

**AGENDA
CITY OF MORRISTOWN, TENNESSEE
CITY COUNCIL MEETING
AUGUST 1, 2017 – 5:00 P.M.**

1. CALL TO ORDER

Mayor Gary Chesney

2. INVOCATION

Charles Mills, Chaplain, Morristown Police Department

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

5. APPROVAL OF MINUTES

1. July 18, 2017

6. PROCLAMATIONS/PRESENTATIONS

Recognition of Rotary Club for donation to Farmers Market, Phase II.

**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. 3582

Being an Ordinance of the City Council of Morristown, Tennessee,
Amending Title 3 (Municipal Court) Chapter 1 (City Court) of the
Morristown Municipal Code.

2. Ordinance No. 3583

Being an Ordinance of the City Council of Morristown, Tennessee,
Amending Title 14 (Zoning and Land Use Control), Chapter 10
(Intermediate Business District), and Chapter 11 (Central Business
District).

3. Ordinance No. 3584
Being an Ordinance of the City Council of Morristown, Tennessee,
Amending Title 14 (Zoning and Land Use Control – HOME
OCCUPATIONS).
4. Ordinance No. 3585
Being an Ordinance of the City Council of Morristown, Tennessee,
Amending Ethics Policy.

9. NEW BUSINESS

9-a. Resolutions

9-b. Introduction and First Reading of Ordinances

9-c. Awarding of Bids/Contracts

1. Approval of Engineering Services Agreement between City of Morristown, Tennessee, and Lamar Dunn & Associates, Inc./DBA LDA Engineering.
2. Approval of Proposals from LDA Engineering to provide professional services for the following:
 - (a) South Cumberland Street Drainage Improvements. LDA Engineering will provide these services as follows; Design Services \$35,000 (Lump Sum), Permitting including coordination City, TDOT and Norfolk Southern \$12,000 (Hourly not to exceed), Bidding Services \$5,500 (Lump Sum).
 - (b) Freshour Street Culvert Project – Phase I Design (From Upstream Headwall to Lincoln Avenue). LDA Engineering will provide these services as follows; Design Services \$25,000 (Lump Sum), Permitting/Easements including coordination with City, preparation ARAP Permit and SWPPP \$15,000 (Hourly not to exceed), Bidding Services \$5,500 (Lump Sum).
 - (c) Debi Circle Project – FEMA Application. LDA will prepare the FEMA Application for the amount of \$11,800. LDA is requesting an additional \$10,200 to collect additional information required for the application. The total hourly budget amount will be \$22,000
3. Approval of Request for Proposal for CDBG Homeowner Rehab & Repair Program submitted by Knoxville-Knox County Community Action Committee (CAC), and allow the City Administrator to negotiate and enter into a contract with CAC.

4. Approval of Employment Agreement between the City of Morristown, Tennessee and Attorney Lauren Carroll.
5. Approval of Bid for three (3) HVAC Units at Rose Center to Lynch Heating and Air Conditioning in the total amount of \$18,985.
6. Approval of Memorandum of Understanding between the City of Morristown and Hamblen County Government regarding maintenance of advanced warning school signs and school zone signs at SR 32 (Highway 25E) to help manage traffic near Witt Elementary School.

9-d. Board/Commission Appointments

9-e. New Issues

1. Approval of Minor Corrections to Employee Handbook.
2. City Council confirmation of Police Department disciplinary action

10. CITY ADMINISTRATOR'S REPORT

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**

Aug 2, 2017	(Wednesday)	Call City Council Work Session
Aug 11-12, 2017	(Fri. & Sat)	City Council Annual Planning Work Session Meadowview Conference Center, Kingsport, TN
Aug 15, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Aug 15, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Aug 17, 2017	(Thursday)	City Council Roundtable, Trinity United Methodist Church
Sep. 4, 2017	(Monday)	City Employee's Holiday, Labor Day
Sep. 5, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Sep. 19, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Sep. 19, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Oct. 3, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Oct. 17, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Oct. 17, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 7, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 21, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Nov. 21, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 23-24, 2017	(Thursday & Friday)	City Employee's Holiday, Thanksgiving

WORK SESSION AGENDA

1. Fire Station #4

**STATE OF TENNESSEE
COUNTY OF HAMBLLEN
CORPORATION OF MORRISTOWN
JULY 18, 2017**

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 18, 2017, 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.

Dr. Gary Brewster, Chaplain, Morristown Police Department, led in the invocation and Councilmember Alvis led in the "Pledge of Allegiance".

Councilmember Smith made a motion to approve the June 20, 2017 minutes as circulated. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

A Public Hearing was held pertaining to Ordinance No. 3581. No one spoke.

Councilmember Senter made a motion to approve Ordinance No. 3581 on second and final reading. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3581

Being an Ordinance of the City Council of Morristown, Tennessee, Amending Title 18 (Water and Sewers) Chapter 5 (Stormwater Program) of the Morristown Municipal Code.

Councilmember Alvis made a motion to approve Resolution No. 08-17. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

RESOLUTION NO. 08-17

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 18th day of July in the year of 2017.

MAYOR

ATTEST:

CITY ADMINISTRATOR

Councilmember Pedigo made a motion to approve Ordinance No. 3582 on first reading and schedule a public hearing relative to final passage of said ordinance for August 1, 2017. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3582

Being an Ordinance of the City Council of Morristown, Tennessee, Amending Title 3 (Municipal Court) Chapter 1 (City Court) of the Morristown Municipal Code.

Councilmember Alvis made a motion to approve Ordinance No. 3583 on first reading and schedule a public hearing relative to final passage of said ordinance for August 1, 2017. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3583

Being an Ordinance of the City Council of Morristown, Tennessee, Amending Title 14 (Zoning and Land Use Control), Chapter 10 (Intermediate Business District), and Chapter 11 (Central Business District).

Councilmember Pedigo made a motion to approve Ordinance No. 3584 on first reading and schedule a public hearing relative to final passage of said ordinance for August 1, 2017. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3584

Being an Ordinance of the City Council of Morristown, Tennessee Amending Title 14 (Zoning and Land Use Control – HOME OCCUPATIONS).

Councilmember Smith made a motion to approve Ordinance No. 3585 on first reading and schedule a public hearing relative to final passage of said ordinance for August 1, 2017. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3585

Being an Ordinance of the City Council of Morristown, Tennessee Amending Ethics Policy.

Councilmember Pedigo made a motion to approve the Fire Department Uniform Bid from Galls for daily uniforms and BKT for Class A Dress Uniforms and Police Department Uniform Bid from Summit Uniforms. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve the Agreement between City of Morristown and LB Technology, Inc. to purchase GPS enabled fleet tracking units and subscribe to communication services from LB Technology, Inc. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve the Interlocal Agreement between the City of Morristown and Hamblen County Board of Education and the Morristown Police Department for School Resource Officers. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Councilmember Alvis made a motion to approve the Interlocal Agreement between the City of Morristown and Morristown Housing Authority (MHA) for law enforcement and police services at MHA's housing facility locations. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Pedigo made a motion to approve the General Engineering Services – Amendment No. 3 with McGill & Associates for general professional engineering services with an allocation of an initial \$40,000 in funding for the new fiscal year. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve the Curbline Maintenance Agreement between the City of Morristown and L&B Landscaping & Property Management. Councilmember Pedigo seconded the motion and upon roll call; Councilmembers Garrett, Senter, Smith, Pedigo and Mayor Chesney voted “aye”; Councilmember Alvis voted “no”.

Councilmember Smith made a motion to approve the Extension of Professional Services for FY2018 with Strategic Services Company, LLC (SSC) in the amount not to exceed \$40,000. Councilmember Alvis seconded the motion and upon roll call; all voted “aye”.

Councilmember Smith made a motion to approve the Amendment to the original lease for office space located at 1748 West Andrew Johnson Hwy., Morristown, TN to extend the current lease from November 1, 2017 to October 31, 2020, at the current monthly rent of \$1,650. Councilmember Alvis seconded the motion and upon roll call; all voted “aye”.

Councilmember Pedigo made a motion to approve the Inspection and Maintenance Agreement (I&M Agreement) between Walters Ridge Apartments, L.P. and the City of Morristown. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Mayor Chesney nominated Lynn Elkins for re-appointment to the Morristown Utilities Commission for a five (5) year term to expire on July 31, 2021, and upon roll call; all voted “aye”.

Mayor Chesney appointed Frank McGuffin to the Morristown Regional Planning Commission to fill the remaining term of K. C. Curberson-Alverado, (who was filling the remainder of Doug Beiers term), to expire March 1, 2019.

Councilmember Pedigo made a motion to approve the Certificate of Compliance for Gauri J. Patel for a retail package store renewal licensure, store located at 1506 South Cumberland Street, DBA The Package Store. Councilmember Senter seconded the motion and upon roll call; all voted “aye”.

July 18, 2017

Councilmember Alvis made a motion to confirm the Fire Departments disciplinary action on Driver, Brian Wallace. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve the hiring of Troy Rosenfels as an entry-level Patrol Officer. Councilmember Alvis seconded the motion and upon roll call; all voted “aye”.

Mayor Chesney adjourned the July 18, 2017, City Council meeting at 6:24 p.m.

MAYOR

ATTEST:

CITY ADMINISTRATOR

ORDINANCE NO. 3582
BEING AN ORDINANCE OF THE CITY COUNCIL OF
MORRISTOWN, TENNESSEE AMENDING TITLE 3, CHAPTER 1
OF THE MORRISTOWN MUNICIPAL CODE.

Be it ordained by the City Council for the City of Morristown that pursuant to Public Chapter 750 which amended Tennessee Code Annotated §55-10-207 by authorizing electronic citations to be filed in court, including the assessment of a fee to recover costs associated with these citations, the text of Title 3, Chapter 1 of the Morristown Municipal Code is amended by adding the following section:

“3-113. Electronic citation regulations and fees.

(a) As used in this section, “electronic citation” means a written citation or an electronic citation prepared by a law enforcement officer on paper or on an electronic data device with the intent the citation shall be filed, electronically or otherwise, with a court having jurisdiction over the alleged offense.

(b) Pursuant to and in accordance with state statutory requirements found in Tennessee Code Annotated §55-10-207(e), each court clerk shall charge and collect an electronic citation fee of five dollars (\$5.00) for each citation which results in a conviction.

(c) Pursuant to Tennessee Code Annotated §55-10-207, this electronic citation fee and this Section of the Morristown Municipal Code shall terminate five (5) years from the date of adoption.”

This ordinance shall take effect upon second and final reading, the public welfare requiring same.

PASSED ON FIRST READING THIS THE 18TH DAY OF JULY, 2017.

MAYOR

ATTEST:

CITY ADMINISTRATOR

PASSED ON SECOND AND FINAL READING THIS THE 1ST DAY OF
AUGUST, 2017.

MAYOR

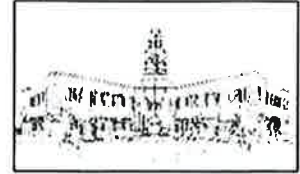
ATTEST:

CITY ADMINISTRATOR

City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



Ord. 3583

TO: City Council
FROM: Lori Matthews, Senior Planner
DATE: July 18th, 2017
SUBJECT: **Zoning Text Amendment Changes - Motor Vehicle Sales**

The Planning Department has been on the receiving end of numerous complaints throughout the course of the last couple of years with regard to motor vehicle sales lots. Displays of the sales stock is being placed within sidewalks and City street rights-of-way which blocks the view of on-coming traffic. Customer parking is being utilized for display areas forcing customers to park on the street. Sales lots are so congested that emergency vehicles (or potential customers) have no means by which to traverse the lot due to inadequate travel aisles. No consideration is given to pedestrians crossing major arterials to adjoining sales lots.

According to Tennessee state records, the City of Morristown has within its corporate limits over 50 motor vehicle sales dealer. The State differentiates between recreational motor vehicles and cars/trucks but no distinction is made between new or used vehicles. Motor vehicle dealerships must register and meet State of Tennessee requirements as do their sales personnel. Certain financial and site location criteria must be met in order to obtain this license from the State such as carrying insurance, being able to house a minimum of 18 vehicles and obtaining a zoning verification letter from the local municipality.

After researching the problems, Staff has determined that changes to zoning requirements are needed with regard to motor vehicle sales and their accessory repair facilities. Most of the amendments being proposed are duplicated from existing State requirements and current City zoning code which can at times, be vague. The ability to enforce is enhanced as well when regulations are clarified and strengthened.

Currently, motor vehicle sales are allowed by right within our CBD (Central Business District) and IB (Intermediate Business) districts. Staff is recommending that vehicle sales be deleted as a use by right and allowed only with use on review approval by the Board of Zoning Appeals. A site plan to meet the minimum criteria as set forth in Section 14-1903 APPROVAL OF PLANS AND ISSUANCE OF BUILDING PERMIT will be required as part of the use on review application.

Congestion in car sales repair center





City sidewalk used for display storage



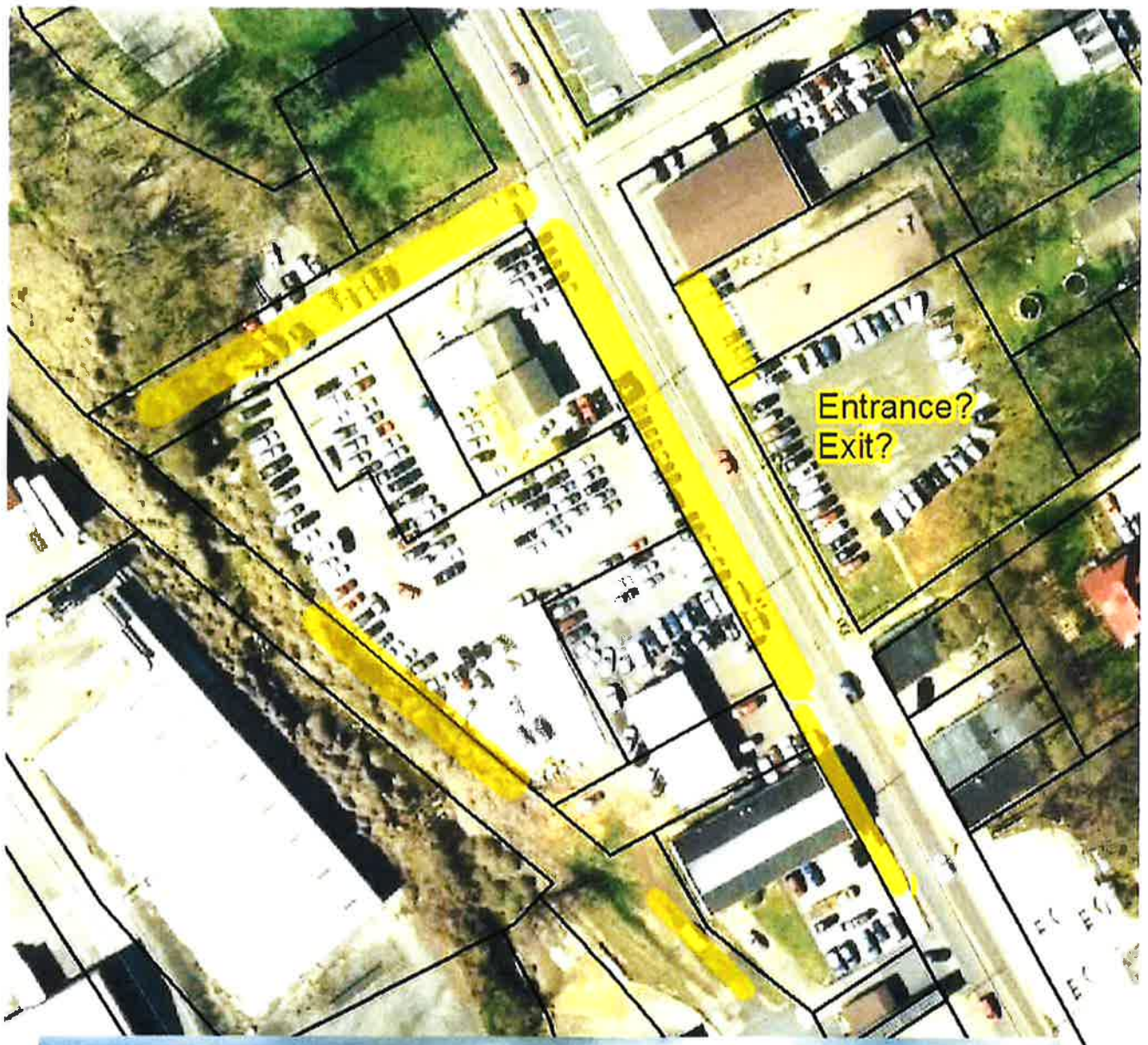
Display stock? Or junked cars?



Inoperable vehicles outnumber sales stock



Vehicles in public right of way



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ORDINANCE NO. 3583

BEING AN ORDINANCE OF THE CITY COUNCIL OF MORRISTOWN, TENNESSEE AMENDING TITLE 14 (ZONING AND LAND USE CONTROL), DELETING THE PERMITTED USE OF AUTOMOBILE SALES AGENCIES, NEW AND USED FROM CHAPTER 10, SECTION 14-1002 AND FROM CHAPTER 11, SECTION 14-1102; AND BY ADDING SAID USE WITH CONDITIONS TO CHAPTER 10, SECTION 14-1003 AND TO CHAPTER 11, SECTION 14-1103;

BE IT ORDAINED BY THE CITY COUNCIL of the City of Morristown that the text of Title 14 (Zoning and Land Use Control), Chapter 10 and 11 be reapproved with the below described changes:

14-1002. USES PERMITTED (3227-08/02/2005)

Delete # 8. Automobile Sales Agencies (New and Used).

14-1003. USES PERMITTED ON REVIEW.

Add as #5 - Automobile Sale with the following conditions:

5. Automobile Sales.

- a. A site plan shall be submitted to meet requirements as put forth in Section 14-1903 APPROVAL OF PLANS AND ISSUANCE OF BUILDING PERMIT. Traffic aisles shall meet the requirements as stated under Chapter 2, Section 14-203 Definition of Parking Aisle for one way and two-way traffic. All plans will include access as required by the Morristown Fire Department for emergency vehicles.
- b. In addition to parking as required for in Section 14-216-3.e, a minimum of three (3) customer spaces must be provided for and identified; a minimum of fifteen (15) parking stalls must be provided for sales stock. All parking shall meet the specifications of Section 14-216-2 requiring parking stalls to be 9.5 feet by 18 feet in size.
- c. Automobiles displayed along property lines must include a Staff approved physical barrier. New development sites require a 10-foot grassed strip along property lines which front rights-of-way. Existing or redeveloped sites may choose this option or provide a smaller grassed strip with barriers such as chain and bollard or wheelstops to prevent vehicles from encroaching into rights of way and/or prevent overlap onto adjacent properties. Either method will be shown on the site plan.
- d. All parking to include sales stock shall be composed of a hard surface material as stipulated under Section 14-216.4 and Section 14-203.209

of the Zoning Ordinance unless granted a variance by the Planning Commission.

14-1102. USES PERMITTED

Delete #8 – Automobile Sales Agencies (New and Used).

14-1103. USES PERMITTED ON REVIEW.

Add as #5 - Automobile Sales with the following conditions:

5. Automobile Sales.

- a. A site plan shall be submitted to meet requirements as put forth in Section 14-1903 APPROVAL OF PLANS AND ISSUANCE OF BUILDING PERMIT. Traffic aisles shall meet the requirements as stated under Chapter 2, Section 14-203 Definition of Parking Aisle for one way and two-way traffic. All plans will include access as required by the Morristown Fire Department for emergency vehicles.
- b. In addition to parking as required for in Section 14-216-3.e, a minimum of three (3) customer spaces must be provided for and identified; a minimum of fifteen (15) parking stalls must
- c. be provided for sales stock. All parking shall meet the specifications of Section 14-216-2 requiring parking stalls to be 9.5 feet by 18 feet in size.
- d. Automobiles displayed along property lines must include a Staff approved physical barrier. New development sites require a 10-foot grassed strip along property lines which front rights-of-way. Existing or redeveloped sites may choose this option or provide a smaller grassed strip with barriers such as chain and bollard or wheelstops to prevent vehicles from encroaching into rights of way and/or prevent overlap onto adjacent properties. Either method will be shown on the site plan.
- e. All parking to include sales stock shall be composed of a hard surface material as stipulated under Section 14-216.4 and Section 14-203.209 of the Zoning Ordinance unless granted a variance by the Planning Commission.

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

Passed on first reading this the 18th day of July 2017.

MAYOR

ATTEST:

CITY ADMINISTRATOR

Passed on second and final reading this the 1st day of August 2017.

MAYOR

ATTEST:

CITY ADMINISTRATOR

City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



Ord. 3584

TO: Morristown City Commission
FROM: Steve Neilson, Planning Director *SN*
DATE: July 18, 2017
SUBJECT: Zoning Text Amendment-Home Occupations

BACKGROUND

This is a proposed text amendment to Section 14-228. HOME OCCUPATIONS. Under the current Zoning Ordinance, all home occupations are required to go before the Board of Zoning Appeals (BZA) as a Use on Review. Staff has found that taking a home occupation to the BZA can add considerable time to the review process often delaying the opening of home businesses. Depending on the date the application is received, it can add almost a month to the review process. If the home occupation is approved at staff level, the applicant can often be approved the same day.

Reviewing ordinances from larger communities in East Tennessee within Morristown's general population range, staff found that Morristown is the only municipality that takes home occupations to the BZA for approval. Reviewing home occupations at the staff level would not only save the applicant time, allowing them to open their business sooner, but it would also save them the required \$50 Use on Review application fee.

However, a number of Board members are concerned about the impact of certain home occupations on surrounding residential properties. Those home occupations such as beauty shops where people are coming to the home on a regular basis have a much greater impact on the neighboring properties than those uses where no one comes to the home. Several BZA members expressed that it was important for the surrounding properties to be informed of these higher impact home occupations.

The proposed text amendment attempts to address these concerns by setting up a two-tier system. Those home occupations where no one comes to the home (such as an internet business) would be a Permitted Use approved administratively by staff and those home occupations where people (employees, clients, or students) come to the home would remain a Use on Review requiring the BZA approval and notification to surrounding property owners.

The Planning Commission voted 8 to 0 to recommend approval of the proposed text amendments.

RECOMMENDATION

Staff recommends approval of the proposed text amendments.

ORDINANCE NO. 3584

BEING AN ORDINANCE OF THE CITY COUNCIL OF MORRISTOWN, TENNESSEE AMENDING TITLE 14 (ZONING AND LAND USE CONTROL), OF THE MORRISTOWN MUNICIPAL CODE.

BE IT ORDAINED BY THE CITY COUNCIL of the City of Morristown that the text of Title 14 (Zoning and Land Use Control), Chapter 2, Chapter 3, Chapter 4, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 10, and Chapter 11, regarding home occupations be amended to states:

14-228. HOME OCCUPATION (3341-09/18/2008)

1. A Home Occupation Permit is required for any business requiring a State Business license which is conducted within the premise of any occupied domicile or accessory structure.
 - a. do not generate any additional traffic to the premises,
 - b. do not advertise the business with any sign on the premises,
 - c. do not utilize any employees that are not full-time residents of the domicile,
 - d. do not store any materials outside the principal residential structure,
 - e. do not involve any on-site retail sales or professional services open to the public.
2. An applicant for a home occupation permit shall submit an application to the Planning Staff in a form as required by the city administrator or his assignee along with the required fee for a home occupation permit as approved by City Council.
3. A home occupation must comply with the following criteria:
 - a. The applicant(s) shall demonstrate that the location for the home occupation is their principal domicile,
 - b. If the applicant for the home occupation is not the property owner, the property owner shall also sign the Home Occupation application indicating they support the proposed use.
 - c. Not more than 25% of the gross floor area or 500 square feet, whichever is less, of the principal domicile or any accessory structure shall be used for the home occupation, including the storage of any materials or products related to the home occupation.
 - d. No more than one employee affiliated with the home occupation who is not a permanent resident of the dwelling unit shall be employed at the site of the home occupation.
 - e. No more than one home occupation may be permitted per dwelling unit.
 - f. Products or materials shall not be visible on the premises from any street or sidewalk adjacent to the property on which the home occupation is situated.

- g. A home occupation shall be limited to one, wall-mounted sign, mounted flatly against the structure, that shall not exceed two (2) square feet in size and such sign shall not have lights, be illuminated, flash, glimmer, flutter, or have movement by any electronic, wind or other means.
- h. There shall be no significant increase in the use of utilities such as water, sewer, gas, garbage or electricity that would indicate the usage of the property other than the use for residential purposes.
- i. There shall be no external storage of materials incidental to the home occupation.
- j. No equipment or process associated with the home occupation shall generate noise, vibration, smoke, dust, glare, electrical interference, odors, fumes or other objectionable effect detectable to the normal senses beyond the property lines of the lot on which the business is situated, or if within a multi-family structure, beyond the confines of the individual dwelling unit.
- k. Off-street parking shall be provided on the premises in sufficient quantity to accommodate all residents of the domicile, delivery vehicles, employees, clients, customers, students, visitors, etc. affiliated with the residence and the home occupation.
- l. No activity related to the home occupation shall be permitted outdoors on the property.
- m. No new construction or alterations to any existing structure on the site shall be made to indicate from the exterior that the buildings are being used for other than residential purposes.
- n. There shall be no group instruction in connection with the home occupation. For the purposes of this subsection, instruction shall be group instruction if it involves more than two (2) students at any time.
- o. There shall be no group assembly involved with the home occupation.
- p. Deliveries to the premises shall be consistent with the intent and purpose of maintaining the residential character of the neighborhood and shall not exceed two business deliveries between the hours of 8:00 a.m. and 6:00 p.m. to the premises per day.
- q. One (1) commercial vehicle (one and one-half ton or less in size) owned by the residents of the domicile may be used in conjunction with the home occupation. The vehicle will be deemed in use for the home occupation if it advertises the home occupation and/or contains or stores materials including stock, wares, goods, samples or equipment. Such vehicle shall be stored in a garage or building or shall be concealed so as not to be visible from the street or sidewalk adjacent to the premises when it is parked at the residence.
- r. No earth moving equipment or heavy construction or hauling equipment or building materials shall be allowed on the premises.

- s. The Board of Zoning Appeals, when considering a permit for a home occupation, may render additional requirements specific to a particular application as it may deem necessary to protect the intent and purpose of maintaining the residential character of the neighborhood in which the application is being sought.
 - t. Home Occupation permits shall not be transferrable. A new home owner, property owner, descendant, heir or individual other than that to whom the Board of Zoning Appeals issues a home occupation permit shall be required to apply for a new home occupation permit.
 - u. The applicant(s) shall have signed a notarized Affidavit of Zoning Compliance for a Home Occupation, Section 14-228 Zoning Ordinance of the City of City of Morristown stating their agreement to comply with the standards set forth herein.
4. An applicant for a home occupation permit which involves the above listed criteria and involves employees, clients, or students must be approved by the Board of Zoning Appeals. All other home occupation permits may be approved administratively by Staff.
5. The holder of a home occupation permit is required to continuously comply with all conditions of its issuance or suffer revocation as provided below:
- a. A home occupation permit shall be revoked when it is determined that the conditions of its issuance are not being met.
 - b. The permit holder of the home occupation shall be notified in writing that the conditions of its issuance are not being met with the specific infractions noted.
 - c. The permit holder of the home occupation shall be given ten (10) calendar days from the postmark of written notification of non-compliance to contact the city to resolve the issue of non-compliance. Should the issue not be resolved, the City Administrator or his assignee shall notify the permit holder that the Home Occupation Permit has been revoked and all business activities associated with the home occupation shall terminate immediately upon receipt of the notice.
6. Appeals to the revocation of a home occupation permit shall be made in writing to the Board of Zoning Appeals within seven (7) calendar days of the date of the revocation notice. A timely filed appeal shall result in the revocation action being held in abeyance pending the hearing by the Board of Zoning Appeals.
- a. A notice of application for appeal shall be posted by the city on the applicable property.

- b. A public notice shall be published in a newspaper of general circulation advertising the nature of the appeal and the date, time and location at which the Board of Zoning Appeals shall consider the issue.
- c. An appeal hearing before the Board of Zoning Appeals shall be limited to the issue of whether the applicant complies with the criteria to be issued a home occupation permit or whether a permit holder continuously meets the criteria required for the issuance of a home occupation permit.
- d. The Board of Zoning Appeals shall not grant a variance from the established criteria for the issuance of a home occupation permit.
- e. The Board of Zoning Appeals shall not hear an appeal that is not timely filed as provided in this Section.

14-301. SINGLE FAMILY RESIDENTIAL DISTRICT (R1)

14-302. USES PERMITTED

- 6. Home Occupation with no additional employees, clients or students.

14-303. USES PERMITTED ON REVIEW

- 5. Home Occupation involving employees, clients and students.

14-401. RP-1 PLANNED RESIDENTIAL DEVELOPMENT DISTRICT

14-4A02. USES PERMITTED

- 7. Home Occupations require Board of Zoning Appeals approval.

14-4A01. RD-1 MODERATE DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT

14-4A02. USES PERMITTED

Any use permitted and as regulated in the R-1 Single Family Residential District to include Home Occupations not involving employees, clients and students.

14-4A03. USES PERMITTED ON REVIEW

- 3. Home Occupation involving employees, clients and students.

14-501. RD-2 MODERATE DENSITY RESIDENTIAL DISTRICT

14-502. USES PERMITTED

4. Home Occupations not involving employees, clients and students.

14-503. **USES PERMITTED ON REVIEW**

3. Home Occupation involving employees, clients and students.

14-601. R-2 MEDIUM DENSITY RESIDENTIAL DISTRICT

14-602. **USES PERMITTED**

2. Home Occupations not involving employees, clients and students.

14-603. **USES PERMITTED ON REVIEW**

4. Home Occupation involving employees, clients and students.

14-701. R-3 HIGH DENSITY RESIDENTIAL DISTRICT

14-702. **USES PERMITTED**

1. Any use permitted and as regulated in the R-1 and R-2 Residential Districts. to include Home Occupations not involving employees, clients and students.

14-703. **USES PERMITTED ON REVIEW**

1. Any use permitted and as regulated in the R-1 and R-2 Residential Districts to include Home Occupations involving employees, clients and students.

14-1505. (MHP) MOBILE HOME PARK DISTRICT

14-1505. **GENERAL REQUIREMENTS**

- k. Home Occupations require Board of Zoning Appeals approval.

The following sections will be deleted:

14-2501. MIXED USE (RESIDENTIAL AND COMMERCIAL USES) DISTRICT (MUD)

14-2503. **USES PERMITTED**

~~10. — Customary Home Occupations.~~

14-8B01. OMP-R OFFICE, MEDICAL AND PROFESSIONAL-RESTRICTED DISTRICT

14-8B03. USES PERMITTED ON REVIEW

~~9. — Home Occupation.~~

14-801. OMP OFFICE, MEDICAL AND PROFESSIONAL DISTRICT

14-803. USES PERMITTED ON REVIEW

~~19. — Home Occupation.~~

14-1001. IB INTERMEDIATE BUSINESS DISTRICT

14-1003. USES PERMITTED ON REVIEW (3227-08/02/2005)

~~17. — Home Occupation.~~

14-1101. CB CENTRAL BUSINESS DISTRICT

14-1103. USES PERMITTED ON REVIEW

~~17. — Home Occupation.~~

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

Passed on first reading this the 18th day of July 2017.

Mayor

ATTEST:

City Administrator

Passed on second and final reading this the 1st day of August 2017.

Mayor

ATTEST:

City Administrator

**ORDINANCE NO. 3585
BEING AN ORDINANCE OF THE CITY COUNCIL OF MORRISTOWN,
TENNESSEE REPEALING THE CURRENT ETHICS POLICY AND
REINSTATING THE PRIOR POLICY.**

Be it ordained by the City Council for the City of Morristown that the current Ethics Policy that was adopted by the City on February 21, 2012 is hereby repealed and the previous Ethics Policy adopted by the City on May 16, 2006 shall be reinstated as stated below:

Ethics Policy (Attached)

This ordinance shall take effect upon second and final reading, the public welfare requiring same.

PASSED ON FIRST READING THIS THE 18TH DAY OF JULY 2017.

MAYOR

ATTEST:

CITY ADMINISTRATOR

PASSED ON SECOND AND FINAL READING THIS THE 1ST DAY OF
AUGUST 2017.

MAYOR

ATTEST:

CITY ADMINISTRATOR

“Ethics Policy

SECTION I. Declaration of Policy.

Our government is a representative democracy. Those who are elected, appointed, hired, volunteer or campaign to serve the public as representatives accept a public trust, which they share with those whom they elect, appoint, hire or otherwise enlist to help them serve the public. The public entrusts its power and resources to its servants to use only in the public interest. Public trust requires public servants to fulfill their public duties faithfully and honestly, and to subordinate any personal interest which conflicts with the public interest.

The maintenance of high standards of honesty, integrity, impartiality, and conduct by elected and appointed officials, employees and agents of the City of Morristown, Tennessee is essential to ensure the proper performance of government business and the maintenance of confidence by citizens in their government. The avoidance of misconduct and conflicts of interest on the part of elected and appointed officials, employees and agents of the City of Morristown is indispensable to the maintenance of these standards.

SECTION II. Purposes of Ordinance.

This Ordinance is adopted pursuant to the Tennessee Comprehensive Governmental Ethics Reform Act of 2006:

- (a) to state principles of ethics which are to be applied in public service; and
- (b) to identify minimum standards of ethical conduct for public officials; and
- (c) to require that public officials engage in ethical practices which always meet minimum standards; and
- (d) to encourage public officials to pursue the highest ethical ideals which they can achieve; and
- (e) to provide a process by which public officials may identify and resolve ethical issues; and
- (f) to inform public officials and the public of the minimum standards to which public servants must adhere; and
- (g) to promote public confidence in the integrity of public officials; and

(h) to encourage members of the public to seek public office or employment, to serve on public boards, to assist public officials as volunteers, and to take pride in participating in the governmental process; and

(i) to establish penalties, as appropriate, for public officials who violate the public trust; and

(j) to provide for a just and reasonable balance among the rights of all individuals who are directly affected by the operation of this Ordinance.

NOW, THEREFORE, Be it ordained by the City Council for the City of Morristown, as follows:

SECTION III. The Ordinance.

101. Persons covered. This Ordinance shall apply to any official, whether elected or appointed, officer, employee or servant or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant of the City, all collectively referred to herein as “public officials”.

102. Public Official Responsibilities. Each public official of the City of Morristown shall avoid any action, whether or not specifically prohibited by this Ordinance or departmental codes of ethics, which might result in, or create the appearance of:

(i) using public office for private gain;

(ii) unfair or unequal treatment of any citizen;

(iii) impeding government efficiency or economy;

(iv) acting on behalf of the City, unless such person is the Mayor or member of City Council, by making any policy statement or representation, or by promising to authorize or to prevent any future action of any nature, when such public official is not authorized to make such a statement or representation;

(v) conducting City business outside of official channels; or

(vi) affecting adversely the confidence of the public in the integrity of the government.

103. Gifts, Entertainment and Favors. No public official shall solicit or accept, directly or indirectly, on behalf of himself, herself, or any member of the public official's household, any gift, gratuity, service, favor, entertainment, lodging, transportation, loan, guarantee or any other thing of monetary value exceeding an aggregate value of \$50.00 during any twelve month period, from any person who:

(i) has, or is seeking to obtain, contractual or other business or financial relations with the department or agency of the City of Morristown by which the individual is employed; or

(ii) conducts operations or activities that are regulated by the department or agency of the City of Morristown by which the employee is employed; or

(iii) has interests that may be substantially affected by the performances or nonperformance of employee's official duties.

104. Exceptions: Gifts, Entertainment and Favors. The prohibitions on accepting gifts, entertainment or favors in (103) do not apply to:

(i) family members or friends of long standing when the circumstances make it clear that it is the relationship, rather than the business of the persons concerned, which is the motivating factor, and where the value of the gift, entertainment or favor is appropriate to the circumstances and consistent with the parties' historical relationship. If such gift, entertainment or favor exceeds \$50.00 in value, the employee shall disclose the nature and value of the gift, entertainment or favor in a letter to the Finance Director.

(ii) loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in (103);

(iii) unsolicited advertising material of nominal value;

(iv) food and refreshments of nominal value when they are part of the employee's participation in a charitable, civic, political or community event which bears a relationship to the public official's office and the public official is attending in an official capacity.

A business lunch or dinner is not an "event" for the purposes of this exception. On those occasions, the public official must buy his or her own meal or refreshment. If the meal is held at a private club where the public official may not pay the establishment directly, the public official must reimburse the member of the establishment for the equivalent cost of the meal or refreshment.

(v) lawful campaign contributions made on behalf of elected officials.

105. Conflicts of Interest, Financial Interests.

Conduct of public officials shall be controlled and governed by the provisions of the Tennessee Comprehensive Governmental Ethics Reform Act of 2006, as may, from time to time, be amended. All public officials shall annually submit verified conflict of interest disclosure statements on forms provided by the Personnel Director.

106. Use of Information. No public official of the City of Morristown shall directly or indirectly:

(i) use, disclose, or allow the use of official information which was obtained through or in connection with his or her municipal office or employment, and which has not been made available to the general public, for the purpose of furthering the private interest or personal profit of any person, including the public official; or

(ii) engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her government office or employment.

107. Use of Government Property. No public official shall use the facilities, equipment, personnel, or supplies of the City of Morristown or its agencies for other than officially approved activities, except to the extent that they are lawfully available to the general public.

108. Questions on Interpretation of this Ordinance. When a public official is in doubt as to the proper interpretation of this Ordinance, he or she is expected to seek the advice of the City Attorney, if time permits, or to use good judgment and to report the gift, entertainment or favor to the Finance Director within 7 days.

109. Departmental Ethics Standards. This Ordinance does not supersede or revoke those portions of any existing departmental or agency policies regarding ethical standards which are stricter than, or cover areas additional to, the standards set out herein.

110. Ethics Guidelines Published by Personnel Director. The personnel director, or his assignee, shall inform each covered public official of the requirements of this Ordinance, shall distribute the Ordinance to covered public officials and have them sign a statement that they have received and read it, and shall modify personnel manuals to incorporate these standards as soon as practicable.

111. Penalties. Violation by any person of this Ordinance shall be punishable as, and subject to criminal and civil penalties as set forth in the Tennessee Comprehensive Governmental Ethics Reform Act of 2006. In addition, violation of this Ordinance may result in any one or combination of the following actions by the governing body: reprimand; suspension; demotion; forfeiture of or removal from office.

112. Indemnification. (i) The City may indemnify an individual against liability incurred, including reasonable legal expenses, who is made a party to a proceeding because the individual is or was a public servant if:

- (a) The individual's conduct was in good faith; and
- (b) The individual reasonably believed:
 - (1) In the case of conduct in the individual's official capacity with the City, that the individual's conduct was in its best interest; and
 - (2) In all other cases, that the individual's conduct was at least not opposed to its best interests; and
 - (3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.
- (ii) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the public official did not meet the standard of conduct described in this section.
- (iii) The City may not indemnify a public official under this section:
 - (a) In connection with a proceeding by or in the right of the City in which the public official was adjudged liable to the City; or
 - (b) In connection with any other proceeding charging improper personal benefit to the public official, whether or not involving action in the public official's official capacity, in which the public official was adjudged liable on the basis that the personal benefit was improperly received by the public official.
- (iv) The City shall indemnify a public official who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the public official was a party because the public official is or was a public official of the City against reasonable expenses incurred, including attorney's fees, by the public official in connection with the proceeding.

113. Construction of Ordinance. The provisions of this Ordinance are to be construed liberally, to the end that the public interest be fully protected, and shall be construed in a manner consistent with all applicable federal and state laws and applicable provisions of the City Charter. In the event of a conflict between any provision of this Ordinance and any applicable federal, state or City charter provision which does not expressly provide otherwise, the federal, state or City charter provision shall control. To the extent permitted by law, all ordinances, resolutions or rules, and parts of ordinances, resolutions or rules inconsistent with this Ordinance are hereby repealed.

114. Less Restrictive. Any provision herein which is less restrictive than that provided for in the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 shall be deemed invalid and in that event, the provisions of the Act shall apply. Any provision in the Act which applies to local government ethics requirements which is omitted herein shall be incorporated herein.

115. Severability. If any provision of this Ordinance is held by any court or by any federal or state agency of competent jurisdiction to be invalid as

conflicting with any federal, state or City charter provision now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such provision, the conflicting provision of this Ordinance shall be considered a separate, distinct and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of this Ordinance as a whole, or any part other than the part declared to be invalid.”

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

TASK ORDER EDITION

Prepared by



and
Issued and Published Jointly by

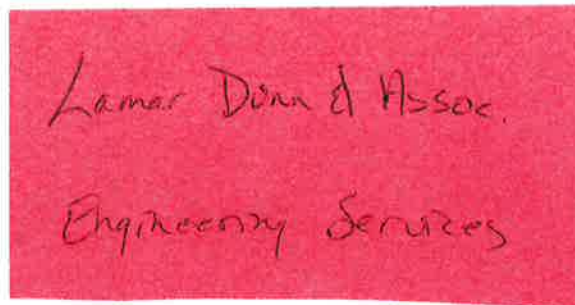


AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS



This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between

City of Morristown, Tennessee ("Owner") and

Lamar Dunn & Associates, Inc./D.B.A. LDA Engineering ("Engineer").

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

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

1.02 Task Order Procedure

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Owner's Responsibilities," and in each Task Order.
- B. Owner shall compensate Engineer as set forth in each Task Order.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and

information in performing or furnishing services under this Agreement. The Engineer agrees; however, that because information in the City's GIS database is based on aerial surveys and is provided on an "as-is" basis, it is the Engineer's responsibility to field-verify the information prior to relying on it.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for five (5) years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

- A. The times for performing services or providing deliverables will be stated in each Task Order and are hereby agreed to be reasonable. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole monetary remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. Engineer shall prepare invoices in accordance with its standard invoicing practices and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt of an invoice meeting the requirements of this section. All invoices submitted for payment shall be original hard copies.
- B. Any proposed reallocation of funds for design, program management, or other engineering services to different Phases of the project must be approved by the Owner in writing prior to the work being performed.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, and Owner's failure to pay is not as a result of a dispute regarding an invoice, or a portion thereof, pursuant to 4.02.C, then:
 - 1. the compounded amount due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion. Upon notice to Engineer that an invoice, or a portion thereof, is subject to dispute, the parties may immediately commence the dispute resolution process pursuant to Exhibit H. Engineer shall continue performance pursuant to this Agreement while the dispute resolution process is underway.
- D. *Legislative Actions:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Engineer's services or compensation under the Task Order, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. Not applicable to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:* Engineer and Owner shall comply with applicable Laws and Regulations.
1. Prior to the Effective Date of each Task Order, Owner will make available to Engineer any and all policies and procedures of Owner applicable to Engineer's performance of services under such Task Order, including the City's current policy regarding Temporary Traffic Control (Exhibit L). Engineer shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 2. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Task Order. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree in a Task Order to use other General Conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by Engineer.
- L. While at a Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been itemized and expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, shop drawing review, or other

obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be in any way connected to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to a Specific Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely upon that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or its Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04

- A. ~~At all times~~ when any Task Order is under performance, Owner and Engineer shall each procure and maintain insurance as set forth in Exhibit G, "Insurance."
- B. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services under any Task Order and at renewals thereafter during the life of this Agreement.

- C. Both parties agree that required insurance will remain in force during the duration of this Agreement and that any lapse in coverage will not relieve the breaching party of liability.
- D. Engineer will maintain Professional Liability coverage for three years after completion of services performed under the terms of any Task Order.
- E. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so request by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by the Owner.
- F. When applicable, the Engineer will incorporate the Owner's insurance requirements for Contractors into the bidding documents. The Engineering, when under contract to perform bidding phase services, will verify that the selected Contractor meets the Owner's insurance requirements.

6.05 *Suspension and Termination*

A. *Suspension*

- 1. *By Owner:* Owner may suspend a Task Order upon seven days written notice to Engineer.
- 2. *By Engineer:* If Engineer's services are substantially delayed through no fault of Engineer, then Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order.

B. *Termination:* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law:*

A. This Agreement is to be governed by the laws of the State of Tennessee.

6.07 *Successors, Assigns, and Beneficiaries:*

- A. Owner and Engineer each is hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

6.08 *Dispute Resolution:*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law. The parties also agree to set a mediation date during this 30 day period in order to expedite reaching a resolution in the event that negotiation fails.

- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site:*

- A. With respect to each Task Order, Specific Project, and Site:

1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
2. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
3. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
4. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 days notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* To the extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from

and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to a Specific Project.

6.11 *Miscellaneous Provisions*

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

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:
1. *Addenda*: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 2. *Additional Services*: Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.
 3. *Agreement*: This "Agreement between Owner and Engineer for Professional Services – Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
 4. *Application for Payment*: The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. *Asbestos*: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 6. *Basic Services*: Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
 7. *Bid*: The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 8. *Bidding Documents*: The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
 9. *Change Order*: A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
 10. *Constituent of Concern*: Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 11. *Construction Agreement*: The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
 12. *Construction Contract*: The entire and integrated written agreement between Owner and Contractor concerning the Work.
 13. *Construction Cost*: The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or

financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

14. *Consultants:* Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
15. *Contract Documents:* Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
16. *Contract Price:* The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
17. *Contract Times:* The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
18. *Contractor:* The entity or individual with which Owner has entered into the Construction Contract.
19. *Correction Period:* The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. *Defective:* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.
21. *Documents:* Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
22. *Drawings:* That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.
23. *Effective Date of the Construction Agreement:* The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Effective Date of the Agreement:* The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Task Order:* The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Engineer:* The individual or entity named as such in this Agreement.
27. *Field Order:* A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

28. *General Conditions*: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
29. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
30. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
31. *Owner*: The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any construction contracts concerning the Project.
32. *PCBs*: Polychlorinated biphenyls.
33. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
34. *Project*: The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Radioactive Materials*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Record Drawings*: The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
37. *Reimbursable Expenses*: The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.
38. *Resident Project Representative*: The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Task Order.
39. *Samples*: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
40. *Shop Drawings*: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
41. *Site*: Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
42. *Specifications*: That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.

- 43. *Specific Project*: An undertaking of Owner as set forth in a Task Order.
- 44. *Subcontractor*: An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at a Site.
- 45. *Substantial Completion*: The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended.
- 46. *Supplementary Conditions*: That part of the Contract Documents which amends or supplements the General Conditions.
- 47. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
- 48. *Task Order*: A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
- 49. *Total Project Costs*: The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
- 50. *Work*: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by those Contract Documents.
- 51. *Work Change Directive*: A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits

Exhibit A, Task Order (Suggested Form)

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Exhibit G, Insurance

Exhibit H, Dispute Resolution

Exhibit L, City Engineer's Directive #01-11 "Temporary Traffic Control (TTC)" – to be incorporated by Engineering into plans and specifications for construction projects and observed by Engineer and its Sub-consultants)

Only Exhibits A, B, G, H, and L referenced in the City of Morristown's Standard Form of Agreement EJCDC E505 are applicable to this Agreement.

Task Orders pursuant to this Agreement will be numbered in sequence, beginning with 007.

8.02 *Total Agreement*

- A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format provided in Exhibit K to this Agreement, "Amendment to Task Order."

8.03 *Designated Representatives*

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

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER: **CITY OF MORRISTOWN**

ENGINEER: **LDA ENGINEERING**

By: _____

Name: Anthony W. Cox

Title: City Administrator

Date Signed: _____

Address for giving notices:

Post Office Box 1499
Morristown, TN 37816-1499

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail
Address: _____

By: _____

Name: Jason D. Brooks, P.E.

Title: President/CEO

Engineer License or Firm's
Certificate No. 650

State of : Tennessee

Date Signed: _____

Address for giving notices:

110 Tyson Boulevard, Suite 200
Alcoa, TN 37701

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Greg Jones, P.E.

Title: Vice President

Phone Number: 865-573-7672

Facsimile Number: _____

E-Mail
Address: gjones@ldaengineering.com

SUGGESTED FORM OF
TASK ORDER

This is Task Order No. _____, consisting of _____ pages.
--

Task Order

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

A. Title: _____

B. Description: _____

C. Number of Construction Contracts

The Specific Project is anticipated to be constructed under _____ Construction Contracts.

2. Services of Engineer

[Check all that apply.]

☐ Study and Report Services

[After reviewing Part 1 of Exhibit A, Engineer's Services, supplement or modify Part 1 as needed for the Specific Project and attach, reference, or insert specific text here.]

☐ Design Services

[After reviewing Part 2 of Exhibit A, Engineer's Services, supplement or modify Part 2 as needed for the Specific Project and attach, reference, or insert specific text here.]

☐ Designing to a Construction Cost Limit

Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$_____. The bidding or negotiating contingency to be added to the Construction Cost Limit is _____ percent.

☐ Bidding or Negotiating Services

[After reviewing Part 3 of Exhibit A, Engineer's Services, supplement or modify Part 3 as needed for the Specific Project and attach, reference, or insert specific text here.]

☐ Construction and Commissioning Services

[After reviewing Part 4 of Exhibit A, Engineer's Services, supplement or modify Part 4 as needed for the Specific Project and attach reference, or insert specific text here.]

☐ Resident Project Representative Services

Engineer will provide Resident Project Representative services pursuant to Part 4 of Exhibit A; Exhibit D is attached to this Task Order and expressly incorporated by reference.

[If RPR services are not in the scope of the Task Order, do not include any references to RPR services from Exhibit A in any attached, referenced, or inserted specific text regarding Construction Phase services and do not include Exhibit D with the Task Order.]

☐ Other Services

[After reviewing Part 5 of Exhibit A, Engineer's Services,, supplement or modify Part 5 as needed for the Specific Project and attach, reference, or insert specific text here.]

☐ Additional Services Requiring an Amendment to Task Order

Part 6 of Exhibit A is incorporated by reference unless otherwise noted.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following:
[Here state any additions or modifications to Exhibit B, for this Specific Project.]

4. Times for Rendering Services

<u>Phase</u>	<u>Completion Date</u>
_____	_____
_____	_____
_____	_____

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered as follows:

Category of Services	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Basic Services (Study and Report, Design, Bidding or Negotiating, Construction and Commissioning, Other Services)	Choose <u>One</u> : A. Lump Sum B. Standard Hourly Rates C. Direct Labor Costs Times a Factor (Factor: _____) D. <i>[Insert any other compensation method]</i>	
Resident Project Representative	Choose <u>One</u> : A. Lump Sum B. Standard Hourly Rates C. Direct Labor Costs Times a Factor (Factor: _____) D. <i>[Insert any other compensation method]</i>	
Additional Services Requiring an Amendment to Task Order	Choose <u>One</u> : A. [Omitted] B. Standard Hourly Rates C. Direct Labor Costs Times a Factor (Factor: _____) D. <i>[Insert any other compensation method]</i>	

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

6. Consultants:

7. Other Modifications to Agreement:

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. Attachments:

9. Documents Incorporated By Reference:

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

The Effective Date of this Task Order is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. _____
State of: _____

DESIGNATED REPRESENTATIVE FOR TASK
ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

Engineer's Services

Introduction:

NOTE TO USER: The following text describes a variety of services that may be included, in whole or in part, in a Task Order issued under the Agreement. Not all possible services are included herein. User should feel free to revise and supplement the descriptions of services provided here for purposes of drafting each Task Order. The items in Parts 1-5 of Exhibit A will be included in a Task Order only if they are expressly included by direct reference or physical incorporation; Part 6 will be incorporated in whole in all Task Orders unless noted otherwise in the Task Order.

PART 1 – STUDY AND REPORT PHASE SERVICES

A1.01 Study and Report Phase

For each Task Order that includes study or report services, select from or supplement the following possible services:

A. The Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B, and, if requested, assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate *[insert specific number or list here]* alternate solutions available to Owner for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. The Report will be accompanied by:

Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized:

- a. opinion of probable Construction Cost,
 - b. allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and,
 - c. on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.
6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Task Order and review it with Owner.

7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Task Order.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

PART 2: DESIGN ACTIVITIES

A1.02 Preliminary Design Phase

For each Task Order that includes preliminary design services, select from or supplement the following possible services:

A. Engineer shall on the basis of the above acceptance, selection, and authorization:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in the Study and Report Phase Services section above.
5. Furnish the Preliminary Design Phase documents to and review them with Owner.
6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Task Order.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

A1.03 Final Design Phase

For each Task Order that includes final design services, select from or supplement the following possible services:

A. Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Where appropriate, prepare Specifications in general conformance with the format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of a Specific Project and assist Owner in consultations with appropriate authorities.
3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, itemized as provided in the Study and Report Phase Services section above.

4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.
 5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Task Order.
 6. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the required submittals have been delivered to Owner.

PART 3: BIDDING AND NEGOTIATION

A1.04 Bidding or Negotiating Phase

For each Task Order that includes bidding or negotiation services, select from or supplement the following possible services:

- A. The Engineer shall:
1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 4. Prepare additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions below regarding additional compensation for an excessive number of such substitute or "or equal" submittals.
 6. Attend the bid opening, prepare bid tabulation sheets, and assist Owner in evaluating bids or proposals and in assembling and awarding contracts for the Work.
 7. Assist Owner with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
 8. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: *[here list any such tasks or deliverables]*
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of the Task Order).

PART 4: CONSTRUCTION AND COMMISSIONING

A1.05 Construction Phase

For each Task Order that includes Construction Phase services, select from or supplement the following possible services:

A. Engineer shall provide the following services:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site of the Specific Project to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in the Task Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. [Note: For those Specific Projects for which Engineer will not be providing the services of an RPR, do not incorporate this Paragraph A1.05.A.2, and do not include Exhibit D.]
3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Paragraph B2.01.0.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction:* In connection with observations of Work in progress :
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Task Order and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site of the Specific Project, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to any provisions below regarding additional compensation for evaluation of such substitute or "or equal" submittals.
13. *Inspections and Tests:* Require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance or progress of the Work; review each

duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, the Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in Paragraph A1.05.A.15.a are expressly subject to the limitations set forth in Paragraph A1.05.A.15.b and other express or general limitations in this Agreement and elsewhere.
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of the Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
16. *Contractor's Completion Documents:* Receive, review and transmit to Owner maintenance and operating instructions, schedules guarantees, bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided above, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided above.
17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to determine if the Work is Substantially Complete. If after considering any objections of Owner, Engineer considers the Work Substantially Complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

18. *Final Notice of Acceptability of the Work:* Conduct a final payment inspection to determine if the completed Specific Project of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

19. *Defective Work:* Together with Owner, visit the Site to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if any.

20. *Correction Period:* Together with Owner or Owner's representative, visit the Site within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Task Order, Construction Phase services may be rendered at different times in respect to the separate contracts.

A1.06 Commissioning Phase

For each Task Order that includes facilities commissioning services, select from or supplement the following possible services:

A. Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

PART 5— OTHER SERVICES

A2.01 *For each Task Order, consider the inclusion of the following possible services:*

A. Engineer shall:

1. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with a Specific Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.

2. Provide services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.
3. Provide renderings or models for Owner's use.
4. Undertake investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assist in obtaining financing for a Specific Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
5. In addition to baselines and benchmarks, provide more extensive construction surveys and staking to enable a Contractor to perform its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.
6. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
7. Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to a Specific Project.

PART 6: ADDITIONAL SERVICES REQUIRING AMENDMENT TO TASK ORDER

A2.02 Additional Services Requiring an Amendment to Task Order

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. The Task Order shall be amended to reflect the inclusion of such Additional Services. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
 1. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A.1.01.A.4.
 2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 3. Providing Construction Phase services beyond the Contract Times set forth in the Task Order.
 4. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner, subject to the terms of Paragraph 6.01.F of the Agreement.
 5. Overtime work requiring higher than regular rates.
 6. Other services proposed to be performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from

Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. The Task Order shall be amended to reflect the inclusion of such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of any Construction Contract in evaluating and determining the acceptability of a proposed substitution, whether approved or not; evaluation and determination of an excessive number of proposed "or equals" or substitutions whether proposed before or after award of the Construction Contract.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to Substantial Completion.
6. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
7. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program enacted or provided to Engineer subsequent to the Effect Date of the Task Order that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.
8. Evaluation of an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to a Specific Project, the Site and adjacent areas.
 - 6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in the Task Order as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Task Order.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (including obtaining advice of an attorney,

insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Specific Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Specific Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Specific Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose a Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling and legal advice) for Owner so that Engineer may assist the Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Site.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work for the Specific Project with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.
- R. Inform Engineer of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

- S. Perform or provide the following additional services: *[NOTE TO USER: Here list any such additional services.]*

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Payments to Engineer for Services and Reimbursable Expenses

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Method of Payment*

B. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:

1. Method A: Lump Sum
2. Method B: Standard Hourly Rates

C2.02 *Explanation of Methods*

A. Method A – Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.

4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of Approval Date) to reflect equitable changes in the compensation payable to Engineer.

C2.03 Reimbursable Expenses

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Appendix 1 to this Exhibit C which shall be adjusted annually (as of Approval Date) to reflect equitable changes in the rates.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, the latter multiplied by a Factor of 15%.

C2.04 Serving as a Witness

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.5 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 Other Provisions Concerning Payment

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
 1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated _____.

Standard Hourly Rates and Reimbursable Schedule

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services effective on the date of this Agreement are:

LDA Engineering 2016 Standard Billing Rates

JOB CLASSIFICATION	BILLING RATE
Managing Engineer	\$ 195.00
Senior Project Manager	\$ 185.00
Civil-Environmental Engineer/Scientist V	\$ 175.00
Civil-Environmental Engineer/Scientist IV	\$ 155.00
Civil-Environmental Engineer/Scientist III	\$ 135.00
Civil-Environmental Engineer/Scientist II	\$ 115.00
Civil-Environmental Engineer/Scientist I	\$ 95.00
Electrical Engineer II	\$ 175.00
Electrical Engineer I	\$ 155.00
GIS/CADD IV	\$ 105.00
GIS/CADD III	\$ 95.00
GIS/CADD II	\$ 85.00
GIS/CADD I	\$ 75.00
Project Administrator II	\$ 70.00
Project Administrator I	\$ 60.00
Field Technician V	\$ 105.00
Field Technician IV	\$ 95.00
Field Technician III	\$ 85.00
Field Technician II	\$ 75.00
Field Technician I	\$ 65.00
Survey Crew	\$ 150.00

Mileage: Reimbursement rate published by US
General Service Administration Currently
\$0.565/mile

Subconsultants: \$ Actual Cost + 8%

Other reimbursables: \$ Actual Cost

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, by the RPR, supervise, direct, or have control over Contractor's work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A1.05 of Exhibit A as incorporated in the Task Order are applicable.
- C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:
 - 1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - RPR's dealings in matters pertaining to a Contractor's work in progress shall in general be with Engineer and Contractor.
 - RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.
 - RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by a Contractor and consult with Engineer concerning acceptability.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, and assist in providing information regarding the intent of the Contract Documents.

- b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Specific Project Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
- 7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Specific Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 9. *Inspections, Tests, and System Start-ups:*
 - a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over a Specific Project, record the results of these inspections, and report to Engineer.
- 10. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract,

Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Specific Project-related documents.

- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Specific Project documentation to Engineer.

11. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern..

12. Payment Requests:

- a. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. Certificates, Operation and Maintenance Manuals:

- a. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by a Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. Completion:

- a. Participate in visits to the Project to assist in determining Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.

- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work. (See Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of a Contractor, subcontractors, suppliers, or a Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work.
5. Advise on, issue directions regarding, or assume control over security safety practices, precautions and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of ___ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: _____

OWNER: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: _____

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: _____

ENGINEER: _____

NOTICE DATE: _____

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of Engineer.
3. Said Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. Said Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referenced in this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under Engineer's Agreement with Owner and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced in this Notice nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Task Order for a Specific Project:

F5.02 *Designing to Construction Cost Limit*

- A. A Construction Cost limit may be set forth in the Task Order.
- B. If a Construction Cost limit is set forth in a Task Order, then the Task Order will also specify bidding or negotiating contingency to be added to such Construction Cost limit.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound engineering practices to bring the project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of its responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraphs 6.04.A and 6.04.B of the Agreement are as follows:

1. *By Engineer:*

- | | | |
|----|---|----------------|
| a. | Workers' Compensation: | Statutory |
| b. | Employer's Liability – | |
| | 1) Each Accident: | \$100,000 |
| | 2) Disease, Policy Limit: | \$500,000 |
| | 3) Disease, Each Employee: | \$100,000 |
| c. | General Liability – | |
| | 1) Each Occurrence
(Bodily Injury and Property Damage): | \$1,000,000 |
| | 2) General Aggregate: | \$4,000,000 |
| d. | Excess or Umbrella Liability – | |
| | 1) Each Occurrence: | Not applicable |
| | 2) General Aggregate: | |
| e. | Automobile Liability – | |
| | 1) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident | \$1,000,000 |
| f. | Professional Liability – | |
| | 1) Each Claim Made: | \$2,000,000 |
| | 2) Annual Aggregate: | \$2,000,000 |

B. *Additional Insureds:*

1. The Owner shall be listed as an additional insured on all of the following policies which the Engineer has in effect: General Liability, Excess Liability, Umbrella Liability, and Automobile Liability.
 - a. The Engineer will provide a copy of the insurance policy endorsement along with their Certificate of Insurance to verify the Liability Insurance Additional Insured status.

C. *Workers' Compensation*

1. Waiver of Subrogation for the City of Morristown is required.
 - a. The Engineer will provide a copy of the insurance policy endorsement along with their Certificate of Insurance to verify the Workers' Compensation Waiver of Subrogation.
2. The City of Morristown will not accept any owner-partner-member or officer to be excluded from the Workers' compensation coverage except according to Tennessee State law regarding contractors' exemptions.
 - a. A copy of the Workers' Compensation Exemption must be provided with the Certificate of Insurance.

Dispute Resolution

Paragraph 6.08 of the Agreement is supplemented to include the following agreement of the parties:

[NOTE: Select one of the two alternatives provided]

H6.08 Dispute Resolution

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation by a Rule 31 listed mediator. Owner and Engineer agree to participate in the mediation process in good faith. The process should be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

[or]

- A. All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [insert name of an arbitration service] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Paragraph H6.08.A will be specifically enforceable under the prevailing law of any court having jurisdiction.
1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [name of arbitration service]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
 2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$_____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute, where the amount in controversy of any such Dispute, is more than \$_____ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$_____ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.
 3. The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award; and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
 4. The award rendered by the arbitrators will be consistent with the terms of this Agreement and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
 5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning the Project, then either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.08.C.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____

Amendment To Task Order No. _____

1. Background Data:

- a. Effective Date of Task Order Agreement:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner with respect to the Task Order are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services under this Task Order is modified as follows:
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- a. Original Task Order amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Task Order amount: \$ _____

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

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

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date
Signed: _____

This is **EXHIBIT L**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Temporary Traffic Control

L1.01 Temporary Traffic Control

- A. Paragraph 6.01.E.2 of the Agreement is amended to include the City's current policy regarding Temporary Traffic Control as listed in the City Engineer's Directive #01-11 (below).

City of Morristown

Incorporated 1853

OFFICE OF CITY ENGINEER



CITY ENGINEER'S DIRECTIVE #01-11

Temporary Traffic Control (TTC)

Issued October 5, 2011

Sub 10/5/11

The City of Morristown hereby adopts *Guidelines for Temporary Traffic Control*, 2009 Edition, US Department of Transportation, Federal Highway Administration (Publication No. FHWA-CFL/TD-11-001, January 2011) as the reference for all construction work within the City of Morristown which requires Temporary Traffic Control (TTC).

This reference shall be followed regarding tapers, flagging, warning lights, nighttime operations, arrow panels, channelizing devices, and signs, and all other components of TTC. A copy of the manual shall be maintained on site by each crew performing work which requires TTC.

Contractors' attention is directed in particular to the following applications which are likely to be encountered within the City:

- Lane Closure on Two-Lane Road Using Flaggers (TA-10)
- Lane Closure on Two-Lane Road with Low Traffic Volumes (TA-11)
- Temporary Road Closure (TA-13)
- Work in Center of Road with Low Traffic Volumes (TA-15)
- Lane Closure on Minor Street (TA-18)
- Closure in Center of Intersection (TA-26)
- Sidewalk Detour or Diversion (TA-28)

Note that the reference manual contains scenarios which may be encountered other than those listed above and shall be followed in those situations as well. For situations not addressed in the reference manual, the *Manual of Uniform Traffic Control Devices*, 2009 Edition, shall be followed and a TTC Plan shall be submitted to the City for review and approval before work begins.

Contractors are required to sign this form below and return it to the City Engineer's office prior to the commence of construction activities.

I, JASON D BROOKS (print name), serving as PRESIDENT (title)
of Lamar Dunn Assoc Inc. (company), have read and understand the information above and agree to provide Temporary Traffic Control measures as outlined in this directive and referenced materials.

Signature:

Date:

12-14-12



WATER
WASTEWATER
STORMWATER
PUBLIC WORKS

July 11, 2017

Mr. Anthony Cox
City Administrator
City of Morristown
P.O. Box 1499
Morristown, TN 37816-1499

Reference: City of Morristown
South Cumberland Street Drainage Improvements

Mr. Cox:

We appreciate the opportunity to provide you with a proposal to provide professional services for design of improvements for the Drainage on South Cumberland at Norfolk Southern Railroad. The Project consists of replacing curbed inlets on South Cumberland and installing a new trunk storm sewer parallel to the railroad tracks, connecting to both existing upstream and downstream storm sewers from South Cumberland to an existing 60-inch culvert that passes under the Railroad.

LDA Engineering will provide the following services:

- Prepare construction documents for the proposed improvements to the South Cumberland Street drainage system. Plans, to include:
 - Site Survey and Existing Conditions,
 - Demolition Plan,
 - Proposed Layout Plan,
 - Profiles,
 - Utilities,
 - Details,
 - Erosion Control Plan.
- Plans to be reviewed with the City at the 30% and 90% completion stage.
- Prepare Opinion of Probable Construction Costs for proposed improvements.
- Prepare Project Manual to include specifications and bidding documents.
- Prepare Drainage Model and Calculations to properly size the new storm sewer trunk line and check the capacity of the existing downstream storm system is not exceeded.
- Prepare permit package for submittal to Norfolk Southern to work on their right-of-way.
- Prepare permit package for submittal to Tennessee Department of Transportation to work on their right-of-way.


- The bidding services includes render assistance in obtaining bids, attend bid opening, make an analysis of the bids received, make recommendations on awards of the contract, render assistance in award of the contract and assembly of the contract.

LDA Engineering will provide these services as follows:

Design Services:	\$ 35,000.00 (Lump Sum)
Permitting including, Coordination City, TDOT and Norfolk Southern Bidding Services:	\$ 12,000.00 (Hourly, not to \$ 5,500.00 (Lump Sum)

We are prepared to begin this work immediately upon your written authorization. If you have questions or comments, please do not hesitate to contact us.

Sincerely,



Greg Jones, P.E.
Vice President

The City Council has approved the proposal
and LDA Engineering is authorized to proceed.

Anthony Cox, City Administrator

DATE



**WATER
WASTEWATER
STORMWATER
PUBLIC WORKS**

July 11, 2017

Mr. Anthony Cox
City Administrator
City of Morristown
P.O. Box 1499
Morristown, TN 37816-1499

Reference: City of Morristown
Freshour Street Culvert Project
Phase I Design (From Upstream Headwall to Lincoln Avenue)

Mr. Cox:

We appreciate the opportunity to provide you with a proposal to provide professional services for design of improvements to the Freshour Street Culvert. The Project consists of rehabilitating a 750 feet long culvert (approximately) that lies beneath both public and private property, and is deteriorating in some locations. The culvert conveys Turkey Creek which is a FEMA-regulated stream.

The preparation of this proposal has been based on the assumption that prior to beginning design, a defined scope of work shall be determined from the results of the Preliminary Engineering Assessment Report for the Freshour Culvert.

LDA Engineering will provide the following services:

- Prepare construction documents for the proposed improvements to the Freshour Street Culvert. Plans, to include:
 - Site Survey and Existing Conditions,
 - Demolition Plan,
 - Proposed Layout Plan,
 - Profiles,
 - Utilities,
 - Cross-sections,
 - Details,
 - Erosion Control Plan.
- Plans to be reviewed with the City at the 30% and 90% completion stage.
- Prepare Opinion of Probable Construction Costs for proposed improvements.
- Prepare Project Manual to include specifications and bidding documents.
- Coordinate geotechnical investigations as required by the design.
- Prepare a Stormwater Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) for the project and submit to the Tennessee Department of Environment and Conservation (TDEC) for approval.

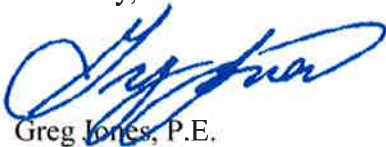
- Prepare Aquatic Resource Alteration Permit (ARAP) application for the project and submit to TDEC for approval.
- Prepare easements required for construction of the improvements, the City shall acquire easements from the property owner.
- The bidding services includes render assistance in obtaining bids, attend bid opening(s), make an analysis of the bids received, make recommendations on awards of the contract(s), render assistance in award of the contract(s) and assembly of the contract(s).

LDA Engineering will provide these services as follows:

- | | |
|--|------------------------|
| • Design Services | \$25,000.00 (Lump Sum) |
| • Permitting/Easements including
Coordination with City, Preparation
ARAP Permit and SWPPP | \$15,000.00 (Hourly) |
| • Bidding Services | \$5,500 (Lump Sum) |

We are prepared to begin this work immediately upon your written authorization. If you have questions or comments, please do not hesitate to contact us.

Sincerely,



Greg Jones, P.E.
Vice President

The City Council has approved the proposal
and LDA Engineering is authorized to proceed.

Anthony Cox, City Administrator

DATE



WATER
WASTEWATER
STORMWATER
PUBLIC WORKS

July 11, 2017

Mr. Anthony Cox
City Administrator
City of Morristown
P.O. Box 1499
Morristown, TN 37816-1499

Reference: City of Morristown
Debi Circle Project
FEMA Application

Mr. Cox:

We appreciated the opportunity to provide you with a proposal to provide professional services to complete the FEMA application for the Debi Circle project. LDA will provide services related to the development of a grant application to be submitted by the OWNER to the Federal Emergency Management Agency (FEMA). The intent of the grant application will be to request FEMA funds to address the chronic flooding issue on Stubblefield Creek adjacent to Debi Circle by acquiring the affected private properties. The project will consist of preparing a detailed analysis and grant application package for submittal to FEMA.

Services to be provided by ENGINEER:

- a. Perform field survey to collect first floor elevations (FFE) of the affected properties.
- b. Prepare mitigation cost estimate and prepare mitigation Statement of Work.
- c. Prepare brief summary of hydraulic and hydrologic basis.
- d. Prepare other "justification" documents required by FEMA per the FEMA benefit/cost analysis (BCA) methodology.
- e. Prepare "Long Form" BCA.
- f. Meet with OWNER to review final analysis.
- g. Prepare submittal cover letter for OWNER and FEMA submittal package.

Additional Services.

- a. Follow-up support as may be required due to public, public officials, and/or FEMA feedback.
- b. Additional services not included above that may be requested by the OWNER, such as such as participation in public meetings, participation in meetings with FEMA, etc.

Deliverables will consist of a “Long Form” analysis, FEMA submittal package, and submittal cover letter.

Information to be provided by the OWNER:

To the extent Practical, OWNER will provide to the ENGINEER:

1. Appraised values of the affected properties to be included in the grant application.
2. Records of any anecdotal flooding information (dates, extent of flooding, etc.) relevant to the project.
3. A list of which properties in question are insured under the National Flood Insurance Program.
4. OWNER will be responsible to notify/communicate with owners of affected properties for field survey activities.

LDA will prepare the FEMA Application which was previously authorized on August 17, 2016 for the amount \$11,800. LDA is requesting an additional \$10,200 to collect additional information required for the FEMA application. The total hourly budget amount will be \$22,000. Any additional services that maybe requested as stated above will be at an additional hourly rate.

We are prepared to begin these services immediately upon written authorization. If you have questions or comments, please do not hesitate to contact us.

Sincerely,



Greg Jones, P.E.
Vice President

GJ:mrc

The City Council has approved the proposal
and LDA Engineering is authorized to proceed.

Anthony Cox, City Administrator

DATE



Morristown City Council Agenda Item Summary

Date: July 26, 2017

Agenda Item: Request for Proposal – CDBG Homeowner Rehab and Emergency Repair Program

Prepared by: Joey Barnard

Subject: Potential Contract – CDBG Homeowner Rehab and Emergency Repair

Background/History: The City of Morristown recently sought proposals from qualified respondents for the administration of the City's Homeowner Rehab and Emergency Repair program that is funded from Community Development Block Grant. The City of Morristown Emergency Home Repair Program addresses the need of low to moderate income, elderly/disabled, and other at-risk homeowners for sustainable housing that is safe, secure, decent, and affordable. This project serves owner-occupied, single family residences that are located within the City limits of Morristown. The City of Morristown is seeking an initial contract that will cover approximately a two (2) year term.

Findings/Current Activity: The request for proposals for these services were solicited. The request for proposals were advertised in the *Citizen Tribune* on June 26, 2017 and on June 28, 2017. Additionally, it was posted to the City of Morristown's website, and it was posted on Vendor Registry, an on-line bid facilitation website. The City of Morristown received two (2) proposals.

Financial Impact: Funds for this service have been appropriated in the 2016-17 fiscal year budget. As previously stated, funding for this services if provided by the Community Development Block Grant.

Action options/Recommendations: It is staffs' recommendation to approve the request for proposal submitted by Knoxville-Knox County Community Action Committee (CAC), and allow the City Administrator to negotiate and enter a contract with CAC.

Attachments: None.

Legal Services Employment Agreement

This agreement, entered into this _____ day of _____, 2017 by and between the City of Morristown, Tennessee, hereafter called "City" and Attorney Lauren Carroll, hereafter called "City Attorney".

Whereas, the City desires to employ the legal services of Lauren Carroll, as its City Attorney, and Lauren Carroll agrees to be employed and retained as City Attorney under the conditions, terms, and provisions of this agreement.

Now, Therefore, it is hereby agreed:

1. **Engagement.** The City shall employ Lauren Carroll as its City Attorney, under the conditions, terms, and provisions hereinafter set forth herein.
2. **Duties.**
 - a. In consultation with the City Council and the City Administrator, the City Attorney shall direct the management of all litigation in which the City is or may be a party.
 - b. The City Attorney shall serve as prosecuting attorney in the city court only in individual cases upon the request of the Council or City Administrator.
 - c. The City Attorney shall attend all meetings of the council and also attend council workshops upon request of the Mayor or City Administrator. Also shall attend when requested other committee meetings (ex. Airport Commission)
 - d. Advise the Council, the City Administrator, officers of the city as to all legal questions affecting the city's interests.
 - e. Approve as to form all contracts, deeds, bonds, ordinances, resolutions, and other documents to be signed in the name of or made by or with the city.
 - f. The City Attorney shall provide legal advice to the planning commission, board of zoning appeals and adjustments, airport commission and committees of the council or insurance company attorneys.
 - g. The City Attorney shall appear and represent the city in chancery, circuit, quasi-judicial hearings, and appellate courts in litigation and defend the city in court on all matters where the defense is not otherwise provided by insurance. When legal assistance is provided by insurance, the City Attorney shall monitor the defense and provide assistance as requested by insurance carrier attorneys.
 - h. The City Attorney shall conduct a tax sale for unpaid property taxes in conjunction with the County or independent of the County, annually. All tax sales will be performed in accordance to TCA and City Ordinances, including compensation for said sales.
 - i. The City Attorney shall keep the council and City Administrator advised of all legal activities that involve or may in the future involve the City.

- j. The City Attorney may employ additional “specialty legal counsel” where it is deemed necessary and beneficial.
 - k. The City Attorney shall represent the City in other matters as requested by the city council or the City Administrator.
3. **Absences.** During times of illness, vacation, or scheduling conflicts, a member of the city attorney’s law firm may represent the city attorney under the provisions of this agreement. The City Administrator shall approve all such representations.
4. **Term of Agreement.** The term of this agreement and the engagement of “_____” shall commence on _____, 2017 and continue until terminated as follows:
- a. The Council may terminate this agreement at any time by written notice to Lauren Carroll.
 - b. City Attorney may terminate this agreement by written notice to the council as will allow for an orderly transfer by the city of its legal affairs to other counsel.

5. Compensation and other Terms.

- a. The City Attorney shall bill the city for services at an hourly rate of \$170.00. Services shall include representation in the courts, preparing for and defending legal actions against the city, monitoring legal cases being defended by insurance attorneys, attending Council meetings and workshops, other committee meetings when necessary, consultations with the Mayor, Council Members, City Administrator, Department Heads and prosecuting cases on behalf of the city.
- b. The City Attorney may bill the city for other related legal expenses as approved by the City Administrator.
- c. The City Attorney shall be responsible for professional development, training and other necessary meetings to be current on changes in the legal landscape for government entities. This also includes Tennessee Code Annotated library.
- d. The City Attorney shall bill the city on a monthly basis and all such bills shall be approved by the City Administrator prior to payment.
- e. On termination, records will be maintained for 5 years from date of termination.
- f. The City Attorney status will be as a contractor and not as an employee for any benefits.
- g. If the City Attorney determines that a conflict of interest is present in regards to a City legal issue, the Mayor and City Administrator shall be notified of the possible conflict and recommendations on a substitute attorney or other recommendations to resolve the conflict.

6. **Entire Agreement.** This agreement contains the entire agreement between the City and Lauren Carroll. This agreement may be amended from time to time by mutual agreement of the parties in writing.

This agreement entered into on this _____ day of _____, 2017.

Approved as agreed:

Mayor

City Attorney

Attest: City Recorder



Morristown City Council Agenda Item Summary

Date: July 26, 2017

Agenda Item: Rose Center HVAC Unit Replacement Bid

Prepared by: Joey Barnard

Subject: Awarding of Bid - HVAC Unit Replacement at Rose Center

Background/History: In recent years, the City of Morristown has been replacing HVAC units at the Rose Center. Should City Council accept the bid that is before them, it will replace the remaining units that are needing replacement. It should be noted that the units to be replaced were placed in service in 1989. With the replacement of these three (3) HVAC units, units located at Rose Center will be five (5) years of age or newer.

Findings/Current Activity: The bid was advertised in the *Citizen Tribune* on June 26, 2017 and June 28, 2017. Additionally, the bid was posted to the City of Morristown's website and through Vendor Registry, an on-line bid facilitation website. A mandatory pre-bid meeting was held on Thursday, July 6, 2017. The submission deadline was 2:00 PM on Thursday, July 13, 2017. We received one (1) response.

Financial Impact: Funds have been appropriated for the needed replacement units at Rose Center through Community Development Block Grant funding.

Action options/Recommendations: It is staffs' recommendation to accept the bid received by Lynch Heating and Air Conditioning.

Attachments: Bid Tabulation.

City of Morristown
Purchasing Department

Rose Center HVAC Unit Replacement Bid
July 13, 2017 2:00 P.M.

Vendor: Lynch Heating and Air

Replacement Unit	Manufacturer	Model	Unit Price	Total Price
5 TON Unit (total of 2 units)	Carrier	24AHA460/585TA110-1-22	\$ 6,895.00	\$ 13,790.00
2 TON Unit	Carrier	25HCE424/FB4CNP025	\$ 5,195.00	\$ 5,195.00
TOTAL BID			\$	\$ 18,985.00

**Memorandum of Understanding
Between the City of Morristown
And Hamblen County Government**

This Memorandum of Understanding, made and entered into on this 24th day of May 2017 by and between the City of Morristown, hereafter called "CITY" and Hamblen County Government, hereafter called "COUNTY."

WHEREAS, Department of Transportation of the State of Tennessee will install advanced warning school signs and school zone end signs along SR 32 (Highway 25E) to help manage traffic near Witt Elementary School;

WHEREAS, the signs will be installed and operated according to TCA, Section 54-5-108(b), that requires all highway traffic safety control devices in Tennessee to conform with the Manual on Uniform Traffic Control Devices (MUTCD);

WHEREAS, the COUNTY, on behalf of CITY, has entered into a contract with the Department of Transportation of the State of Tennessee that it shall maintain and guarantee that it, or some other governmental entity, will be solely responsible for and pay all costs associated with the maintenance of all advanced warning school signs and school zone end signs;

NOW, THEREFORE, in consideration of these premises, the CITY will pay all costs associated with maintenance of the installed advanced warning school signs and school zone end signs.

Further, CITY, as owners of subject signs, shall hold the County harmless and indemnify the County should any person or entity seek to assert any liability claim against the County in connection with the installed signs.

IN WITNESS WHEREOF, the parties hereto have caused their duly-authorized officials to execute this Memorandum of Understanding.

HAMBLEN COUNTY GOVERNMENT


CITY OF MORRISTOWN



Name



Title



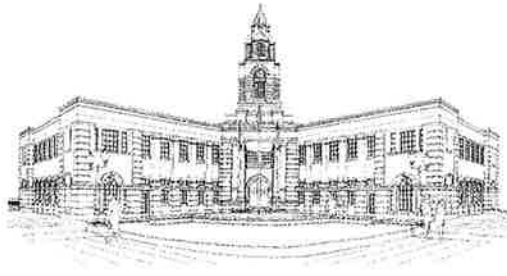
Date

Name

Title

Date

Prepared May 2017



Morristown City Council Agenda Item Summary

Date: July 18, 2017

Agenda Item:

Prepared by: Larry Clark

Subject: Minor Corrections to Handbook

Background / History: In October 2016, Council approved revisions to the Employee Handbook which went into effect November 1, 2016.

Findings / Current Activity: Three items were noted that need to be revised. These were day of pay day, double time for Public Safety (same as previous version) and correcting conflicting dates on usage of floating holiday and birthday.

Financial Impact: None

Action options / Recommendations: Approval of corrections.

Attachments: Copies of references in handbook

I. BENEFITS

1. HOLIDAYS

- A. All offices and shops of the City of Morristown, except emergency and necessary operations, will be closed and employees excused on the following legal holidays:

(1) New Year's Day	January 1
(2) Martin Luther King Day	Third Monday in January
(3) Good Friday	Friday before Easter Sunday
(4) Memorial Day	Last Monday in May
(5) Independence Day	July 4
(6) Labor Day	First Monday in September
(7) Thanksgiving Day	Fourth Thursday in November
(8) Friday after Thanksgiving	Fourth Friday in November
(9) Christmas	December 25

- B. When a legal holiday falls on Saturday, offices will be closed on the preceding Friday. When a legal holiday falls on a Sunday, offices will be closed the following Monday.
- C. To receive compensation for a holiday, employees eligible for holiday benefits must be in a pay status (not away on leave without pay or on workers' compensation) on his or her last regular shift scheduled before a holiday and his or her first regularly scheduled shift after a holiday. It shall be the department head's responsibility to report to payroll the names, hours, and dates of employees who work holidays.
- D. Employees will also receive eight (8) hours (24 hours for Fire Department or 8, 10 or 12 hours for Police Department depending on position) of paid time off for floating holiday and eight (8) hours (24 for Fire Department or 8, 10 or 12 hours for Police Department depending on position) for employee's birthday. These days may be used at the discretion of the employee and his or her supervisor/department head. This leave must be used within one year when accrued and cannot be carried over.

2. HOLIDAY PAY

- A. All full-time employees (except for fire and police departments) excused in observance of an official holiday as outlined above shall be compensated on an eight-hour basis at their regular straight-time pay rate in effect as of that date.
- B. When an employee, except for the police and fire departments, must work on the day the City observes a holiday, they shall receive eight (8) hours holiday pay plus straight or overtime pay (depending on the total number of hours worked for the workweek) for actual time worked.

Any police officer or firefighter whose shift falls on a holiday (day designated by the City) shall receive double-1½-time for his or her regular shift. When a holiday falls during a police or fire officer's day off, they shall receive eight (8) hours of holiday pay at straight-time.

- A. Except for those employees already scheduled to work on a designated holiday, no employee shall work during a holiday without prior approval of the department head, except in the case of an emergency.
- B. The floating holiday and birthday shall not be used to calculate holiday pay. These are flexible day benefits. New employees will receive a floating holiday when hired. New employees will receive a birthday holiday when their birthday occurs on the calendar. Both of these days shall be used within ~~6 months~~ one year of accruing the day.

2. ANNUAL LEAVE

A. Accrual of Annual Leave for Full-Time Employees

- (1) All full-time employees will receive annual leave based upon their years of service. Accrual of annual leave begins on the first day of employment as a regular full-time employee. Annual leave will be earned according to the following schedule.

- (a) All full-time employees except firefighters on shift schedule:

<u>Completed Years of Service</u>	<u>Annual Leave Accrued per Year</u>
Less than 5 years	80 hours
At least 5 years, but less than 10	96 hours
At least 10 years, but less than 15	120 hours
At least 15 years, but less than 20	144 hours
At least 20 years and up	168 hours

- (b) All firefighters on shift schedule:

<u>Completed Years of Service</u>	<u>Annual Leave Accrued per Year</u>
Less than 5 years	120 hours
At least 5 years, but less than 10	144 hours
At least 10 years, but less than 15	180 hours
At least 15 years, but less than 20	216 hours
At least 20 years and up	252 hours

- B. Promotion;
- C. Anniversary of employment;
- D. Cost of Living Adjustment (COLA);
- E. As provided for in the annual budget approved by City Council.

3. PAYCHECKS

- A. All employees of the City of Morristown shall be paid on a biweekly basis. Friday is officially designated as payday. If the City will be closed for a holiday on Friday, payday will be the last working day prior to that ~~Friday~~ Thursday. If an employee has questions about his or her work time, salary, deductions, or any other paycheck related issue, they are to inform his or her supervisor and/or department head immediately.
- B. The final paycheck for a resigning, dismissed, terminated or retiring employee will be made available on his or her regular payday, but no more than 21 days after the date of separation. In unusual circumstances, a department head may request arrangements for earlier payment from the Finance department with Finance approval.
- C. Employees are responsible for their paychecks after they have been issued. Checks lost or otherwise missing should be reported immediately to the payroll department so that a stop-payment order may be initiated. The Finance/Purchasing Director will determine when a new check should be issued to replace a lost or missing check. Employees losing more than two paychecks within a twelve (12) month period will be charged an amount equal to the stop-payment fee charged to the City.
- D. Current employees are strongly encouraged to receive their pay via direct deposit to a checking or savings account of their choice. Employees who select this option will still receive a pay stub detailing the wages earned, deductions, and net pay. New employees after January 1, 2013, shall receive their pay via direct deposit.

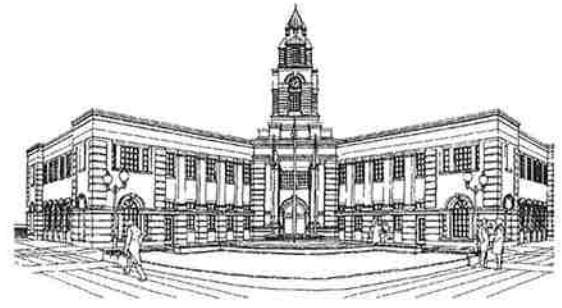
4. PAYROLL DEDUCTIONS

By law the City is required to deduct, where applicable, federal withholding taxes, Social Security taxes, and garnishments from any employee's pay. The following deductions will be made only when required by law or authorized by an employee:

- A. Federal Income Tax - Federal taxes are withheld from employees' paychecks based on the number of dependents claimed by each individual. Employees are required to keep on file with the City a copy of the W-4 form. In the event of changes an employee's exemption status, a revised W-4 must be filed before payroll deduction adjustments will be made;
- B. Social Security - Social Security payments and deductions will be made according to the Social Security Act. The insurance/payroll clerk shall keep such records and make such reports as may be required by applicable state and federal laws or regulations;

Morristown Police Department

ROGER OVERHOLT
Chief of Police



MEMORANDUM

To: Mayor Gary Chesney
City Council

From: Chief Roger D. Overholt *RDO*

Date: July 27, 2017

Re: Employee Disciplinary Action

I am requesting confirmation of the disciplinary action of a police officer. I am making this request based upon the recommendation of the officer's supervisors as part of the progressive discipline process.

The officer would receive one (1) day (12 hours) suspension and by policy would lose his master officer designation which would result in a 5% pay decrease.

Please see the attached communication and warning record.

Thank you.

RDO/ll