property or disposition date if Grantee no longer has possession;
- i. Depreciation method, if applicable; and
- j. Monthly depreciation amount, if applicable.
- k. The Grantee shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control

report. The Grantee shall inventory equipment or motor vehicles annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

1. The Grantee shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant contract within thirty (30) days of its end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify THDA, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon THDA's original contribution to the purchase price.
- m. Upon termination of the Grant contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant contract, the Grantee shall request written approval from THDA for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

- D.28. Local, State and Federal Compliance. The Grantee shall comply with all applicable local, state and federal laws, ordinances, rules and regulations in the performance of this Grant Contract.
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall control.
- E.2. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this the date of this Grant Contract been convicted of, or had a civil judgement rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding the date of this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to THDA if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.3. Work Papers Subject to Review. The Grantee shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by THDA or the Tennessee Comptroller of the Treasury or their respective representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.
- E.4. Environmental Tobacco Smoke. Pursuant to the provisions of the federal “Pro-Children Act of 1994” and the Children’s Act for Clean Indoor Air of 1995”, Tenn. Code Ann. §§ 39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post “no smoking” signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be a part of any subcontract related to this Grant Contract.
- E.5. Hold Harmless. To the extent permitted by State law, the Grantee agrees to indemnify and hold harmless the State of Tennessee and THDA, as well as its officers, agents and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Grantee, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Grantee further agrees it

shall be liable for the reasonable cost of attorneys and court costs for the State and THDA to enforce the terms of this Grant Contract.

In the event of any such suit or claim, the parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State or THDA to give notice shall only relieve the Grantee of its obligations under this Section to the extent that the Grantee can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Grantee, through its attorney(s), the right to represent the State of Tennessee or THDA in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. §8-6-106.

E.6. Federal Funding Accountability and Transparency Act (“FFATA”). This Grant requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Grantee provides information to THDA as required. The Grantee shall comply with the following:

a. Reporting of Total Compensation of the Grantee’s Executives.

(1) The Grantee shall report the names and total compensation of each of its five (5) most highly compensated executives for the Grantee’s preceding completed fiscal year, if in the Grantee’s preceding fiscal year it received:

- i. 80 percent or more of the Grantees annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and sub awards); and
- ii. \$25,000,000 or more in annual gross annual revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports files under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 CFR § 170.315, “Executive” means officers, managing partners, or any other employees in management positions..

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Grantee’s preceding fiscal year and includes the following (for information see 17 § CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites of property) for the executive exceeds \$10,000.
- b. The Grantee must report executive total compensation described above to THDA by the end of the month during which this Grant Contract is fully executed.
  - c. If this Grant Contract is amended to extend the Term, the Grantee must submit an executive total compensation report to THDA by the end of the month in which the amendment to this Grant Contract becomes effective.
  - d. The Grantee will obtain a Data Universal Numbering System (“DUNS”) number and maintain its DUNS number for the term of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Grantee’s failure to comply with the above requirements is a material breach of this Grant Contract for which THDA may terminate this Grant Contract for cause. THDA will not be obligated to pay any outstanding invoice received from the Grantee unless and until the Grantee is in full compliance with the above requirements.

E.7. Training. The Grantee agrees to attend all training sessions regarding management of the ESG Program which are scheduled by THDA.

E.8. ESG Program Requirements. Under this Grant Contract, Grantee is receiving an allocation or grant of Emergency Solutions Grant Program funds. The Grantee understands these funds are made available through the U.S. Department of Housing and Urban Development (HUD) and to facilitate the receipt of these funds the Grantee agrees and certifies to comply with all applicable State and HUD requirements. Without limitations, Grantee specifically agrees and certifies as to the following:

- a. The Grantee will abide with all of the requirements of 24 CFR Part 576 and Part 91, the Emergency Solutions Grant Program.
- b. The Grantee will match dollar-for-dollar the ESG funding it receives under this Grant Contract with funds from other public or private sources.
- c. The Grantee will comply with other applicable Federal Requirements in 24 CFR Part 576 and Part 91, as follows:
  - 1. 24 CFR 5.105(a). Section 3 Nondiscrimination and Equal Opportunity;



2. 24 CFR 576 Subpart B Applicability of OMB Circulars
  3. 24 CFR 576 Subpart B Lead-Based Paint Poisoning Prevention Act;
  4. 24 CFR 576.404 Conflicts of Interest;
  5. 24 CFR 24.50 Environmental Review;
  6. 24 CFR 576.408 Relocation and Acquisition.
  7. Title VI and Executive Order 13166 Affirmative Outreach
- d. If the Grantee is primarily a religious organization, it agrees to use its funds to provide all eligible activities under this program in a manner that is free from religious influences as provided by 24 CFR 576.406.
  - e. The Grantee will comply with the uniform administrative requirements of 24 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award, and the requirements of 24 CFR 576.407.
  - f. The Grantee will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR, Part 24 and the requirements of 24 CFR 576.59.
  - g. The Grantee will comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, implementing regulations at 24 CFR, Part 35, Subparts A, B, H, J, K, and M as applicable.
  - h. The Grantee will use ESG funds pursuant to its or the State's Consolidated Plan approved by HUD and all requirements of 24 CFR, Part 576 and Part 91.
  - i. If the Grantee is a unit of government, it will obligate all ESG grant funds to subrecipients within 120 days of the date the funds were made available to the State.
  - i. The Grantee will maintain adequate documentation of homelessness status to determine eligibility of persons served by the ESG program.
  - k. The Grantee will establish a formal process by which it may terminate ESG assistance to an individual or family who violates program requirements in accordance with 24 CFR Part 576.402. The formal process adopted by the Grantee must allow for the due process of the terminated participant's rights through a grievance procedure that allows a hearing regarding the termination of assistance.
  - l. The Grantee will ensure that at least one homeless or formerly homeless individual participates in a policy-making function within the organization in accordance with 24 CFR Part 576.405. The Grantee will involve homeless individuals and families in the operation of the ESG-funded program through work or volunteer activities in accordance with 24 CFR Part 576.405.
  - m. The Grantee will develop and implement procedures to ensure the confidentiality of records pertaining to any individual fleeing domestic violence situations. In addition the

address and location of family violence shelter facilities receiving ESG funding may not be publicly disclosed except with the written authorization of the person(s) responsible for the shelter facility's operation.

- E.9. Homeless Management Information Systems (HMIS). The Grantee must participate in the local Continuum of Care and ensure that data on all persons served and all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those person and activities are located, in accordance with HUD's standards on participation, data collection and reporting under a local HMIS. If the Grantee is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (e.g., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.
- E.10. Drug Free Workplace. The Grantee will or will continue to provide a drug-free workplace by:
- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the action that will be taken against employees for violation of such prohibition;
  - b. Establishing an ongoing drug-free awareness program to inform employees about:
    1. The dangers of drug abuse in the workplace;
    2. The Grantee's policy of maintaining a drug-free workplace;
    3. Any drug counseling, rehabilitation and employee assistance programs; and
    4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
  - c. Making it a requirement that each employee to be engaged in the performance of this Grant Contract be given a copy of the statement required by Paragraph E 5 (a);
  - d. Notifying the employee in the statement required by Paragraph E.11(a) that, as a condition of employment under this Grant Contract, the employee will:
    1. Abide by the terms of the statement; and
    2. Notify the employees in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - e. Notifying THDA in writing, within ten calendar days after receiving notice under Paragraph E.11(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

- f. Taking one of the following actions, within thirty calendar days of receiving notice under Paragraph E.11(d)(2), with respect to any employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or the appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs E.11(a), (b), (c), (d), (e) and (f).
- E.11 Corrective Action. If THDA takes any corrective or remedial action as outlined in 24 CFR §576.67 that is the result of any action taken by the Grantee, the Grantee will take any action required by THDA to prevent a continuation of the deficiency, mitigate to the extent possible its adverse effects or consequences, and prevent its recurrence. These remedies could, among other actions, include repaying ESG funds to THDA.

IN WITNESS WHEREOF,

**City of Morristown:**

BY: 

Gary Chesney, Mayor

DATE

**TENNESSEE HOUSING DEVELOPMENT AGENCY:**

BY:

Don Watt, Director of Community Programs

DATE

## **ATTACHMENT A**

### **TENNESSEE HOUSING DEVELOPMENT AGENCY**

#### **2016 ESG PROGRAM**

#### **DESCRIPTION OF GRANTEE ACTIVITIES**

**GRANTEE NAME: CITY OF MORRISTOWN**

**I. The activities for the 2016 ESG Project shall consist of the following:**

1. Administer ESG funds through a subrecipient agreement with Ministerial Association Temporary Shelter in Hamblen County.
2. Ministerial Association Temporary Shelter will provide Emergency Shelter activities for homeless individuals and/or families in Hamblen County.
3. Ministerial Association Temporary Shelter will use ESG funds for HMIS related activities for the purpose of data collection.
4. An invoice under this Grant Contract shall be presented to THDA within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. THDA will not deem such Grantee costs to be allowable and reimbursable unless, at the sole discretion of THDA, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it shall be signed by a Grantee agent that would be authorized to sign this Grant Contract.

**ATTACHMENT B**

**TENNESSEE HOUSING DEVELOPMENT AGENCY  
2016 ESG PROGRAM  
IMPLEMENTATION PLAN FOR ESG PROJECTS**

**GRANTEE: CITY OF MORRISTOWN**

**I. The time table for completing the activities for the project shall be:**

- |    |  |               |
|----|--|---------------|
| 1. | Determination of status for Environmental Review | July 1, 2016  |
| 2. | Release of funds                                 | July 1, 2016  |
| 3. | Begin providing services to homeless             | July 1, 2016  |
| 4. | Contract complete                                | June 30, 2017 |



**ATTACHMENT C**

**TENNESSEE HOUSING DEVELOPMENT AGENCY  
2016 ESG PROGRAM  
PROJECT BUDGET**

**GRANTEE NAME: CITY OF MORRISTOWN**

<b>Funding Source</b>	<b>Street Outreach</b>	<b>Shelter Activities</b>	<b>Homeless Prevention</b>	<b>Rapid Re-Housing</b>	<b>HMIS</b>	<b>Admin</b>	<b>TOTAL</b>
<b>ESG FUNDS</b>	\$	\$ 46,486	\$	\$	\$ 7,912	\$	54,398
<b>Other Federal Funds</b>	\$	\$	\$	\$	\$	\$	\$
<b>Local Gov't or Agency Funds</b>	\$	\$ 46,486	\$	\$	\$ 7,912	\$	\$ 54,398
<b>Private Funds</b>	\$	\$	\$	\$	\$	\$	\$
<b>Donated Labor, Services, Cash, or Materials</b>	\$	\$	\$	\$	\$	\$	\$
<b>TOTAL</b>	\$	\$ 92,972	\$	\$	\$ 15,824	\$	\$ 108,796

## **ATTACHMENT D**

### **Federal Award Identification Worksheet**

Subrecipient's name (must match registered name in DUNS)	City of Morristown
Subrecipient's DUNS number	079026779
Federal Award Identification Number (FAIN)	E-16-DC-47-0001
Federal award date	July 1, 2016
CFDA number and name	14.231 Emergency Solution Grant Program
Grant contract's begin date	July 1, 2016
Grant contract's end date	June 30, 2017
Amount of federal funds obligated by this grant contract	\$50,850
Total amount of federal funds obligated to the subrecipient	\$50,850
Total amount of the federal award to the pass-through entity (Grantor State Agency)	To be determined, but not to exceed \$5,000,000
Name of federal awarding agency	U. S. Department of Housing and Urban Development
Name and contact information for the federal awarding official	Mary C. Wilson, Director Community Planning and Development U. S. Department of Housing and Urban Development Knoxville Field Office 710 Locust Street, Third Floor Knoxville, TN 37902-2526
Is the federal award for research and development?	NO
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	To be determined by cost allocation plan approved by Grantee's cognizant agency

## ATTACHMENT E

### Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to [cpo.auditnotice@tn.gov](mailto:cpo.auditnotice@tn.gov). ***The Grantee should submit only one, completed "Notice of Audit Report" document to the State during the Grantee's fiscal year.***

- ☒ City of Morristown is subject to an audit for fiscal year 2016.
- ☐ City of Morristown is not subject to an audit for fiscal year 2016.

Any Grantee that is subject to an audit must complete the information below.

Grantee's Edison Vendor ID Number:

Type of funds expended	Estimated amount of funds expended by end of Grantee's fiscal year
Federal pass-through funds	
a. Funds passed through the State of Tennessee	a. 2,193,272
b. Funds passed through any other entity	b. NA
Funds received directly from the federal government	\$ 246,780
Non-federal funds received directly from the State of Tennessee	0

Auditor's name: CRAINE, THOMPSON & TONGS, P.C.

Auditor's address: 225 W. 1<sup>ST</sup> N. ST  
MORRISTOWN, TN 37816

Auditor's phone number: 423-586-7650

Auditor's email: [WWW.CTANBT.NET](mailto:WWW.CTANBT.NET)

## ATTACHMENT F

### Parent Child Information

Send completed documents as a PDF file to [cpo.auditnotice@tn.gov](mailto:cpo.auditnotice@tn.gov). *The Grantee should submit only one, completed "Parent Child Information" document to the State during the Grantee's fiscal year if the Grantee indicates it is subject to an audit on the "Notice of Audit Report" document.*

"Parent" means an entity whose IRS filing contains the information of at least one other entity.

"Child" means an entity whose information is contained in another entity's IRS filing.

Grantee's Edison Vendor ID number:

Is City of Morristown a parent? Yes ☒ No ☐

If yes, provide the name and Edison Vendor ID number, if applicable, of any child entities.

Is City of Morristown a child? Yes ☐ No ☒

If yes, complete the fields below.

Parent entity's name: N/A

Parent entity's tax identification number: \_\_\_\_\_

Note: If the parent entity's tax identification number is a social security number, this form must be submitted via US mail to:

Central Procurement Office, Grants Program Manager  
3<sup>rd</sup> Floor, WRS Tennessee Tower  
312 Rosa L Parks Avenue  
Nashville, TN 37243

Parent entity's contact information

Name of primary contact person: Tony Cox, CITY ADMINISTRATOR

Address: 100 W. 1<sup>ST</sup> N. ST. MORRISTOWN, TN 37814

Phone number: 423 - 585 - 0100

Email address: TCOX@NVMORRISTOWN.COM

Parent entity's Edison Vendor ID number, if applicable: N/A

## AUTHORIZED SIGNATURE FORM

<b>AUTHORIZED SIGNATURES FOR REQUESTS FOR PAYMENT ON THE THDA ESG ACCOUNT</b>	
<b>1. Grantee Name:</b> <div style="text-align: center; font-family: cursive;">CITY OF MORRISTOWN</div>	<b>2. Address:</b> 100 W. 1 <sup>ST</sup> N. ST <div style="text-align: center; font-family: cursive;">MORRISTOWN, TN 37814</div>
<b>3. Contract Number:</b> <div style="text-align: center; font-family: cursive;">ESG-16-43</div>	<b>4. Telephone Number:</b> <div style="text-align: center; font-family: cursive;">423-585-1834</div>
<b>TWO ORIGINAL SIGNATURES ARE REQUIRED FOR EACH PAYMENT REQUEST SUBMITTED TO THDA</b>	
<p>It is recommended that four signatures be shown to permit flexibility in making draw downs.</p> <p style="text-align: center;">Signatures of individuals authorized to sign ESG Requests for Payment:</p>	
<b>5. Typed Name and Signature:</b> BUDDY FIELOBA <div style="font-family: cursive; font-size: 1.2em;">Buddy Fieloba</div>	<b>5. Typed Name and Signature:</b> LARRY CLARK <div style="font-family: cursive; font-size: 1.2em;">Larry Clark</div>
<b>5. Typed Name and Signature:</b> TRACY STROUD <div style="font-family: cursive; font-size: 1.2em;">Tracy L. Stroud</div>	<b>5. Typed Name and Signature:</b> JOEY BARMAD <div style="font-family: cursive; font-size: 1.2em;">Joey Barmad</div>
<p>I certify that the signatures of the above individuals are only those persons authorized to sign ESG Requests for Payment</p>	
<b>6. Signature of Chief Elected Official, Board President or Ex. Director:</b> <b>Date:</b> <div style="font-family: cursive; font-size: 1.5em; display: inline-block;">X [Signature]</div> - Mayor 7/2/16	

**NOTE: THE CHIEF ELECTED OFFICIAL WHO SIGNS IN BLOCK 6 MAY NOT BE ONE OF THE PERSONS AUTHORIZED TO SIGN A REQUEST FOR PAYMENT (PERSONS LISTED IN BLOCK 5). IN OTHER WORDS, AN ELECTED OFFICIAL CANNOT CERTIFY HIS OR HER OWN SIGNATURE.**

A new form must be submitted whenever authorized signers change.

[Return to Agenda](#)





STATE OF TENNESSEE  
DEPARTMENT OF FINANCE & ADMINISTRATION  
SUPPLIER DIRECT DEPOSIT AUTHORIZATION  
(NOT WIRE TRANSFERS)

Mail the ORIGINAL form to the  
address below. Mark the outside  
of the envelope "CONFIDENTIAL".  
State of Tennessee  
Attn: Supplier Maintenance  
21st Floor WRS Tennessee Tower  
312 Rosa L Parks Ave  
Nashville, TN 37243

SECTION 1: TYPE OF REQUEST

☐ New  
☐ Change Existing Account: Enter Existing Routing No. 064201324 Existing Account No. 184357125

SECTION 2: ACCOUNT HOLDER INFORMATION

Name (as shown on your income tax return) CITY OF MORRISTOWN, TN

Business Name, if different from above CITY OF MORRISTOWN, TN

Federal Employer Identification Number (FEIN) 62-6000369 or Social Security Number (SSN)

Enter the address that should be associated with the account number:

Address Line 1: 100 W. 1<sup>ST</sup> N. ST

Address Line 2:

City: MORRISTOWN State: TN Zip Code: 37814

Contact Name: JOEY BARNARD Telephone: 423-585-4614

Enter the email address to which the remittance advices should be routed

Email: JBARNARD@MYMORRISTOWN.COM

SECTION 3: AUTHORIZATION

Are payments deposited into this account subject to being transferred, in its entirety, to a financial institution outside of the United States? Yes ☐ No ☒

Account Type: Checking ☒ Savings ☐

Financial Institution Name: FIRST TENNESSEE BANK

Routing Number: 064201324 Account Number: 184357125

I authorize my financial institution to verify any information provided on this form with the State of Tennessee. I also authorize the state to initiate credit entries and to initiate if necessary, debit entries and adjustments for any credit entries in error, to my account indicated above. This authorization will remain in effect until the state has received written notification of its termination and has adequate time to act upon the request.

Authorized Signatory Printed Name: TONY COX BUDDY FIELDER

Authorized Signature: X A.V. / C ABR Date: 7/7/16

SECTION 4: FINANCIAL INSTITUTION VERIFICATION

I certify the account and routing numbers in Section 3 are for the above specified account holder and is signed by an authorized signatory on the account.

Representative Name: Susan Harbison Representative Signature: Susan Harbison

Title of Representative: FSR Date: 7-7-16

Business Fax Number: 423-587-2381 Business Phone Number: 423-254-6219

Mailing Address: Sharon Skarbison@fthb.com

City: MORRISTOWN State: TN Zip Code: 37814

## Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>City of Morristown, TN</b>	
	2 Business name/disregarded entity name, if different from above <b>Same</b>	
	3 Check appropriate box for federal tax classification; check only <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input checked="" type="checkbox"/> Other (see instructions) ▶ <b>Local Government (City of Morristown, TN)</b>	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) <b>3</b> Exemption from FATCA reporting code (if any) <b>N/A</b> <small>(Applies to accounts maintained outside the U.S.)</small>	
	5 Address (number, street, and apt. or suite no.) <b>100 West 1st North Street</b>	
6 City, state, and ZIP code <b>Morristown, TN 37816</b>		
7 List account number(s) here (optional)		

<b>Part I Taxpayer Identification Number (TIN)</b>																																														
Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.																																														
<b>Note.</b> If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.																																														
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<b>Part II Certification</b>	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and	
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and	
3. I am a U.S. citizen or other U.S. person (defined below); and	
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.	
<b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.	
Sign Here	Signature of U.S. person ▶ <i>Tracy L. Strand</i> Date ▶ <i>6-30-16</i>

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.



**STATE OF TENNESSEE  
DEPARTMENT OF FINANCE & ADMINISTRATION  
SUPPLIER DIRECT DEPOSIT AUTHORIZATION INSTRUCTIONS  
(NOT WIRE TRANSFERS)**

As a supplier to the state of Tennessee you are offered the security and convenience of having payments automatically deposited into your bank account. The Supplier Direct Deposit Authorization is required to process payments electronically. The information on this form is confidential and subject to verification by the state. The completed form must contain original signatures and be received by the state in a timely manner. Electronic signatures are not accepted.

**SECTION 1: TYPE OF REQUEST**

- Check the appropriate box.
  - New: Initial set up of supplier direct deposit.
  - Change Existing Account: Bank account information will not be changed unless the existing routing and account numbers currently on file with the state have been entered.

**SECTION 2: ACCOUNT HOLDER INFORMATION**

- The Name, Business Name, and Federal Employer Identification Number (FEIN) or Social Security Number (SSN) on the Supplier Direct Deposit Authorization form must match the W-9 submitted, or the information already on file with the state.
- Enter the address that should be associated with the account number identified in Section 3. For example, if the business has different locations, each with separate bank accounts, enter the address of the location to which this account applies. If the account is to be added to multiple addresses, list each address on an additional sheet.
- Enter the contact information of an authorized signatory on the account.

**SECTION 3: AUTHORIZATION**

- All fields in this section must be completed.

**SECTION 4: FINANCIAL INSTITUTION VERIFICATION**

- This section must be completed by the financial institution representative.

**Mail the ORIGINAL form to the address below. Mark the outside of the envelope "CONFIDENTIAL".**

State of Tennessee  
Attn: Supplier Maintenance  
21st Floor WRS Tennessee Tower  
312 Rosa L Parks Ave  
Nashville, TN 37243

**Cancellation of Direct Deposit**

To cancel direct deposit, mail a written request to the address above. The request must contain the payee's name, FEIN or SSN, routing and account numbers, that matches the information already on file with the state, and an original signature of an authorized signatory.

Should you have any questions or need assistance, contact Supplier Maintenance at 615-741-9745.



U.S. Department of Housing and Urban  
Development  
451 Seventh Street, SW  
Washington, DC 20410  
www.hud.gov  
espanol.hud.gov

## **Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 Pursuant to 24 CFR Part 58.34(a) and 58.35(b)**

### **Project Information**

**Project Name:** Ministerial Association Temporary Shelter (MATS)

**Responsible Entity:** City of Morristown, TN

**Grant Recipient** (if different than Responsible Entity): Same

**State/Local Identifier:** City of Morristown, TN

**Preparer:** Tracy Stroud

**Certifying Officer Name and Title:** Tracy Stroud, Community Developmental Coordinator

**Consultant** (if applicable): N/A

**Project Location:** 324 N. Hill St, Morristown, TN

### **Description of the Proposed Project [24 CFR 58.32; 40 CFR 1508.25]:**

The M.A.T.S. Charter states that the purpose of the shelter is "to provide temporary shelter for homeless people; to provide meals to homeless people; to provide assistance to homeless people such as counseling, job search and referrals; and to provide public education on the problems of homelessness". 29 years later the leaders of M.A.T.S. are proud to say that the original mission has been maintained.

### **Level of Environmental Review Determination:**

☒ Activity/Project is Exempt per 24 CFR 58.34(a):   (4)Public Service  

☐ Activity/Project is Categorically Excluded Not Subject To §58.5 per 24 CFR 58.35(b):  
\_\_\_\_\_

**Funding Information**

<b>Grant Number</b>	<b>HUD Program</b>	<b>Funding Amount</b>
ESG-16-43	ESG	\$50,850

**Estimated Total HUD Funded Amount:** \$50,850

**This project anticipates the use of funds or assistance from another Federal agency in addition to HUD in the form of (if applicable):** N/A

**Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]:** \$300,000

**Compliance with 24 CFR §50.4 and §58.6 Laws and Authorities**

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

<b>Compliance Factors:</b> Statutes, Executive Orders, and Regulations listed at 24 CFR 50.4 and 58.6	Are formal compliance steps or mitigation required?	Compliance determinations
<b>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §58.6</b>		
<b>Airport Runway Clear Zones and Accident Potential Zones</b>  24 CFR Part 51 Subpart D	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See Attached
<b>Coastal Barrier Resources</b>  Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See Attached
<b>Flood Insurance</b>  Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See Attached



**Mitigation Measures and Conditions [40 CFR 1505.2(c)]**

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

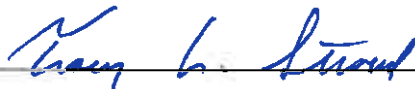
Law, Authority, or Factor	Mitigation Measure
N/A	N/A

Preparer Signature:

Date: 6-30-16

Name/Title/Organization: \_Tracy Stroud, Community Development Coordinator, City of Morristown, TN\_

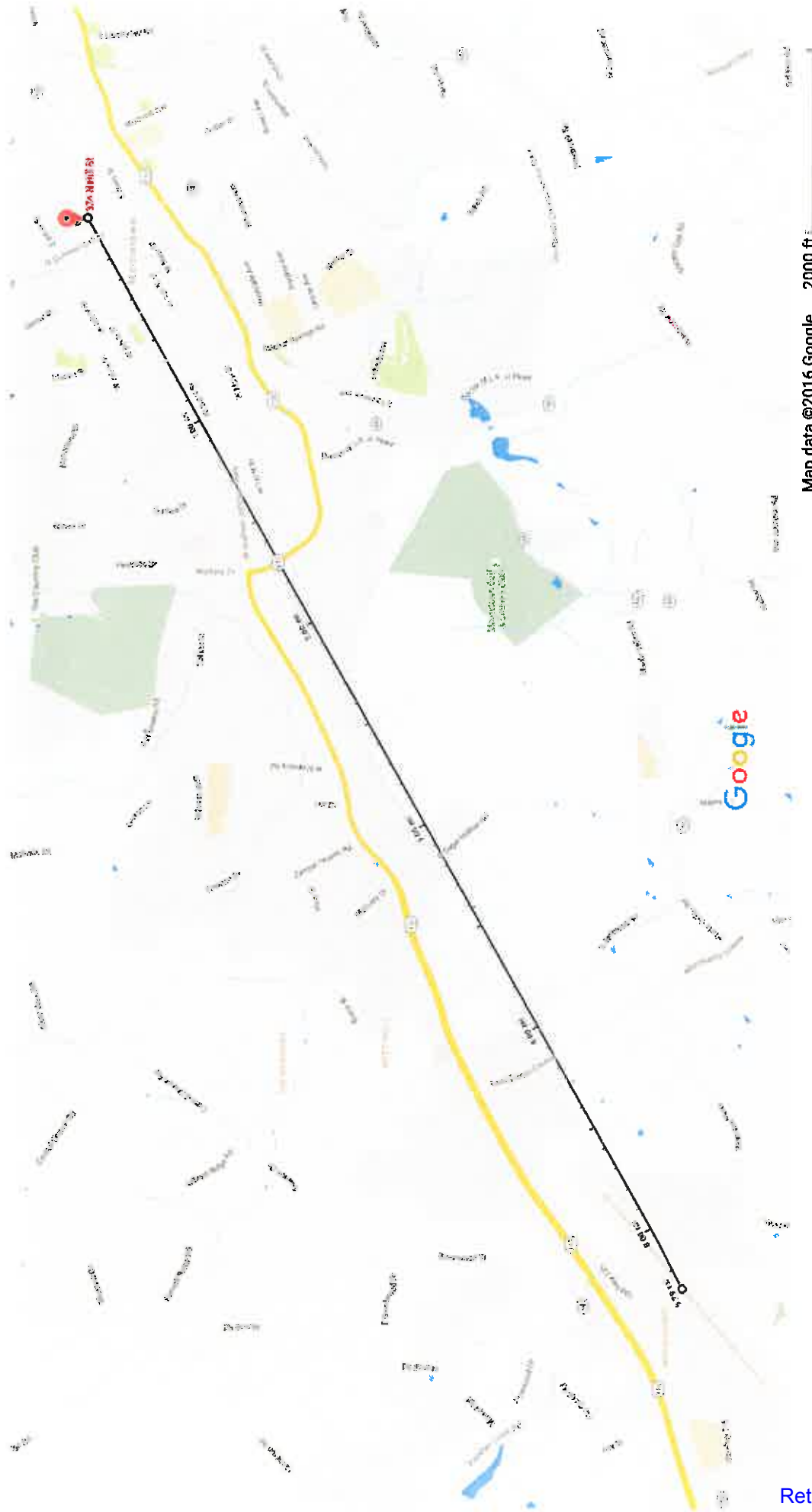
Responsible Entity Agency Official Signature:

Date: 6-30-16

Name/Title: \_Tracy Stroud, Community Development Coordinator

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).

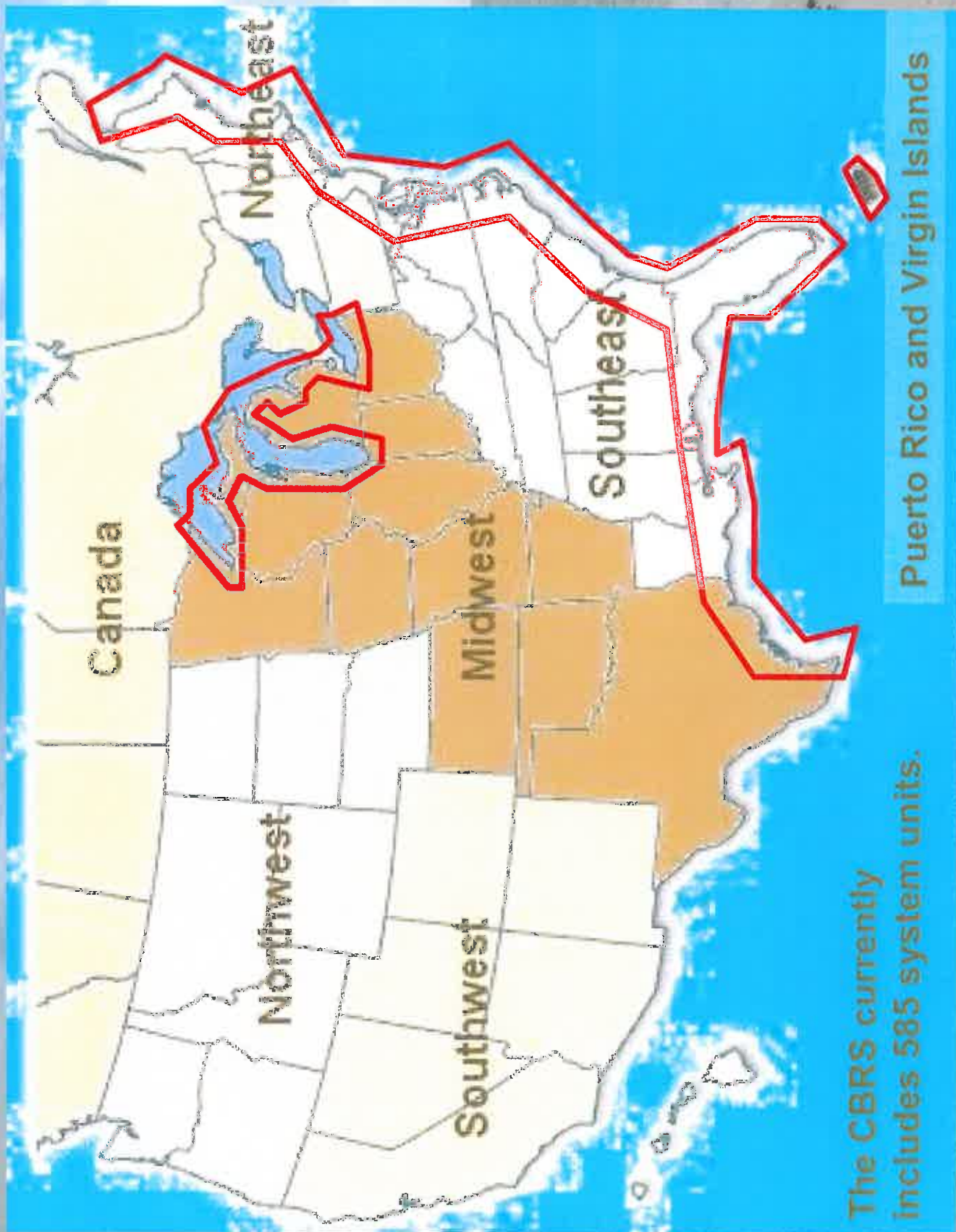
324 N Hill St

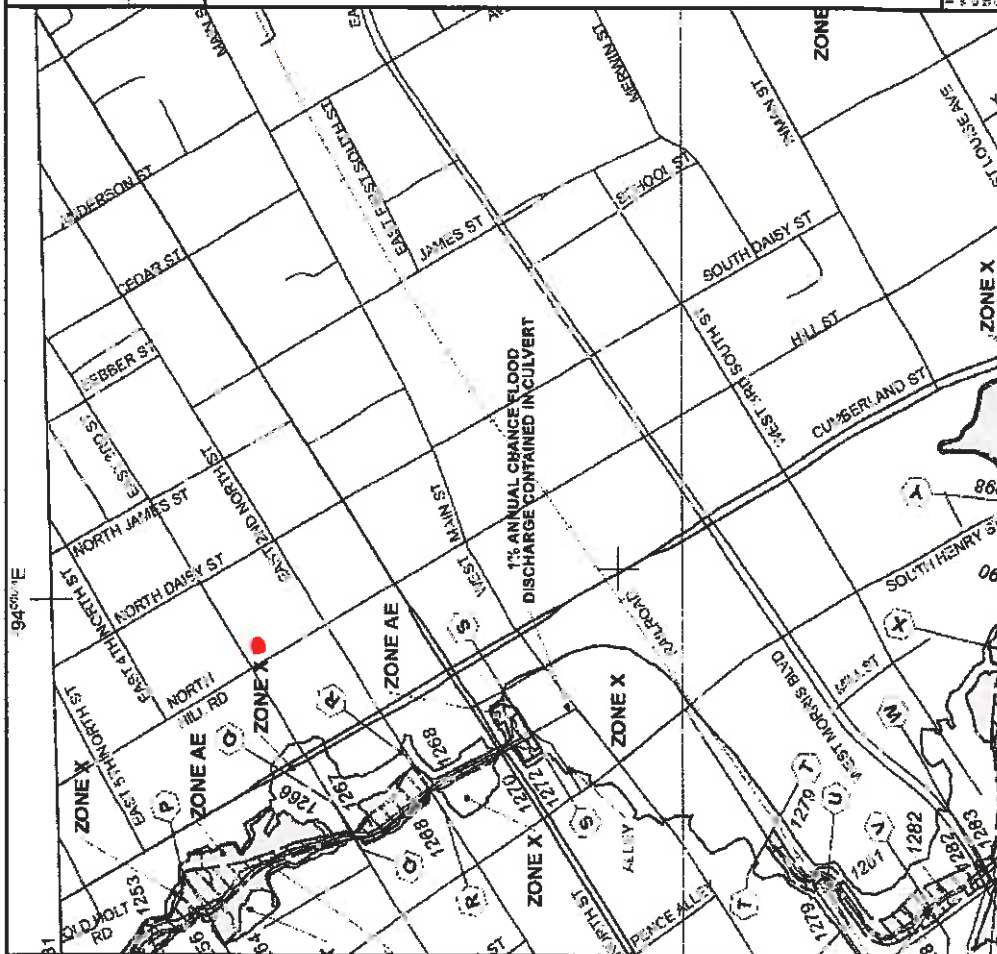


Measure distance  
Total distance: 5.29 mi (8.52 km)

[Return to Agenda](#)

# CBRS Units





**MAP SCALE 1" = 500'**

250 500 750 1,000 FEET

**PANEL 0133E**

**FIRM**

**FLOOD INSURANCE RATE MAP**

**HAMBLEN COUNTY, TENNESSEE**

**AND INCORPORATED AREAS**

**PANEL 133 OF 250**

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS	DATE	BY
1. FIRM PANEL 133 OF 250	4/1/06	001/06
2. FIRM PANEL 133 OF 250	4/1/06	001/06

**MAP NUMBER 47063C0133E**

**EFFECTIVE DATE JULY 3, 2006**

**Federal Emergency Management Agency**

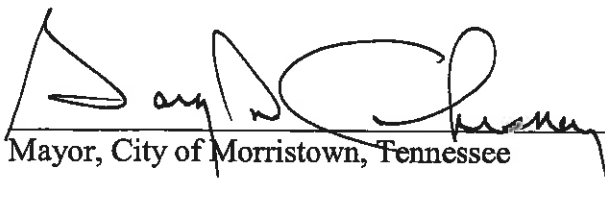
This is an official copy of a portion of the official Flood Insurance Rate Map (FIRM) for Hamblen County, Tennessee, and incorporated areas. It is a reproduction of the original map and is not to be used for any purpose other than for informational purposes. For the latest product information, please visit the FEMA Flood Map Service Center website at [www.fema.gov](http://www.fema.gov).

• MATS



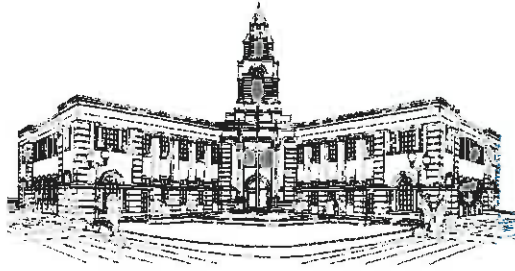
**Delegation of Authority to Act as Environmental Reviews  
Certifying Officer and CDBG, THDA-ESG Grantee  
Authorized Representative/Official**

I, Gary Chesney, Mayor of the City of Morristown, in accordance with 24 CFR 58.13, 58.282, and 58.40 of the laws of the state of Tennessee, do hereby delegate to Tracy L. Stroud, Community Development Coordinator, an official of the City of Morristown, all of the authority necessary to act as Certifying Officer for the City of Morristown under Section 104 (g) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304 (g)) (HCD Act), in connection with the receipt of assistance from the U.S. Department of Housing and Urban Development (HUD) under Title I of the HCD Act ( CDBG Entitlement Funds). Such authority hereby delegated includes, but is not limited to, the authority to execute the certification required under Section 104 (g) of the HCD Act; the authority to specify when appropriate that the City of Morristown has fully carried out its responsibilities for environmental review, decision making and action under Section 104 (g) (1) of the HCD Act; the authority to consent to assume the status of a responsible Federal Official under the National Environmental Policy Act of 1969 and other provisions of law specified in the regulations of HUD in 24 CFR Part 58; and the authority to consent on behalf of the City of Morristown and himself to acceptance of the jurisdiction of the Federal Courts for the purpose of enforcement of his responsibilities as responsible Federal Official. This authorization also extends to include any and all signatory responsibilities inherent in any documentation related to the HUD CDBG entitlement grant program, the THDA Neighborhood Stabilization Program, and the THDA Emergency Solutions Grant Program.

  
\_\_\_\_\_  
Mayor, City of Morristown, Tennessee

8/11/15  
Date





## Morristown City Council Agenda Item Summary

**Date:** July 12, 2016

**Agenda Item:** Approval of Pitney Bowes Lease Agreement

**Prepared by:** Joey Barnard

**Subject:** Pitney Bowes Lease Agreement

**Background/History:** The City of Morristown utilizes an on-site automated postage machine in order to maintain the various mailings by each department. In the past the City has maintained two separate machines with a machine located at the City Center and at Parks and Recreation. The lease agreement for the machine housed at the City Center has come up for renewal. Due to the small volume of mailings done by the Parks and Recreation Department we have the option to consolidate and maintain only one machine. The machine housed at the City Center would be upgraded to a more efficient machine and the City of Morristown would be responsible for only one lease agreement.

**Financial Impact:** Acceptance of the new lease agreement would allow the City of Morristown to maintain only **one** postage machine and be obligated to only one lease agreement. This will in turn save the City money by removing a second lease agreement, as well as the maintenance of a second machine. The City currently pays \$4,320 yearly to lease both machines. This cost does not include ink, tape rolls, and additional maintenance of each machine. The new lease agreement of \$3,949.32 per year would allow the City to save \$370.68 annually plus the cost of maintaining a second machine.

**Action options/Recommendations:** It is staff recommendation to approve the Pitney Bowes lease agreement to house and maintain only one postage machine to be located at the City Center.

**Attachments:** Copy of Lease Agreement

# State & Local Term Rental

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Agreement Number

## Business Information

MORRISTOWN PURCH DEPT

Legal Name of Lessee / DBA Name of Lessee

Tax ID # (FEIN/TIN)

ST NORTH ST STE 100	MORRISTOWN	TN	37814-4606
Address : Street	City	State	ZIP+4
Summings	4235854622	0011212971	
Contact Name	Billing Contact Phone #	Billing Account #	
ST NORTH ST STE 100	MORRISTOWN	TN	37814-4606
on Address (if different from billing address) : Street	City	State	ZIP+4
Summings	4235854622	0011212971	
on Contact Name	Installation Contact Phone #	Installation Account #	
	2016-08-01		
	Quote Expiration Date		

## Business Needs

Item	Business Solution Description
SENDPROPSERIES	SendPro P Series
1FWW	10 lb Interfaced Weighing (unit)
4W00	Connect+ /SendPro P Series Meter
APA2	100 Dept Analytics
APKE	SendPro P Receiving Feature
AZBE	SendPro P Series Mono Print Module
AZCG	SendPro P1500 Series Bundle (120/60 LPM)
M9SS	Mailstream Intellilink Services
MSD1	10" Color Touch Display
MW90007	SendPro P Series Drop Stacker
MW90147	Wireless Keyboard
MW90650	Tape Moistener Asmbly Connect+ 3000 Mono
MW96000	Weighing Platform
NV10	INVIEW TMR Web Acct Bundle Single only
NV90	NV90 - INVIEW Subscription
NVMA	NVMA - INVIEW Dashboard - Single Meter
SG00	SoftGuard for SendPro P Series
STDsla	Standard SLA-Equipment Service Agreement (for SendPro P Series)
T6CS	Receiving - Standard

[Return to Agenda](#)

Term: 60 months	Initial Payment Amount:	
Term of Months	Monthly Amount	Billed Quarterly at*
	\$ 329.11	\$ 987.33

include any applicable sales, use, or property taxes which will be billed separately.

- ☐ Tax Exempt Certificate Attached
 ☐ Tax Exempt Certificate Not Required
- ☒ Purchase Power® transaction fees included
 ☐ Purchase Power® transaction fees extra

### Signature Below

appropriations. You warrant that you have funds available to make all payments until the end of your current fiscal period, and shall use your best efforts to obtain funds in each subsequent fiscal period through the end of your lease term. If your appropriation request to your legislative body, or funding authority ("Governing Body") is denied, you may terminate this lease on the last day of the fiscal period for which funds have been appropriated, upon (i) submission of documentation to us evidencing the Governing Body's denial of an appropriation sufficient to continue this lease for the next succeeding fiscal period, and (ii) satisfaction of all obligations under this lease incurred through the end of the fiscal period for which funds have been appropriated, including the return of the equipment at your expense.

By signing below, you agree to be bound by all the terms and conditions of this Agreement, including the NJPA Contract Number 043012-PIT, effective date July 11, 2012 and the State & Local Term Rental (including the Pitney Bowes Terms) (Version 9/14) which is available at [www.pb.com/states/njpa](http://www.pb.com/states/njpa) and is incorporated by reference (the "Agreement") will be binding on us after we have completed our credit and documentation approval process and have signed below. If software is included in the Order, additional terms are available by clicking on the hyperlink for that software located at [www.pitneybowes.com/us/license-terms-of-use/software-and-subscription-terms-and-conditions](http://www.pitneybowes.com/us/license-terms-of-use/software-and-subscription-terms-and-conditions) and are incorporated by reference.

Contract Number  
 Governing Body's Contract #

Signature  
 Name  
 Address

Pitney Bowes Signature  
 Print Name  
 Title  
 Date

### Additional Information

Rep Name 1	Split	Sales Rep ID	District Office
Rep Name 2	Split	Sales Rep ID	District Office

# Governmental Bond Issues, Leases, and Installment Sales

January 2012  
Department of the Treasury  
Revenue Service

Under Internal Revenue Code section 149(e)

OMB No. 1545-0720

Caution: If the issue price of the issue is \$100,000 or more, use Form 8038-G.

## Reporting Authority

Check box if Amended Return ☐

Issuer's name

2 Issuer's employer identification number

OF MORRISTOWN PURCH DEPT

Address and street (or P.O. box if mail is not delivered to street address)

Room/suite

1ST NORTH ST STE 100

City, town, or post office, state, and ZIP code

5 Report number (For IRS Use Only)

MORRISTOWN TN 37814-4606

Name and title of officer or other employee of issuer or designated contact person whom the IRS may call for more information

7 Telephone number of officer or legal representative

## Description of Obligations Check one: a single issue

☒ or a consolidated return

Issue price of obligation(s) (see instructions) . . . . .  
Issue date (single issue) or calendar date (consolidated). Enter date in mm/dd/yyyy format (for example, 01/01/2009) (see instructions) . . . . .  
Amount of the reported obligation(s) on line 8a that is:

For leases for vehicles . . . . .  
For leases for office equipment . . . . .  
For leases for real property . . . . .  
For leases for other (see instructions) . . . . .  
For bank loans for vehicles . . . . .  
For bank loans for office equipment . . . . .  
For bank loans for real property . . . . .  
For bank loans for other (see instructions) . . . . .  
Used to refund prior issue(s) . . . . .  
Representing a loan from the proceeds of another tax-exempt obligation (for example, bond bank) . . . . .  
Other . . . . .

8a		
9a		
9b		
9c		
9d		
9e		
9f		
9g		
9h		
9i		
9j		
9k		

If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box . . . . . ☐

If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box (see instructions) . . . . . ☐

Vendor's or bank's name:

Vendor's or bank's employer identification number:

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.

Signature

Signature

Signature of issuer's authorized representative

Date

Type or print name and title

Preparer

Only

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name

Firm's address

Firm's EIN

Phone no.

## General Instructions

References are to the Internal Revenue Code unless otherwise noted.

### New

The IRS has created a page on IRS.gov for information about the Form 8038 series and related information, at [www.irs.gov/form8038](http://www.irs.gov/form8038). Information about any future developments in the Form 8038 series (such as changes enacted after we release it) will be posted on that page.

### Use of Form

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide information with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

## Who Must File

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

### Filing a separate return for a single issue.

Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to

pay a penalty in lieu of arbitrage rebate (see the line 11 instructions).

### Filing a consolidated return for multiple issues.

For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, if the issue is a construction issue, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.

## To File

separate return for a single issue, file 38-GC on or before the 15th day of the next calendar month after the close of the calendar quarter in which the issue is issued.

For a consolidated return for multiple issues, file Form 8038-GC on or before the 15th day of the calendar year following the calendar year in which the issue is issued.

**1g.** An issuer may be granted an extension of time to file Form 8038-GC under section 3 of Rev. Proc. 2002-48, 2002-37, if it is determined that the failure to file is not due to willful neglect. Type at the top of the form, "Request for extension under section 3 of Rev. Proc. 2002-48." Attach the Form 8038-GC a letter briefly explaining why the form was not submitted to the IRS. Also indicate whether the extension in question is under examination by the IRS. Do not submit copies of any bond contracts, leases, or installment sale contracts. See *Where To File* next.

## To File

File Form 8038-GC, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

**Delivery services.** You can use private delivery services designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns and attachments. These private delivery services include the following:

Express (DHL): DHL Same Day Service.  
Federal Express (FedEx): FedEx Priority Mail, FedEx Standard Overnight, FedEx International Priority, and FedEx International First.  
Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 3rd Day Air A.M., UPS Worldwide Express, and UPS Worldwide Express.

A private delivery service can tell you what written proof of the mailing date.

## Forms That May Be Used

For arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal Reserve, use Form 8038-T, Arbitrage Yield Reduction and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Private Activity Bond Issues.

For tax-exempt governmental obligation issues with a face price of \$100,000 or more, use Form 8038-G.

## Converting to Whole Dollars

Show the money items on this return in whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher whole dollar.

## Private Activity Bonds

**Definition.** This refers to a single tax-exempt governmental obligation if Form 8038 is used for separate reporting or to

multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

**Tax-exempt obligation.** This is any obligation including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and
- More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private activity business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private activity business use.

It also includes a bond, the proceeds of which (a) are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 70% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and

2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1-1/2% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date of issue. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

## Part I—Reporting Authority

**Amended return.** An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "Amended Return" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new corrected information. Attach an explanation of the reason for the amended return and write across the top "Amended Return Explanation."

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

**Lines 3 and 4.** Enter the issuer's address or the address of the designated contact person listed on line 6. If the issuer wishes to use its own address and the issuer receives its mail in care of a third party authorized representative (such as an accountant or attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box. Include the suite, room, or other unit number after the street address. If the post office does not deliver mail to the street address and the issuer has a P.O. box, show the box number instead of the



address. If a change in address occurs on the return is filed, use Form 8822, Change of Address, to notify the IRS of the address.

The address entered on lines 3 and 4 is the address the IRS will use for all written communications regarding the processing of the return, including any notices. By designating a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS will contact about this return, the issuer agrees as the IRS to communicate directly with that individual listed on line 6, whose address is entered on lines 3 and 4 and to disclose the issuer's return information to that individual, as necessary, to complete this return.

This line is for IRS use only. Do not make any entries in this box.

## —Description of Obligations

Enter the appropriate box designating this as a single issue basis or a consolidated return basis.

The issue price of obligations is determined under Regulations 1.148-1(b). Thus, when issued for an issue price is the price at which the total amount of the obligations are sold publicly. To determine the issue price of obligations issued for property, see sections 1274 and the related regulations.

For a single issue, enter the date of the issue. For example, 03/15/2010 for a single issue issued on March 15, 2010, generally on which the issuer physically issues the bonds that are part of the issuer's (or other person's) funds; for a lease or installment issue, enter the date interest starts to accrue. If reported on a consolidated basis, enter the first day of the calendar year during which the obligations were issued (for example, for calendar year 2010, enter 1/1/10).

**Lines 9a through 9h.** Complete this section if other than cash is exchanged for the obligations, for example, acquiring a police car, truck, or telephone equipment through a lease or other arrangement. (This type of arrangement is sometimes referred to as a "lease-to-own" arrangement.) Also complete this section if the property is directly acquired in exchange for the obligation to make periodic payments of cash or principal.

Complete lines 9a through 9d if the proceeds of an obligation are received in the form of cash even if the term "lease" is used on the issue. For lines 9a through 9d, enter the amount on the appropriate line that represents a lease or installment obligation. For line 9d, enter the type of item leased. For lines 9e through 9h, enter the amount on the appropriate line that represents a bank loan. For line 9h, enter the amount of a bank loan.

**Lines 9i and 9j.** For line 9i, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Several lines may apply to a particular obligation. For example, report on lines 9i and 9j obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

**Lines 9k.** Enter on line 9k the amount on line 8a that does not represent an obligation described on lines 9a through 9j.

**Line 10.** Check this box if the issuer has designated any issue as a "small issuer exception" under section 265(b)(3)(B)(i)(III).

**Line 11.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

**Line 12.** Enter the name of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

**Line 13.** Enter the employer identification number of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

## Signature and Consent

An authorized representative of the issuer must sign Form 8038-GC and any applicable certification. Also print the name and title of the person signing Form 8038-GC. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that has been designated in this form.

**Note.** If the issuer authorizes in line 6 the IRS to communicate with a person other than an officer or other employee of the issuer, (such authorization shall include contact both in writing regardless of the address entered in lines 3 and 4, and by telephone) by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

## Paid Preparer

If an authorized representative of the issuer filled in its return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the Paid Preparer Use Only area of the return. A paid preparer cannot use a social security number in the *Paid Preparer Use Only* box. The paid preparer must use a preparer tax identification number (PTIN). If the paid preparer is self-employed, the preparer should enter his or her address in the box.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature, and
- Give a copy of the return to the issuer.

## Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Learning about the law or the form** . . . . . 4 hr., 46 min.

**Preparing the form** . . . . . 2 hr., 22 min.

**Copying, assembling, and sending the form to the IRS** . . . . . 2 hr., 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*.



## **AGREEMENT FOR APPLICATION HOSTING AND TECHNOLOGY SUPPORT SERVICES**

This Agreement for Application Hosting and Technology Support Services (hereinafter the “Agreement”) is entered into by and between Morristown Fire Department with offices located at 625 S Jackson St Morristown, TN 37813 (hereinafter “Customer”), and Xerox Government Systems, LLC. with offices located at 8260 Willow Oaks Corporate Drive, Fairfax, VA 22031 (hereinafter “Xerox”), referred to individually as Party and collectively as Parties.

### **1.0 BACKGROUND AND OBJECTIVES**

This Agreement is entered into in connection with Customer’s decision to engage Xerox to provide certain information technology hosting and support services related to Customer’s business operations. This Agreement and the Exhibits set forth all terms and conditions governing the relationship between Xerox and Customer.

### **2.0 TERM**

The term of this Agreement (the “Term”) will be for 5 years, from 8/1/2016 to 7/31/2021, unless earlier terminated or renewed in accordance with the provisions of this Agreement.

### **3.0 SERVICES**

Xerox shall provide all services, personnel, materials, equipment, and tools (hereinafter jointly referred to as the “Services”) as set forth in Exhibit A – Statement of Work, attached hereto and made a part hereof. The Statement of Work constitutes the minimum quantity and level of services and deliverables to be provided in connection with this Agreement. Supplemental services may be procured by Customer in accordance with 4.0 hereof.

### **4.0 SUPPLEMENTAL SERVICES**

Any effort, which does not fall within the Statement of Work set forth in Exhibit A, will be subject to the change order process. Xerox will be responsible for assisting Customer in defining, documenting and quantifying the change order. A detailed change order proposal will be prepared by Xerox and submitted to Customer for its review and approval. Customer will be responsible for timely turnaround of a decision on the approval of the change order request. All terms and conditions of the change order proposal (including any applicable payment terms) will be incorporated into a Supplemental Service Agreement (“SSA”). Xerox will not be required to perform activities that are not specifically stated in the Statement of Work without a fully executed SSA signed by both Parties.

### **5.0 CONFIDENTIALITY**

#### **5.1 Customer Confidential Information**

With respect to information relating to Customer’s business which is confidential and clearly so designated (“Customer Confidential Information”), Xerox will instruct its personnel to keep such information confidential by using the same degree of care and discretion that they use with similar information of Xerox which Xerox regards as confidential. However, Xerox shall not be required to

keep confidential any information which: (i) is or becomes publicly available; (ii) is already in Xerox's possession; (iii) is independently developed by Xerox outside the scope of this Agreement; or (iv) is rightfully obtained from third parties. In addition, Xerox shall not be required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how or techniques developed by Xerox in the course of its services hereunder.

## **5.2 Xerox Confidential Information**

Customer agrees that Xerox's methodologies, tools, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, proprietary data and software programs, and any other information identified as proprietary or confidential by Xerox, which may be disclosed to the Customer, are confidential and proprietary information ("Xerox Confidential Information"). With respect to Xerox Confidential Information, the Customer shall keep such information confidential by using the same degree of care and discretion that it uses with similar information of its own which Customer regards as confidential. However, Customer shall not be required to keep confidential any information which: (i) is or becomes publicly available; (ii) is already in Customer's possession; (iii) is independently developed by the Customer outside the scope of this Agreement and without any reliance on Xerox Confidential Information; (iv) is rightfully obtained from third parties; or (v) as required by law.

## **5.3 Use of Confidential Information**

Xerox and Customer shall use each other's confidential information only for the purposes of this Agreement and shall not disclose such confidential information to any third party, other than as set forth herein, or to each other's employees, Xerox permitted subcontractors, or Customer's permitted consultants on a need-to-know basis, without the other Party's prior written consent.

## **6.0 INTELLECTUAL PROPERTY RIGHTS**

### **6.1 Customer Content**

All data created or transmitted by Customer and stored on Xerox servers as part of the Services ("Customer Data") shall at all times be owned by Customer. Xerox shall not own or have any interest rights in the Customer Data. Except as instructed by Customer directly or indirectly through instructions provided to the servers through Customer's use of the Xerox Software, Xerox shall treat Customer Data as Customer Confidential Information. Xerox will upon (i) request of Customer at any time, and (ii) the cessation of all Termination/Expiration Assistance, promptly return to Customer, in the format and on the media in use as of the date of the request, all or any requested portion of the Customer Data. Archival tapes containing any Customer Data will be used by Xerox solely for back-up purposes. Any conversion of data for porting to other applications will not be provided under this contract.

### **6.2 Proprietary Rights of Xerox**

All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Xerox or its suppliers under this Agreement, and any know-how, methodologies, equipment, or processes used by Xerox to provide the Services to Customer, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto (collectively "Xerox Materials") shall remain

the sole and exclusive property of Xerox or its suppliers. Customer acknowledges and agrees that Xerox is in the business of designing and hosting Web-based applications and Xerox shall have the right to provide services to third parties which are the same or similar to the Services and to use any Xerox Materials providing such services.

### **6.3 License Grant**

Xerox grants Customer a non-exclusive license throughout the Term to perform, display, transmit, participate in the transfer of Customer Data and otherwise use the Xerox Materials for the purposes of performing this Agreement. Customer shall have no residual rights to the Xerox Materials beyond the term of this Agreement. Customer grants Xerox the right to maintain administrative access to the Customer Data during the Term for purposes of performing this Agreement.

## **7.0 INSURANCE; RISK OF LOSS**

### **7.1 Required Insurance Coverage**

Throughout the Term, Xerox shall, at its own expense, carry and maintain at least the kinds and minimum amounts of insurance listed below.

1. **Workers' Compensation Insurance:** As required by law.
2. **Commercial General Liability Insurance:** with a combined single limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate.

Upon request Xerox will furnish proof of coverage, in the form of a standard certificate of insurance, to the Customer's Procurement Officer within ten (10) days of contract execution. If any material policy changes occur during the life of contract, Xerox shall provide updated proof of coverage, in the form of standard certificates of insurance, to Customer in a timely manner.

### **7.2 Risk of Loss**

As of the effective date, each Party will be responsible for risk of loss of, and damage to, any equipment, software or other materials in its possession or under its control.

## **8.0 CHARGES**

### **8.1 Charges**

Subject to the other provisions of this Agreement, Customer will pay to Xerox the amounts set forth in Exhibit B – Applicable Charges, attached hereto and made a part hereof. Services performed in connection with an authorized SSA may be performed either on a time and material (T&M) or fixed fee basis as specified in the SSA. The charges applicable during each renewal term will be mutually agreed to by the Parties and incorporated to this Agreement as an SSA.

### **8.2 Taxes**



- (a) Xerox will pay any sales, use, excise, value-added, services, consumption, and other taxes and duties imposed on any goods and services acquired, used or consumed by Xerox in connection with the Services if applicable.
- (b) If applicable, Customer will pay when due any sales, use, excise, value-added, services, consumption, or other tax imposed by any taxing jurisdiction as of the effective date on the provision of the Services or any component thereof, as the rate of such tax may change from time to time during the applicable Term. If applicable, such taxes will be in addition to the Applicable Charges listed in Exhibit B.
- (c) If any taxing jurisdiction imposes after the effective date a new sales, use, excise, value-added, services, consumption, or other tax on the provision of the Services or any component thereof, the Parties will cooperate in attempting to reduce the amount of such tax to the maximum extent feasible. Customer will be liable for any such new tax, which is imposed on the Charges for the provision of the Services, or any component thereof.

## **9.0 INVOICES AND PAYMENT**

### **9.1 Invoices and Payment**

Xerox will issue to Customer, on an annual basis, one (1) invoice for all amounts due with respect to services to be rendered and products to be delivered in the following calendar year. Payment terms for materials and services will be as specified in Exhibit B. Each invoice will separately state all applicable charges, reimbursable expenses and taxes payable. Invoices delivered pursuant to this Section 9.1 will be due and payable within thirty (30) days after invoice issuance, unless other payment terms are mutually agreed to. All periodic charges for any partial year under this Agreement and any applicable authorized SSA shall be prorated.

Invoices shall be submitted to:

Morristown Fire Department  
P.O. Box 1499  
Morristown, TN 37816-1499

Attn: Clark Taylor

## **10.0 WARRANTIES**

### **10.1 Xerox Warranties**

Xerox warrants that all Services will be provided in a good and workmanlike manner and in accordance with generally applicable industry standards. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, Xerox DOES NOT MAKE AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY,



FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

### **10.2 Disclaimed Warranties**

Xerox exercises no control over, and accepts no responsibility for, the content of the information passing through Xerox host computers, servers, network hubs and points of presence, or the Internet. As a convenience for Customer, Xerox shall perform regular daily backup of all Customer Data. Xerox shall use commercially reasonable efforts to recover any lost or corrupted data resulting from Xerox negligence. Should Xerox be unable to recover such lost or corrupted data, Xerox' responsibility and liability for the loss of Customer Data shall be limited to restoring the data to the last required daily backup. Further, Xerox and its suppliers are not liable for any temporary delay, outages or interruptions of the Services.

### **10.3 Customer Warranties**

Customer warrants, represent and covenants to Xerox that: (a) Customer will use the Services only for lawful purposes and in accordance with this Agreement; (b) all Customer content, including the Customer Data, does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

## **11.0 INDEMNIFICATION**

Xerox will protect, indemnify, and save whole and harmless the Customer and all of its officers, agents, and employees from and against:

- (a) Any third party claim brought against Customer relating to the death or bodily injury, or the damage, loss or destruction of real or tangible personal property, to the extent caused by the tortious acts or omissions of Xerox, its employees, contractors or agents in connection with the performance of the Services;
- (b) Any third party claim brought against Customer relating to the willful or fraudulent misconduct of Xerox, its employees, contractors or agents in connection with the performance of the Services;
- (c) Any third party claim brought against Customer relating to an actual infringement of any United States patent, copyright, or any actual trade secret disclosure, by Xerox, its employees, contractors or agents in connection with the performance of the Services.

Xerox will have a right of contribution from Customer with respect to any claim to the extent Customer is responsible for contributing to the alleged injury.

## **12.0 LIMITATION OF LIABILITY**

### **12.1 Limit on Types of Damages Recoverable**

NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, CONSEQUENTIAL,

EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **12.2 Limit on Amount of Direct Damages Recoverable**

EACH PARTY'S TOTAL CUMULATIVE, AGGREGATE LIABILITY TO THE OTHER FOR ANY AND ALL ACTIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED AN AMOUNT EQUAL TO THE U.S. DOLLAR EQUIVALENT OF THE TOTAL AMOUNT OF SERVICES PURCHASED BY THE CUSTOMER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE EITHER PARTY IS NOTIFIED BY THE OTHER OF ANY CLAIM. THIS LIMITATION WILL NOT APPLY TO ANY FEES OR CHARGES PAYABLE BY CUSTOMER UNDER THE AGREEMENT.

#### **12.3 Force Majeure**

- (a) Neither Party will be liable for any failure or delay in the performance of its obligations under this Agreement, if any, to the extent such failure is caused, directly or indirectly, without fault by such Party, by: fire, flood, earthquake, elements of nature or acts of God; labor disruptions or strikes; acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; or any other cause beyond the reasonable control of such Party. Events meeting the criteria set forth above are referred to collectively as "Force Majeure Events."
- (b) Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail and such Party continues to attempt to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance will immediately notify the other by telephone or by the most timely means otherwise available (to be confirmed in writing within five (5) Business Days of the inception of such delay) and describe in reasonable detail the circumstances causing such delay.

#### **12.4 Actions of Other Party or Third Parties**

Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that Party's reasonable control and occurring without its fault or negligence, including, without limitation, failures caused by the other Party or by third party suppliers, subcontractors, and carriers. The Party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon.

### **13.0 TERMINATION**

#### **13.1 Termination for Cause**



- (a) Customer will have the option, but not the obligation, to terminate this Agreement for Cause for any material breach of the Agreement by Xerox that is not cured by Xerox within thirty (30) days of the date on which Xerox receives Customer's written notice of such breach, or if a cure cannot reasonably be fully completed within 30 days, a later date, provided Xerox has provided a plan acceptable to Customer for such cure. Customer will exercise its termination option by delivering to Xerox written notice of such termination identifying the scope of the termination and the termination date.
- (b) Xerox will have the option, but not the obligation, to terminate this Agreement if Customer fails to pay when due undisputed amounts owed to Xerox, and Customer fails to cure such failure within sixty (60) days after receipt from Xerox of written notice from Xerox.

### **13.2 Effect of Termination**

Termination of this Agreement for any reason under this Section 13.0 will not affect (i) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination, or (ii) any damages or other remedies to which a Party may be entitled under this Agreement, at law or in equity, arising from any breaches of such liabilities or obligations.

## **14.0 APPLICABLE LAW, JURISDICTION, VENUE, AND REMEDIES**

### **14.1 Applicable Law**

All questions concerning the validity, interpretation and performance of this Agreement will be governed by and decided in accordance with the laws of the State of New York.

### **14.2 Jurisdiction and Venue**

The Parties hereby submit and consent to the exclusive jurisdiction of any state or federal court located in State of New York and irrevocably agree that all actions or proceedings relating to this Agreement, will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

### **14.3 Equitable Remedies**

The Parties agree that in the event of any breach or threatened breach of any provision of this Agreement concerning (i) Confidential Information, or (ii) other matters for which equitable rights may be granted, money damages would be an inadequate remedy. Accordingly, such provisions may be enforced by the preliminary or permanent, mandatory or prohibitory injunction or other order of a court of competent jurisdiction.

## **15.0 MISCELLANEOUS**

### **15.1 Customer Provided Resources and Technical Working Environment**

Customer shall provide Xerox resources with reasonable access to Customer facilities, as well as secure storage areas for materials, equipment and tools. Other specific resource needs may be identified following contract award and will be commensurate with the level of effort required under the Statement of Work.

#### **15.2 Binding Nature and Assignment**

Neither Party may assign, voluntarily or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, that either may assign its rights and obligations under this Agreement to an affiliate, or to an entity which acquires all or substantially all of the assets or voting stock of that Party if such Affiliate or entity can demonstrate to the reasonable satisfaction of the other Party that it has the ability to fulfill the obligations of the assigning Party under this Agreement (and in the case of assignment by Customer, such third party agrees to pay any charges imposed by third parties relating to such assignments). No assignment by a Party will relieve such Party of its rights and obligations under this Agreement. Subject to the foregoing, this Agreement will be binding on the Parties and their respective successors and assigns.

#### **15.3 Amendment and Waiver**

No supplement, modification, amendment or waiver of this Agreement will be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, amendment or waiver is sought. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

#### **15.4 Further Assurances; Consents and Approvals**

Each Party will provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions. Whenever this Agreement requires or contemplates any action, consent or approval, such Party will act reasonably and in good faith and (unless the Agreement expressly allows exercise of a Party's sole discretion) will not unreasonably withhold or delay such action, consent or approval.

#### **15.5 Severability**

Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

#### **15.6 Entire Agreement**

This Agreement, including the Exhibits thereto, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

### 15.7 Notices

Any notice, demand or other communication required or permitted to be given under this Agreement will be in writing and will be deemed delivered to a Party (i) when delivered by hand or courier, (ii) when sent by confirmed facsimile with a copy sent by another means specified in this Section 15.7, or (iii) six (6) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such Party set forth below (or at such other address as the Party may from time to time specify by notice delivered in the foregoing manner):

If to Customer, to:

Morristown Fire Department  
625 S Jackson St  
Morristown, TN 37813

Attn: Clark Taylor

If to Xerox, to:

Xerox Government Systems, LLC.  
2900 100<sup>th</sup> Street, Suite 309  
Urbandale, IA 50322

Attn: Accounts Manager

### 15.8 Survival

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, will survive expiration or termination of this Agreement.

### 15.9 Independent Contractors & Use of Subcontractors

Xerox will perform its obligations under this Agreement as an independent contractor of Customer. Nothing in this Agreement will be deemed to constitute Xerox and Customer as partners, joint ventures, or principal and agent. Xerox has no authority to represent Customer as to any matters, except as expressly authorized in this Agreement or in an authorized Supplemental Service Agreement. Xerox has the right to use, if appropriate, qualified third party vendors.

### 15.10 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.





**FIREHOUSE**  
Software®

A Xerox Solution

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**Morristown Fire Department**

**XEROX GOVERNMENT SYSTEMS, LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Shayne Boyd

Title: \_\_\_\_\_

Title: VP, Global Client Operations

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**Statement of Work**

This Statement of Work describes the application hosting services that Xerox will provide to Customer in connection with this Agreement. Should additional services be required beyond or not defined in the scope of this Agreement, Customer and Xerox may enter into a Supplemental Services Agreement as further described in Section 4.0 of the Agreement, subject to required Customer approvals.

**1.0 Application Software and Related Services**

A key element of this Statement of Work is to provide Customer during the term of the Agreement with licensed access to web version of FIREHOUSE Software Version 7 or above for use in the daily operation of their agency.

**1.1 FIREHOUSE Software Application**

Xerox will provide Customer with access to the Applications and modules set forth in Exhibit B during the term of the Agreement, including FIREHOUSE Software Web Version 7 or above. Pricing established in Exhibit B includes professional service to convert the existing customer FIREHOUSE Software data to the cloud environment.

**1.2 Key Assumptions Concerning Software**

- Xerox Software, subject matter experts and network services staff are available on a daily basis from 7:00 am to 7:00 pm (CST), Monday through Friday (except Xerox holidays) via a toll-free support number.
- Access to these applications will be provided during the Term of the Agreement, and via a browser based secure connectivity to a Xerox Data Center facility where all programs and data will be securely stored and accessible.
- All access to the Services shall be controlled by user names and passwords issued by Xerox to Customer from time to time upon request by Customer. Each user name and password will be unique to each staff member that Customer designates is authorized to access the Services. Customer is solely responsible for the security of the user names and passwords issued to Customer's staff members. Any access to the Services using such user names and passwords will be deemed access by Customer.
- All standard software upgrades will be provided to Customer at no additional charge during the term of the Agreement. Upgrades are implemented at Xerox' discretion in accordance with Xerox' standard general release schedule for upgrades.
- Subject to the clarification contained in the following sentence, Software will be modified for "mandated" State & Federal functional requirements that must be handled by or within the Xerox FIREHOUSE Software Application. These mandated modifications / enhancements will be provided by Xerox as long as they can reasonably be integrated into the base system architecture. At Xerox' discretion, if the requirements are such that they cause major modification to either

data structure or the systems base process flow architecture, then Xerox will inform the Customer of options, which may include additional cost, over and above the costs associated with this agreement.

- XEROX data center personnel will physically handle and coordinate all software upgrades for any Xerox directed base application enhancements or upgrades.
- In certain circumstances and/or to provide specific functionality, Xerox may utilize third party application software in conjunction with its own Xerox created software. In these instances, Xerox will inform the Customer of this third party relationship. Xerox will secure all necessary third party software licenses required to ensure proper and legal use by Customer during the Term in accordance with the Agreement.
- Unless otherwise specifically set forth in this Agreement, Xerox shall have no responsibility for the correctness, performance or underlying program code relating to third party software (not developed by Xerox) used in connection with the Services. However, the Xerox Account Manager, as part of this Agreement, will act as a liaison to the appropriate third party vendor/s when problems or concerns arise.

## **2.0 Hardware & Systems Accessibility**

### **Xerox Owned Equipment & Software**

- All software applications identified in Section 3 above will be hosted on remote data center computers provided by Xerox in a remote and secure data center where appropriate computer processing and wide-area network capabilities. Response times experienced by authorized users within Customer site will be maintained at commercially reasonable levels, and response time will be monitored and tuned by data center operations staff. Xerox is not responsible for network performance on network segments outside of Xerox control.
- If specific hardware is provided to the customer to connect Customer Local Area Network to Xerox data center, it will be properly maintained by Xerox. Any maintenance or upgrade needed to this equipment, to meet the deliverables of this agreement, will be the responsibility of Xerox.
- Customer will provide a safe, secure, and adequate environment to house necessary Xerox owned equipment. Customer will inform Xerox if/when these items are damaged or not operating properly.
- Xerox will be responsible for the repair or replacement of Xerox owned equipment if/when it is deemed not operating properly. Xerox owned equipment that is deemed not operating properly, will be repaired or replaced within two (2) business days of Xerox being notified of failure.
- The following equipment and software, if any, will be provided to the Customer for use as part of this Agreement. The equipment and software will be owned by Xerox, but will be located at a Customer facility. Customer will be responsible for the risk of loss or damage to the equipment and software located at its facility for as long as such equipment and software is within its care, custody or control. Xerox will be responsible for providing standard manufacturer maintenance coverage for all equipment supplied as part of this paragraph. Xerox will also be responsible for all shipment costs (both at the time of installation and at the time of retrieval). Xerox will have no obligation to refresh the equipment or software in the absence of a contract amendment.

DESCRIPTION	MODEL	QUANTITY	MAINTENANCE
Not Applicable			

### Customer Owned Equipment

- All required hardware, communication infrastructure, and related software will be the responsibility of the Customer.
- Customer will be responsible for maintaining or renewing any hardware maintenance agreements for their own equipment and at their own discretion.
- It is understood and agreed by Xerox and Customer that the Xerox services and equipment will integrate and connect to Customer equipment and/or network backbone, as a part of Customer's internal infrastructure.
- During the term of this Agreement, any upgrades, changes or additions to Customer owned equipment, or network environment that affects the connectivity, with Xerox equipment or communication infrastructure, must be reviewed and approved by Xerox. These upgrades, if approved, will be at Customer's expense unless otherwise mutually decided. If the Customer changes inhibit Xerox ability to provide the services of this Agreement, Xerox will work with the Customer on a best effort basis to resolve the underlying technical issues. However, if through these efforts a correction is not available, the Customer will be responsible to restore their environment to previous levels of service delivery.
- During the term of this Agreement, any expenses for maintenance, replacement, or repair, of Customer owned equipment or software will be at expense of Customer.

### 3.0 Customer Data

- All data collected on tape or hard copy, or residing on Xerox data center computers supplied by Customer to be utilized by Xerox in the computer system data base to provide services herein, will remain the property of Customer, and no use will be made thereof beyond that listed in the Agreement, without written permission of Customer.
- Once per calendar year or upon expiration or termination of this Agreement, Xerox will upon written request of Customer return to Customer all Customer Data in a MS SQL Server database in MDF format. Any additional conversion of Customer Data to MS SQL Server database in MDF format shall be provided for the additional cost set forth in Exhibit B, Applicable Charges, under "Data Transfer." Any conversion of data for porting to other applications, including conversion to spreadsheet format, will not be provided under this Agreement.
- All Customer data located on Xerox computers in Xerox Data Center/s will be backed up routinely, professionally and daily and stored in secure off-site locations; retrievable by Xerox for Customer for any contingencies.

- Xerox shall be authorized to view and use all reports, data, or other material prepared by it for the Customer under this Agreement, but shall not disclose, nor permit disclosure of, any information designated by Customer as confidential, except authorized recipients as specifically and in writing designated by Customer.

#### **4.0 Professional Support Services**

- Xerox Software, subject matter expert and Network Services staff will be available daily from 7:00 am to 7:00 pm (CST), Monday through Friday (other than Xerox holidays) via toll free 800 support number. Call-back time from Xerox support will average at or under 1 hour.
- All monitoring of the XeroxWide Area Network communications environment and continuous operations, Xerox remote data Center operations and security, and secure back-ups and remote storage of Customer Data will be responsibility of Xerox.
- There will be no on-site visits by Xerox staff on Customer locations. Should Customer request such visits for any reason, Xerox will be entitled to compensation for the hours worked (as well as reasonable travel time), as well as reimbursement for travel and living expenses. Services will be billable at the then current Xerox labor rate, but not initiated without the written consent of Customer.
- Troubleshooting, repair, and replacement of Xerox provided equipment listed in section 2.0 above. Note: The removal of Spyware, Adware, Data Mining, and other infections are outside the scope of these support services and may incur standard time/material support charges. Customer will not incur any additional charges without prior written approval.

#### **5.0 Customer Responsibilities**

While Xerox will provide the account management, staffing, and computer hardware and software resources to provide the required services, Customer agrees to provide the following resources to support this effort:

- Identify the Customer Contract Administrator who will be the main contact for the Xerox Account Manager, for all service delivery issues.
- Identify Customer personnel in each department that can be the key contacts for the Xerox support team with regard to the specific software applications and functions related to the Xerox services.
- Customer is responsible for and controls all security on its internal Local Area Network/s, central computing, and desktop computing environments.



- Customer is responsible for all support services (technical and user) on its owned and internal LAN, other WAN connections outside of Xerox WAN, Central Computing, and desktop computing environments.
- Customer will provide, and is responsible for, the internal infrastructure necessary to allow Xerox to establish secure electronic communications and access to and from the Xerox remote data center.
- Customer is responsible for all Customer owned or purchased equipment set-up and integration into their own desktop or network environment.
- Customer shall, at its sole expense, at all times during the term of this Agreement, protect Xerox owned materials and/or equipment, which are located on Customer site, from deterioration other than normal wear and tear. Customer shall not use the Xerox owned items located on Customer premises for any purposes other than those for which they were designed hereunder. Customer shall bear the risk of loss or damage from fire, the elements, theft or otherwise from the time of and after the delivery of the items to the Customer's delivery address.
- Customer will not move any Xerox owned items or permit them to be moved from the original installation address without Xerox' prior written consent. Upon the request of Xerox, Customer shall make the materials available to Xerox during regular business hours for inspection at the place where it is normally located and shall make Customer's records pertaining to the materials available to Xerox for inspection.
- Except where the Parties mutually agree to extend the term of the Agreement past the initial term or any successive renewal period, upon termination (by expiration or otherwise) of this Agreement, Customer shall, pursuant to Xerox' instructions and at Customer's expense, return the materials and any documentation or other tangible manifestation of the materials to Xerox in the same operating order, repair, condition and appearance as when received, except for normal wear and tear. Customer shall return the materials to Xerox at its address set forth herein or at such other address within the United States as directed by Xerox.
- Customer shall not, without the prior written consent of Xerox, affix or install any accessory, equipment or device to any Xerox owned items which are located on the Customer site, which may either impair the originally intended function or that cannot be readily removed without causing material damages. The Customer will not, without the prior written consent of Xerox and subject to such conditions as Xerox may impose for its protection, affix these items to any real property if, as a result thereof, such materials will become a permanent fixture under applicable law.

**Exhibit B**  
**Applicable Charges**

**1.0 Based Yearly Fee**

Customer shall pay Xerox an annual fee as outlined below for 5 years for services starting on 8/1/2016 and ending on 7/31/2021. Services will be invoiced in advance at the start of the service year, and payments are due on a net 30 day basis.

**Payment Schedule:**

	Yearly Fee
Year 1	\$6,390.00
Year 2	\$6,390.00
Year 3	\$6,390.00
Year 4	\$6,390.00
Year 5	\$6,390.00

**Modules and Concurrent Users**

The following Firehouse Modules and licenses will be available to the customer:

MODULES	Yes or No	# of Licenses
Incident Module	Yes	10
EMS Module	Yes	10
Staff, Training and Certifications	Yes	10
Occupancy Management	Yes	10
Inventory Management	Yes	10
Hydrant Module	Yes	10
Staff Scheduling	Yes	10
Accounts Receivable	NO	0
Sketch	YES	10
Analytics	NO	0
CAD Monitor – Vendor	NO	N/A
VPN connection required for CAD data transfers	NO	N/A
Local Data Transfer	NO	N/A
Archived Database	NO	0

## **2.0 Other Xerox Services**

Services provided to Customer by Xerox, that are beyond the scope of this Agreement, or are in addition to or supplemental to the scope of this Agreement, will be provided at the then current Xerox labor rate during the Term. The Xerox Account Manager will always obtain prior approval from Customer on the nature of the services, personnel assigned and estimated time and expenses to be incurred. All such services will be performed in accordance with a fully executed Supplemental Service Agreement.

### **Pricing Assumptions:**

- Except as otherwise set forth herein, travel, lodging, meals and incidental expenses for Xerox staff that are directly related to performing the specific deliverables of this Agreement will be the responsibility of Xerox.
- Any other “expenses” that fall outside the deliverables of this Agreement will be the responsibility of Customer. The Xerox Account Manager will establish an approval process by Customer prior to incurring the expense.



July 13, 2016

Paul Brown  
City of Morristown  
Department of Public Works  
400 Dice Street  
Morristown, TN 37813

RE: Freddie Kyle Trail and Turkey Creek Greenway  
Trail Phase 5  
Contract Amendment #2 – Archaeology Study  
Morristown, TN

Dear Mr. Brown,

McGill Associates, P.A., is pleased to present this proposal for the preparation of a Phase I Archaeological Assessment in connection with the Freddie Kyle Trail and the Turkey Creek Greenway Trail Phase 5. This task is in addition to the previously defined scope of work in the *NEPA Environmental Assistance* phase of each project, as outlined in our August 19, 2015 Agreement and February 24, 2016 Amendment (#1). The new scope of work that is added with this task will be accomplished in conformance with TDOT requirements and generally include the following:

- Site file and archival research at the Tennessee Division of Archaeology, Tennessee Historic Commission, and Tennessee State Library Archives to investigate the presence of previously identified sites,
- The performance of shovel test pits (STPs) at each end of all pedestrian bridge crossings of Turkey Creek that are noted in the preliminary design drawings,
- In other areas of proposed trail development where prior disturbance by sanitary sewer or railroad activities is not apparent, STPs will be performed at 65' intervals along the center of the trail corridor,
- STP excavations will be screened for the presence of artifacts, with all findings classified, and
- Prepare a Phase I Archaeological Assessment report in accordance with *TDOA's Standards and Guidelines for Archaeological Permit Applications* and *SHPO's Standards and Guidelines for Archaeological Resource Management Studies*.

E n g i n e e r i n g   •   P l a n n i n g   •   F i n a n c e

McGill Associates, P.A. • 2240 Sutherland Avenue, Suite 2, Knoxville, TN 37919

865-540-0801 • Fax 865-595-4999

[Return to Agenda](#)

Freddie Kyle Trail & Turkey Creek Greenway Trail Phase 5  
Contract Amendment - Phase I Archaeological Assessment  
Page 2

Based on our understanding of these two projects, McGill Associates proposes to accomplish the above noted Scope of Work for the following lump sum fees:

Phase I Archaeological Assessment

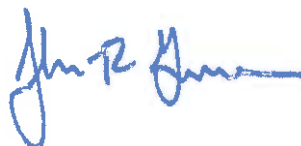
➤ Freddie Kyle Trail	\$ 3,500
➤ Turkey Creek Greenway Trail Phase 5	\$ 4,565
	<u>\$ 8,065</u>

Should any of the STP sites yield artifacts of archaeological significance, more intensive shovel testing will required and an *additional fee of \$2,010 per site* will be assessed. All additional fees will charged to the phase of greenway trail development in which the associated archaeological site is located. Should more than three (3) archaeological sites by identified, prior clearance to proceed with the additional study will be sought by the City before continuing.

Our fees include direct expenses such as printing, reproduction, postage, deliveries, travel, CAD expenses, and word processing. Any permitting fees for the project are not included and must be paid by others. We will assign staff to this project to achieve completion in the shortest time possible. If there are protracted delays for reasons beyond our control, we would expect to negotiate with you an equitable adjustment of our compensation and completion date.

This proposal, in conjunction with the aforementioned Agreement and Amendment, represents the entire understanding between our firm and the City with respect to this project and may only be modified in writing, signed by both parties. If you find this scope and fee acceptable, please indicate acceptance by signing and returning one copy for our files. Thank you for this opportunity to serve you on this important project.

Sincerely,  
McGILL ASSOCIATES, P.A.



JOHN (JAKE) GREEAR, P.E.  
Project Manager

**ACCEPTED**

CLIENT:

McGILL ASSOCIATES, P.A.:

BY: \_\_\_\_\_  
(Signature)

BY:  \_\_\_\_\_

\_\_\_\_\_  
(Print Name/Title)

Jamie Carden, P.E., Knoxville Office Manager

Date: \_\_\_\_\_

Date: 7/13/16





July 12, 2016

Mr. Anthony W. Cox  
City Administrator  
City of Morristown  
P.O. Box 1499  
Morristown, TN 37816-1499

RE: Reauthorization of Staff Augmentation Services

Dear Mr. Cox,

During the past year Strategic Services Company, LLC (SSC) has provided Staff Augmentation Services to the City under an Engineering Agreement dated May 2015. Those services were authorized under two (2) separate six (6) month terms. It is proposed that those services be reauthorized for a full twelve (12) month period. As with the earlier authorizations the services are expected not to exceed an average of \$5,000.00 per month.

Appendix A of the Agreement allows for an escalation of unit rates. We are not proposing any rate changes in the disciplines shown. However, over time the need for additional disciplines not shown has surfaced. We propose to amend the Appendix A by adding the following labor classifications:

Principal Engineer	\$175.00
Structural Engineer	\$175.00
Environmental Technician.	\$135.00

If this proposal is satisfactory please confirm in writing.

Sincerely,



Lamar Dunn, P.E., FACEC  
President  
Strategic Services Company, LLC



**CITY OF MORRISTOWN  
PURCHASING DIRECTOR**

P.O. Box 1499  
Morristown, TN 37815-0847  
Phone: (423) 585-4622 Fax: (423) 585-4687

# Purchase Order

Fiscal Year 2017

Page 1

THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKAGES AND SHIPPING PAPERS

Purchase Order # **17000063-00**

*Retain this purchase order for proof of tax exemption.*

**Tax Exempt #62-6000369**

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COOK'S AIR CONDITIONING AND HEATING, INC.  
P.O. BOX 701  
  
BLOUNTVILLE, TN 37617

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City of Morristown  
400 Dice Street  
ccummings@mymorristown.com  
Morristown, TN 37813

Vendor Phone Number		Vendor Fax Number		Requisition Number	Delivery Reference/Contact	
				17000018	CASEY CUMMINGS	
Date Ordered	Vendor Number	Date Required	Interoffice Delivery		Department/Location	
07/05/16	007464				43120	
Item#	Description/Part No.			Qty/Unit	Cost Each	Extended Price
001	ORIGINAL			1.00 EACH	3335.00000	3,335.00
002	1.5 TON WATER SOURCE HEAT PUMP PER BID (R) 43120-999			3,335.00	1.00 EACH	3,335.00
003	1.5 TON WATER SOURCE HEAT PUMP PER BID (WVFW\$10153Z00) 43120-999			3,335.00	2.00 EACH	6,670.00
004	2 TON WATER SOURCE HEAT PUMP (WFMS1015JZ00) PER BID 43120-999			6,670.00	3.00 EACH	10,500.00
005	2 TON WATER SOURCE HEAT PUMP (R) PER BID 43120-999			10,500.00	1.00 EACH	3,650.00
006	2.5 TON WATER SOURCE HEAT PUMP (L) PER BID 43120-999			3,650.00	2.00 EACH	7,615.00
	3 TON WATER SOURCE HEAT PUMP (R) PER					

The City of Morristown is an equal  
employment / affirmative action  
employer EOE / AA

**VENDOR COPY**

Authorized Signature

Date

[Return to Agenda](#)

Authorized Signature

Date



**CITY OF MORRISTOWN  
PURCHASING DIRECTOR**

P.O. Box 1499  
Morristown, TN 37815-0647  
Phone: (423) 585-4622 Fax: (423) 585-4687

# Purchase Order

Fiscal Year 2017

Page 2

THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKAGES AND SHIPPING PAPERS.

Purchase Order # **17000063-00**

*Retain this purchase order for proof of tax exemption.*

**Tax Exempt #62-6000369**

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**COOK'S AIR CONDITIONING AND HEATING, INC.**  
P.O. BOX 701

**BLOUNTVILLE, TN 37617**

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City of Morristown  
400 Dice Street  
ccummings@mymorristown.com  
Morristown, TN 37813

Vendor Phone Number		Vendor Fax Number		Requisition Number 17000018		Delivery Reference/Contact CASEY CUMMINGS			
Date Ordered 07/05/16		Vendor Number 007464		Date Required		Interoffice Delivery		Department/Location 43120	
Item#	Description/Part No.				Qty/Unit	Cost Each	Extended Price		
	BID 43120-999				7,615.00				
						PO Total	35,105.00		

The City of Morristown is an equal  
employment / affirmative action  
employer EOE / AA

**VENDOR COPY**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

[Return to Agenda](#)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**CITY OF MORRISTOWN****PURCHASING DIRECTOR**

P.O. Box 1499

Morristown, TN 37815-0647

Phone: (423) 585-4622 Fax: (423) 585-4687

**Purchase Order**

Fiscal Year 2017

Page 1

THIS NUMBER MUST APPEAR ON ALL INVOICES.  
PACKAGES AND SHIPPING PAPERSPurchase Order # **17000010-00***Retain this purchase order for proof of tax exemption.***Tax Exempt #62-6000369****V  
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380 NEW YORK STREET  
  
REDLANDS, CA 92373-8100**S  
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o**City of Morristown  
400 Dice Street  
ccummings@mymorristown.com  
Morristown, TN 37813

Vendor Phone Number 931-840-0854		Vendor Fax Number 909-307-3083		Requisition Number 17000009		Delivery Reference/Contact CASEY CUMMINGS			
Date Ordered 07/05/16		Vendor Number 001412		Date Required		Interoffice Delivery		Department/Location GIS	
Item#	Description/Part No.				Qty/Unit	Cost Each	Extended Price		
001	ORIGINAL  POPULATIONS OF 50,001 TO 100,000 SMALL GOVERNMENT TERM ENTERPRISE LICENSE AGREEMENT 41810-355				1.00 EACH   50,000.00	50000.00000	50,000.00		
						PO Total	50,000.00		

The City of Morristown is an equal  
employment / affirmative action  
employer EOE / AA

Authorized Signature

Return to Agenda Date

## **STORMWATER MANAGEMENT / BMP FACILITIES MAINTENANCE AGREEMENT**

City of Morristown, TN

Engineering Department

(423) 585-4620



**STORMWATER MANAGEMENT/BMP FACILITIES MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this 29<sup>th</sup> day of June, 20 16, by and between BEHM, LLC hereinafter called the "Landowner", and  
(Insert Full Name of Owner)  
the City of Morristown, TN hereinafter called "City".

WITNESSETH, that

WHEREAS, the Landowner is the owner of certain property described as TAX MAP 41F, GROUP F,  
PARCEL 5 as recorded by deed in the last land records of  
(Insert Hamblen County Tax & Parcel Number)  
Hamblen County, TN, Deed Book 1168 Page 870 1424 638, hereafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Site Plan/Subdivision known as B&W Enterprises Lot 5rb  
(Name of Plan/Development)

hereafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for management of stormwater within the confines of the property; and

WHEREAS, the City and the Landowner, its successors and assigns, agree that the health, safety and welfare of the residents of the City of Morristown, Tennessee, require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site stormwater management/BMP facilities, as shown on the Plan,  
be constructed and adequately maintained by the Landowner, its successors and assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors, and assigns, in accordance with the plans and specifications identified in the Plan and shall, upon construction completion, be certified as such by the Plan's Engineer of Record.
2. The Landowner, its successors, and assigns, shall adequately maintain the stormwater management/BMP facilities as outlined in the Plan and contained within the Landowner's property. This includes all pipes and channels built to convey stormwater to and from the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition, so that these facilities

are performing their design functions. Those maintenance procedures outlined in the Plan and the City's approved BMP guidelines shall be practiced at a minimum. Common maintenance shall include the removal of debris (leaves, lawn clippings, sticks, etc.) and trash after rainfall events, checking outlet structures for clogging and cleaning, as necessary, repairing erosive areas promptly upon observation, and removing accumulated sediment.

3. The Landowner, its successors, and assigns, shall inspect the stormwater management/BMP facility and report to the City Engineer if any major repairs (i.e. structural) are necessary. The purpose of the inspection and reporting is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc and shall be performed at such times and such manner as to accomplish these objectives.
4. The Landowner, its successors, and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the stormwater management/BMP facilities (including sediment removal) is outlined on the approved plans or in the City's BMP guidelines, the Landowner, its successors, and assigns, shall adhere to the schedule.
5. The Landowner, its successors, and assigns, hereby grant permission to the City, its authorized agents, and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever the City deems necessary. The purpose of inspection may be to check the facility for proper functioning, to follow-up on reported deficiencies or repairs, to respond to citizen complaints, and/or to check for any other reasons the City deems necessary. If problems are observed, the City shall provide the Landowner, its successors, and assigns, copies of the inspection findings and a directive to commence with the repairs within a specified timeframe.
6. In the event the Landowner, its successors, and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the City, the City may enter upon the Property and take the steps necessary to correct deficiencies identified in the inspection report. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Landowner, outside of the easement, for the stormwater management/BMP facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
7. In the event the City, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors, and assigns, shall reimburse the City upon demand, within sixty (60) days of receipt thereof, for one hundred fifty percent (150%) of all actual costs incurred by the City hereunder.
8. If the Landowner fails to pay the City for one hundred fifty percent (150%) of their incurred expenses within sixty (60) days of receipt of written notice, the Landowner authorizes the City to place a lien against the property in an amount equal to one hundred fifty percent (150%) of said expenses.
9. If the Landowner fails to reimburse the City, as described above, the Landowner further authorizes the City to collect said expenses from the Landowner through other appropriate legal action, with the Landowner to be liable for the reasonable costs of collection, court costs, and attorney fees.

10. This Agreement imposes no liability of any kind whatsoever on the City, and the Landowner agrees to hold the City harmless from any liability in the event the stormwater management/BMP facilities fail to operate properly.
11. This Agreement shall be recorded among the land records of Hamblen County, Tennessee, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests.

WITNESS the following signatures and seals:

BEHM, LLC  
Company/Corporation/Partnership Name (Seal)

By: Ernie Horner

Ernie Horner  
(Type Name)

Partner  
(Type Title)

State of Tennessee

County of Hamblen

The foregoing Agreement was acknowledged before me this 29<sup>th</sup> day of June, 2016.

by Ernie Horner Partner

Rhonda F. Smith  
Notary Public

My Commission Expires 4-10-2019

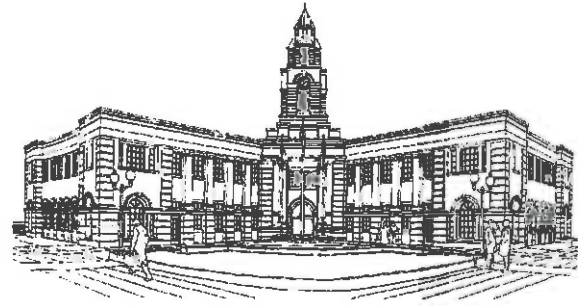
Approved as to form:

Rodney Jones  
City Attorney Date

# Morristown Police Department

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ROGER OVERHOLT  
Chief of Police



## MEMORANDUM

TO: Mayor and Council  
FR: Chief Roger Overholt *RO*  
DATE: July 14, 2016  
**RE: Walmart Donation**

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I am requesting approval to accept a donation from Walmart Store #6370 (located on West Andrew Johnson Highway) of weapon ammunition (assorted types) valued at \$161.33.

The ammunition will be used in the Morristown Police Department training program.



## MORRISTOWN UTILITY SYSTEMS

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441 West Main Street  
P.O. Box 667  
Morristown, Tennessee 37815  
Phone: (423) 586-4121 Fax: (423) 587-6590

June 30, 2016

Mr. Tony Cox  
City Administrator  
P. O. Box 1499  
Morristown, Tennessee 37815

Dear Tony,

I am forwarding the resolution adopted by the Morristown Utilities Commission at the board meeting June 30, 2016, which identifies three nominees for the first submission of the Board vacancy currently held by George McGuffin.

We do not require applications and resumes are not available at present. For additional information, you can reach the nominees at these numbers:

George McGuffin, Businessman  
P.O. Box 1914  
Morristown, TN  
(423) 736-3300

David Gurley, Plant Manager, Team Technologies  
1435 Darbee Drive  
Morristown, TN  
(423) 312-8553

Keith Breeding, President, Strategy Machinery, Inc.  
2965 Wilshire Blvd.  
Morristown TN  
(423) 581-3563

Sincerely,

A handwritten signature in cursive script, appearing to read "J. S. Wigington", is written over a horizontal line.

Joseph S. Wigington  
General Manager

cc: Mayor Gary Chesney



**RESOLUTION NO. 2016-06-07**  
**Submission for Board Member Vacancy**

**BEING A RESOLUTION BY THE MORRISTOWN UTILITIES COMMISSION FOR THE PURPOSE OF SUBMITTING TO THE MAYOR A LIST OF THREE ELIGIBLE PERSONS FOR THE MAYOR'S NOMINATION AND CITY COUNCILS' CONFIRMATION OF ONE SUCH PERSON TO SERVE ON THE COMMISSION.**

**WHEREAS**, the City of Morristown, Tennessee (City) is a Municipal corporation created by the Private Acts of the Tennessee Legislature of 1903, Chapter 103; and

**WHEREAS**, The Morristown Utilities Commission (Commission) is a governmental entity with situs in Morristown, Tennessee, having been created by the Private Acts of the Tennessee Legislature of 1901, Chapter 392; and

**WHEREAS**, Chapter 392 of the Private Acts of the Tennessee Legislature for 1901 was amended and ratified by referendum on May 1, 2001 which increased the number of commissioners from three to five members, and provided a method for appointment of members; and

**WHEREAS**, Chapter 392 of the Private Acts of the Tennessee Legislature for 1901 was further amended and ratified by City Council on May 1, 2012 which amendment modified the method for appointment of commission members; and

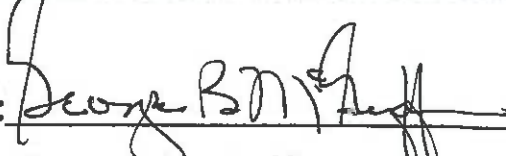
**WHEREAS**, pursuant to this amendment, one vacancy exists on the Morristown Utilities Commission for a five year term beginning on August 1, 2016 and ending July 31, 2021.

**NOW, THEREFORE BE IT RESOLVED BY THE MORRISTOWN UTILITIES COMMISSION**, that in accordance with the method of appointment of Commission members, the following list of nominees are submitted to the Mayor of the City of Morristown for the existing vacancy, this being the first set of names following the MUC Charter change effective May 1, 2012.

1. Term beginning on Aug. 1, 2016 - Ending July 31, 2021.
  - (a) George McGuffin
  - (b) David Gurley
  - (c) Keith Breeding

**PASSED** in regular meeting of the Morristown Utilities Commission of the 30<sup>th</sup> day of June 2016.

**MORRISTOWN UTILITIES COMMISSION**

BY: 

George McGuffin, Chairman of Board

**Attest:**



Commissioner

# MEMO

To: Mayor and Council

From: Bill Honeycutt, Fire Chief

Date: July 12, 2016

**RE: ENTRY-LEVEL FIREFIGHTER**

---

The fire department currently has a vacancy at entry-level firefighter; therefore, I'm requesting the Mayor and Council to appoint an eligible candidate to the position at their July 19, 2016 meeting. As part of Council's informational packet, I'll provide a copy of the certified Entry-Level roster. From that roster, Council may appoint one (1) candidate from the top three (3) names. **I'm prepared to offer a recommendation.**

Once appointed, the candidate will be encouraged to work a notice for his current employer, reporting to work for the City of Morristown on August 1, 2016. After the initial 3 weeks of FD in-house orientation, the new employee begins 14 weeks of firefighter recruit training on August 19<sup>th</sup>.

## CIVIL SERVICE BOARD

P. O. Box 1489 • MORRISTOWN, TN 37816

### FIRE DEPARTMENT ENTRY-LEVEL ROSTER

Revised on January 12, 2016 to reflect recent testing, hiring and /or expirations.

	RANK AND NAME	EXPIRES
1	Derrick Poore	November 30, 2016
2	Matt LeClercq	November 30, 2016
3	Derek Rogers	November 30, 2016
4	Robert Bolden	November 30, 2016
5	Lucas Sizemore	November 30, 2016
6	Dylan Nash	November 30, 2016
7	David Casch	November 30, 2016
8	Jacob Courtney	November 30, 2016
9	Travis Wice	November 30, 2016
10	Otto Gambrell	November 30, 2016
11	Scott Heck	November 30, 2016
12	Keith Samsell	November 30, 2016
13	Samuel Mason	November 30, 2016
14	Greg Parton	November 30, 2016
15	Josh Pierce	November 30, 2016
16	Jeremy Smith	November 30, 2016
17	James Bullen	November 30, 2016
18	Cody Trammel	November 30, 2016
19	Shawn Kirkpatrick	November 30, 2016
20	Josh Anderson	November 30, 2016

For the Civil Service Board



Lee Parker, Vice-Chairman

1-12-16.

Date