

**WORK SESSION AGENDA
AUGUST 7, 2018
4:00 p.m.**

1. **Agenda Review**

**AGENDA
CITY OF MORRISTOWN, TENNESSEE
CITY COUNCIL MEETING
AUGUST 7, 2018 – 5:00 P.M.**

1. **CALL TO ORDER**

Mayor Gary Chesney

2. **INVOCATION**

Mark Campbell, Chaplain Morristown Police Department

3. **PLEDGE OF ALLEGIANCE**

4. **ROLL CALL**

5. **APPROVAL OF MINUTES**

1. July 17, 2018

6. **PROCLAMATIONS/PRESENTATIONS**

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

8. **OLD BUSINESS**

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

9. **NEW BUSINESS**

- 9-a. **Resolutions**

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

9-c. Awarding of Bids/Contracts

1. Approval of Tennessee Department of Transportation, Aeronautics Division, Grant in the amount of \$73,000 for replacement of REIL System with a funding split of 90/5/5; approved by the Municipal Airport Commission at their July 26th, 2018 meeting.
2. Approval of Contract(s) with Michael Baker International, Inc., approved by Municipal Airport Commission at their July 26th, 2018 meeting:
 - a. Work Authorization # 18-1 to provide General Consulting services in the not to exceed amount of \$10,000.
 - b. Work Authorization # 14-2018 for Taxiway Relocation Programming Project in the not to exceed amount of \$88,258.
 - c. Work Authorization # 15-2018 for REIL System Replacement in the not to exceed amount of \$14,875.
3. Approval of Short-Term Hangar Lease to D&R Aero, Inc., in the amount of \$1,500 per month for two months then, then month-to-month; approved by Municipal Airport Commission at their July 26th, 2018 meeting.
4. Approval of Agreement between the City of Morristown and Andrew & Hoskins Construction, Inc., for Heritage Park Phase I.
5. Approval of Professional Services Agreement for Storm Water items with LDA Engineering, in the not to exceed amount of \$20,000.
6. Approval of Project Oversight for Freshour and Cumberland Storm Water Projects to LDA Engineering; base amounts are \$20,000 each for oversight, inspection services & GIS up to budget amounts of \$47,000 and \$4,500 respectively for each project.
7. Approval of Agreement(s) with King General Contractors, Inc., for the following projects:
 - a. South Cumberland Stormwater Drainage Improvements in the amount of \$459,505.80
 - b. Freshour Stormwater Culvert Replacement, Phase I in the amount of \$446,758.70.
8. Approval to make Application for a Justice Assistance Grant (JAG) in the amount of \$13,472.
9. Approval of Municipal Advisory Agreement between City of Morristown and Cumberland Securities.

10. Approval of Right-of-Way Acquisition for West A.J. Project in the amount of \$4,500.
11. Approval of Testing for Public Safety Positions with CPS Consulting; amounts are based on the number of tests purchased; two (2) year contract.
12. Approval of purchase from Wavetronix, a Sole Source Provider, to upgrade several intersections in the amount of \$148,275.
13. Approval of payment to Morristown Utilities System for Water Line Boring Merchants Greene to Durham Landing in the amount of \$64,500.
14. Approval to Surplus Large Plotter Equipment, OCE' TCS 500; plotter is outdated and no longer under maintenance.
15. Approval to Surplus Fire Station #4 located at 3835 West Andrew Johnson Highway and d move forward to sell the property.
16. Approval of Stormwater Inspection and Maintenance Agreement (I&M) between the City of Morristown and Morristown Emergency Rescue Squad.

9-d. Board/Commission Appointments

9-e. New Issues

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. 10-11, 2018	(Fri) 10 a.m. – 5 p.m. (Sat) 8 a.m. - noon	City Council Annual Planning Work Session Meadowview Conference Center, Kingsport, TN
Aug. 21, 2018	(Tues) 4:00 p.m.	Work Session – Council Agenda Review
Aug. 21, 2018	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Sep. 3, 2018	(Monday)	City Employee's Holiday Labor Day
Sep. 4, 2018	(Tues) 4:00 p.m.	Work Session – Council Agenda Review
Sep. 4, 2018	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Sep. 18, 2018	(Tues) 3:45 p.m.	Finance Committee Meeting
Sep. 18, 2018	(Tues) 4:15 p.m.	Work Session – Council Agenda Review
Sep. 18, 2018	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Oct. 2, 2018	(Tues) 4:00 p.m.	Work Session – Council Agenda Review
Oct. 2, 2018	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Oct. 16, 2018	(Tues) 4:00 p.m.	Work Session – Council Agenda Review
Oct. 16, 2018	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 6, 2018	(Tues) 4:00 p.m.	Work Session – Council Agenda Review
Nov. 6, 2018	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 20, 2018	(Tues) 3:45 p.m.	Finance Committee Meeting
Nov. 20, 2018	(Tues) 4:15 p.m.	Work Session – Council Agenda Review
Nov. 20, 2018	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 22-23, 2018	Thurs & Friday	City Employee's Holiday Thanksgiving

**WORK SESSION AGENDA
AUGUST 7, 2018**

1. Building Code/Electrical Chapter

**STATE OF TENNESSEE
COUNTY OF HAMBLLEN
CORPORATION OF MORRISTOWN
JULY 17, 2018**

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 17, 2018, with the Honorable Mayor Gary Chesney, presiding and the following Councilmembers present; Bob Garrett, Chris Bivens, Kay Senter, Dennis Alvis, Ken Smith, and Tommy Pedigo.

Dr. Cynthia Thompson, 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 July 3, 2018, minutes as circulated. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Mayor Chesney presented a proclamation to Barbara Garrow, Crossroads Downtown Partnership, declaring the week of August 5th – 11th 2018, as Farmers Market Week in the City of Morristown.

Councilmember Alvis made a motion to approve Ordinance No. 3612 on second and final reading. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3612
An Ordinance of the City Council of Morristown, Tennessee, Amending Title 9, Business, Peddlers, Solicitors, Etc., Chapter 5 Mobile Food Vending.

Councilmember Senter made a motion to approve Ordinance No. 3613 on second and final reading. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3613
An Ordinance of the City Council of Morristown, Tennessee, Amending Title 14, Zoning and Land Use Control, Chapter 2 General Zoning Provisions, Short-Term Rental Units.

Councilmember Alvis made a motion to approve Resolution No. 08-18. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Resolution No. 08-18
A Resolution of the City of Morristown, Directing Payment of Electric Tax Equivalent.

Whereas, Chapter 84, Public Acts of 1987, Tennessee Code Annotated, empowers the City Council to be paid revenues in lieu of taxes by the Morristown Utility Commission; and

Whereas, these bodies will consult regarding the amount of tax equivalents to be paid to taxing jurisdictions in the service areas of the electric system; and

Whereas, necessary data have been supplied by The Morristown Utility Commission and calculations of tax equivalents payable have been made in accordance with the provisions of Chapter 84, Public Acts of 1987, the TVA Power Contract with the City of Morristown and other relevant contracts between the taxing jurisdictions;

Now, Therefore, Be it Resolved, by the Mayor and City Council of the City of Morristown, Tennessee that the Morristown utility Commission is hereby directed to pay the following amount of tax equivalents to the respective taxing jurisdictions for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Jurisdiction	Amount
City of Morristown	\$1,291,721.93 (77.5%)
Hamblen County	<u>\$ 375,016.05</u> (22.5%)
Total In-Lieu Tax Payable	\$1,666,737.98

Adopted this the 17th day of July 2018.

MAYOR

ATTEST:

CITY ADMINISTRATOR

Councilmember Pedigo made a motion to approve Resolution 09-18.
Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Resolution No. 09-18

A Resolution of the City of Morristown, Directing Payment of Wastewater Tax Equivalent.

Be It Resolved by the Morristown Utility Commission that the Morristown Utility Commission hereby agrees to pay the following amount of wastewater tax equivalents to the City of Morristown for the fiscal year beginning July 1, 2018 and ending June 30, 2019:

Total In-Lieu Tax Payable	\$571,815
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Adopted this the 17th day of July 2018.

MAYOR

ATTEST:

CITY ADMINISTRATOR

Councilmember Alvis made a motion to approve Resolution No. 10-18. Councilmember Bivens seconded the motion and upon roll call; Councilmembers Garrett, Bivens, Alvis, Smith, Pedigo and Mayor Chesney voted "aye", Councilmember Senter voted "no".

Resolution No. 10-18

Initial Resolution Authorizing the Issuance of Not to Exceed Twenty-four million Five Hundred Thousand Dollars (\$24,500,000) General Obligation Bonds of the City of Morristown, Tennessee.

Be It Resolved by the City Council (the "Council") of the City of Morristown, Tennessee (the "Municipality") that for the purpose of financing, in whole or in part, the (i) acquisition of land for and the construction, improvement, renovation, equipping and/or repair of roads, bridges, streets, highways, sidewalks and related equipment, parks and recreation facilities, public buildings, storm water drainage systems, water system, sewer system, electric distribution system, cable television and internet system, fire department equipment and buildings, law enforcement buildings and equipment, libraries, and the acquisition of related vehicles and equipment including, but not limited to, lighting, computers and other technological equipment (the "Projects"); (ii) acquisition of all property, real and personal, appurtenant to the Projects, (iii) payment of legal, fiscal, administrative, architectural and engineering costs incident to the Projects and incident to the indebtedness described herein and (iv) payment of capitalized interest during construction of the Projects and for up to six months thereafter, there shall be

issued bonds, in one or more emissions, of said Municipality in the aggregate principal amount of not to exceed \$24,500,000 which shall bear interest at a rate or rates not to exceed five percent (5.00%) per annum. The bonds shall be payable from ad valorem taxes to be levied on all taxable property within the corporate limits of the Municipality, provided that the portions of the bonds that finance improvements to storm water drainage systems, the water system, the sewer system, the electric distribution system and the cable television and internet system of the Municipality shall also be payable from but not secured by the revenues of such respective systems.

Be It Further Resolved by the City Council of the City of Morristown, Tennessee that the City Recorder of the Municipality be, and is, hereby directed and instructed to cause the foregoing initial resolution relative to the issuance of not to exceed \$24,500,000 in general obligation bonds to be published in full in a newspaper having a general circulation in the Municipality, for one issue of said paper followed by the statutory notice:

N O T I C E

The foregoing resolution has been adopted. Unless within twenty (20) days from the date of publication hereof a petition signed by at least ten percent (10%) of the registered voters of the Municipality shall have been filed with the City Recorder of the Municipality protesting the issuance of the bonds, such bonds will be issued as proposed.

Anthony W. Cox, City Administrator

Adopted and approved this 17th day of July 2018.

GARY CHESNEY, MAYOR

ATTEST:

ANTHONY W. COX, CITY ADMINISTRATOR

Councilmember Smith made a motion to approve Resolution No. 11-18. Councilmember Alvis seconded the motion and upon roll call; Councilmembers Garrett, Bivens, Alvis, Smith, Pedigo and Mayor Chesney voted "aye", Councilmember Senter voted "no".

Resolution No. 11-18

A Resolution Authorizing the Issuance of General Obligation Bonds of the City of Morristown, Tennessee, in the Aggregate Principal Amount of Not to Exceed \$70,000,000, in One or More Series; Making Provision for the Issuance, Sale and Payment of Said Bonds, Establishing the Terms Thereof and the Disposition of Proceeds Therefrom; and Providing for the Levy of Taxes for the Payment of Principal of, Premium, if any, and Interest on the Bonds.

Whereas, 9-21-101, et seq., inclusive, Tennessee Code Annotated, as amended, authorizes the City of Morristown, Tennessee (the "Municipality"), by resolution of its City Council, to issue and sell bonds to finance public works projects and to refund and refinance outstanding indebtedness; and

Whereas, the Municipality has previously incurred indebtedness pursuant to a Loan Agreement dated as of May 2, 2008, between The Public Building Authority of the City of Clarksville, Tennessee (the "Clarksville Authority") and the Municipality, two Loan Agreements dated as of September 1, 2008, between the Clarksville Authority and the Municipality, a Loan Agreement dated as of November 26, 2008, between the Clarksville Authority and the Municipality, and a Loan Agreement dated as of January 3, 2013, between the Clarksville Authority and the Municipality and a Loan Agreement dated as of July 9, 2008, between The Public Building Authority of the County of Montgomery, Tennessee (the "Montgomery Authority") and the Municipality (collectively, the "Outstanding Loans "); and

Whereas, in order to fund the Outstanding Loans, the Clarksville Authority and the Montgomery Authority, respectively, issued bonds (the "Prior Bonds") under Indentures of Trust (the "Authority Indentures") between the Clarksville Authority or the Montgomery Authority, as the case may be, and corporate trustees acting under such Authority Indentures (the "Prior Trustees");

Whereas, all or a portion of the Outstanding Loans can now be refunded for the purpose of reducing the exposure of the Municipality to variable rate indebtedness; and

Whereas, the Municipality has also determined that it is necessary and advisable to issue its bonds for the purpose of financing in whole or in part, (i) acquisition of land for and the construction, improvement, renovation, equipping and/or repair of roads, bridges, streets, highways, sidewalks and related equipment, parks and recreation facilities, public buildings, storm water drainage systems, water system, sewer system, electric distribution system, cable television and internet system, fire department equipment and buildings, law enforcement

buildings and equipment, libraries, and the acquisition of related vehicles and equipment including, but not limited to, lighting, computers and other technological equipment; (ii) the acquisition of all property, real or personal, appurtenant thereto, or connected with such public works projects; (iii) payment of architectural, engineering, legal, fiscal and administrative costs incident to the foregoing; (iv) reimbursement of the Municipality for funds previously expended for any of the foregoing; and (v) payment of costs incident to the issuance and sale of the bonds authorized herein; and

Whereas, contemporaneously with the adoption of this resolution, the Governing Body has adopted an Initial Resolution proposing the issuance of not to exceed \$24,500,000 in the aggregate principal amount of general obligation bonds, the proceeds of which shall be used to finance the public works project described above; and

Whereas, the Initial Resolution, together with the notice required by Section 9-21-206, Tennessee Code Annotated, as amended, will be published as required by law; and

Whereas, a plan of refunding relating to refinancing of the Outstanding Loans has been filed with the Director of State and Local Finance (the "State Director") as required by Section 9-21-903, Tennessee Code Annotated, as amended, and the State Director has submitted to the Municipality a report thereon (the "Refunding Report"), a copy of which has been made available to the members of the City Council of the Municipality and is attached hereto as Exhibit A; and

Whereas, it is the intention of the City Council of the Municipality to adopt this resolution for the purpose of authorizing not to exceed \$70,000,000 in aggregate principal amount of bonds for the above-described purposes, providing for the issuance, sale and payment of said bonds, establishing the terms thereof, and the disposition of proceeds therefrom, and providing for the levy of a tax for the payment of principal thereof, premium, if any, and interest thereon.

Now, Therefore, Be it Resolved by the City Council of the City of Morristown, Tennessee, as follows:

Section 1. Authority. The bonds authorized by this resolution are issued pursuant to 9-21-101, et seq., Tennessee Code Annotated, as amended, and other applicable provisions of law.

Section 2. Definitions. In addition to the terms defined in the preamble above, the following terms shall have the following meanings in this resolution unless the text expressly or by necessary implication requires otherwise:

(a) "Bonds" means the not to exceed \$70,000,000 General Obligation Bonds of the Municipality, to be dated their date of issuance, and having such series designation or such other dated date as shall be determined by the Mayor pursuant to Section 8 hereof.

(b) "Book-Entry Form" or "Book-Entry System" means a form or system, as applicable, under which physical bond certificates in fully registered form are issued to a Depository, or to its nominee as Registered Owner, with the certificate of bonds being held by and "immobilized" in the custody of such Depository, and under which records maintained by persons, other than the Municipality or the Registration Agent, constitute the written record that identifies, and records the transfer of, the beneficial "book-entry" interests in those bonds.

(c) "Code" means the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder.

(d) "Depository" means any securities depository that is a clearing agency under federal laws operating and maintaining, with its participants or otherwise, a Book-Entry System, including, but not limited to, DTC.

(e) "DTC" means the Depository Trust Company, a limited purpose company organized under the laws of the State of New York, and its successors and assigns.

(f) "DTC Participant(s)" means securities brokers and dealers, banks, trust companies and clearing corporations that have access to the DTC System.

(g) "Financial Advisor" for the Bonds authorized herein means Cumberland Securities Company, Inc., Knoxville, Tennessee.

(h) "Mayor" shall mean the Mayor of the Municipality.

(i) "Governing Body" means the City Council of the Municipality.

(j) "Projects" means, in whole or in part, (i) the acquisition of land for and the construction, improvement, renovation, equipping and/or repair of roads, bridges, streets, highways, sidewalks and related equipment, parks and recreation facilities, public buildings, storm water drainage systems, water system, sewer system, electric distribution system, cable television and internet system, fire department equipment and buildings, law enforcement buildings and equipment, libraries, and the acquisition of related vehicles and equipment including, but not limited to, lighting, computers and other technological equipment and (ii) the acquisition of all property, real or personal, appurtenant thereto, or connected with such public works projects.

(k) "Refunded Indebtedness" means the maturities or portions of maturities of the Outstanding Loans designated for refunding by the Mayor pursuant to the terms hereof.

(l) "Registration Agent" means the registration and paying agent appointed by the Mayor pursuant to the terms hereof, or any successor designated by the Governing Body.

Section 3. Findings of the Governing Body; Compliance with Debt Management Policy.

(a) In conformance with the directive of the State Funding Board of the State of Tennessee, the Municipality has heretofore adopted its Debt Management Policy. The Governing Body hereby finds that the issuance and sale of the Bonds, as proposed herein, is consistent with the Municipality's Debt Management Policy.

(b) The estimated interest expense and costs of issuance of the Bonds have been made available to the Governing Body.

(c) The refunding of the Refunded Indebtedness authorized herein through the issuance of the Bonds is expected to result in the reduction of the debt service payable by the Municipality over the term of the Refunded Indebtedness as well as reducing the Municipality's exposure to variable rate indebtedness, thereby effecting a cost savings to the public.

(d) The Refunding Report of the State Director has been presented to the members of the Governing Body in connection with their consideration of this resolution and is attached hereto as Exhibit A.

Section 4. Authorization and Terms of the Bonds.

(a) For the purpose of providing funds to finance, in whole or in part, the cost of the Projects and costs incident thereto; reimbursement to the appropriate fund of the Municipality for prior expenditures for the foregoing costs, if applicable; the refunding of the Refunded Indebtedness; and payment of costs incident to the issuance and sale of the Bonds, there is hereby authorized to be issued bonds, in one or more series, of the Municipality in the aggregate principal amount of not to exceed \$70,000,000. The Bonds shall be issued in one or more series, in fully registered, book-entry form (except as otherwise set forth herein), without coupons, and subject to the adjustments permitted hereunder, shall be known as "General Obligation Bonds", shall be dated their date of issuance, and shall have such series designation or such other dated date as shall be determined by the Mayor pursuant to the terms hereof. The Bonds shall bear interest at a rate or rates not to exceed

five percent (5.00%), payable (subject to the adjustments permitted hereunder) semi-annually on June 1 and December 1 in each year, commencing December 1, 2018. The Bonds shall be issued initially in \$5,000 denominations or integral multiples thereof, as shall be requested by the original purchaser thereof. Subject to the adjustments permitted pursuant to the terms hereof, the Bonds shall mature serially or be subject to mandatory redemption and shall be payable on June 1 of each year, subject to prior optional redemption as hereinafter provided, in the years 2019 through 2042, inclusive; provided, however, such amortization may be adjusted in accordance with the terms hereof.

(b) Subject to the adjustments permitted under Section 8 hereof, the Bonds maturing on June 1, 2029 and thereafter shall be subject to redemption prior to maturity at the option of the Municipality on June 1, 2028 and thereafter, as a whole or in part at any time at the redemption price of par plus accrued interest to the redemption date.

If less than all the Bonds shall be called for redemption, the maturities to be redeemed shall be selected by the Governing Body in its discretion. If less than all of the Bonds within a single maturity shall be called for redemption, the interests within the maturity to be redeemed shall be selected as follows:

(i) if the Bonds are being held under a Book-Entry System by DTC, or a successor Depository, the Bonds to be redeemed shall be determined by DTC, or such successor Depository, by lot or such other manner as DTC, or such successor Depository, shall determine; or

(ii) if the Bonds are not being held under a Book-Entry System by DTC, or a successor Depository, the Bonds within the maturity to be redeemed shall be selected by the Registration Agent by lot or such other random manner as the Registration Agent in its discretion shall determine.

(c) Pursuant to the terms hereof, the Mayor is authorized to sell the Bonds, or any maturities thereof, as term bonds ("Term Bonds") with mandatory redemption requirements corresponding to the maturities set forth herein or as determined by the Mayor. In the event any or all the Bonds are sold as Term Bonds, the Municipality shall redeem Term Bonds on redemption dates corresponding to the maturity dates set forth herein, in aggregate principal amounts equal to the maturity amounts established pursuant to the terms hereof for each redemption date, as such maturity amounts may be adjusted pursuant to the terms hereof, at a price of par plus accrued interest thereon to the date of redemption.

If less than all of the Bonds within a single maturity of Term Bonds shall be called for redemption, the interests within the maturity to be redeemed shall be selected as follows:

(i) if the Bonds are being held under a Book-Entry System by DTC, or a successor Depository, the Bonds to be redeemed shall be determined by DTC, or such successor Depository, by lot or such other manner as DTC, or such successor Depository, shall determine; or

(ii) if the Bonds are not being held under a Book-Entry System by DTC, or a successor Depository, the Bonds within the maturity to be redeemed shall be selected by the Registration Agent by lot or such other random manner as the Registration Agent in its discretion shall determine.

At its option, to be exercised on or before the forty-fifth (45th) day next preceding any such mandatory redemption date, the Municipality may (i) deliver to the Registration Agent for cancellation Bonds to be redeemed, in any aggregate principal amount desired, and/or (ii) receive a credit in respect of its redemption obligation under this mandatory redemption provision for any Bonds of the maturity to be redeemed which prior to said date have been purchased or redeemed (otherwise than through the operation of this mandatory sinking fund redemption provision) and cancelled by the Registration Agent and not theretofore applied as a credit against any redemption obligation under this mandatory sinking fund provision. Each Bond so delivered or previously purchased or redeemed shall be credited by the Registration Agent at 100% of the principal amount thereof on the obligation of the Municipality on such payment date and any excess shall be credited on future redemption obligations in chronological order, and the principal amount of Bonds to be redeemed by operation of this mandatory sinking fund provision shall be accordingly reduced. The Municipality shall on or before the forty-fifth (45th) day next preceding each payment date furnish the Registration Agent with its certificate indicating whether or not and to what extent the provisions of clauses (i) and (ii) of this subsection are to be availed of with respect to such payment and confirm that funds for the balance of the next succeeding prescribed payment will be paid on or before the next succeeding payment date.

Notice of any call for redemption shall be given by the Registration Agent on behalf of the Municipality not less than twenty (20) nor more than sixty (60) days prior to the date fixed for redemption by sending an appropriate notice to the registered owners of the Bonds to be redeemed by first-class mail, postage prepaid, at the addresses shown on the Bond registration records of the Registration Agent as of the date of the notice; but neither failure to mail such notice nor any defect in any such notice so mailed shall affect the sufficiency of the proceedings for redemption of any of the Bonds for which proper notice was given. The notice may state that it is conditioned upon the deposit of moneys in an amount equal to the amount

necessary to effect the redemption with the Registration Agent no later than the redemption date ("Conditional Redemption"). As long as DTC, or a successor Depository, is the registered owner of the Bonds, all redemption notices shall be mailed by the Registration Agent to DTC, or such successor Depository, as the registered owner of the Bonds, as and when above provided, and neither the Municipality nor the Registration Agent shall be responsible for mailing notices of redemption to DTC Participants or Beneficial Owners. Failure of DTC, or any successor Depository, to provide notice to any DTC Participant or Beneficial Owner will not affect the validity of such redemption. The Registration Agent shall mail said notices as and when directed by the Municipality pursuant to written instructions from an authorized representative of the Municipality (other than for a mandatory sinking fund redemption, notices of which shall be given on the dates provided herein) given at least forty-five (45) days prior to the redemption date (unless a shorter notice period shall be satisfactory to the Registration Agent). From and after the redemption date, all Bonds called for redemption shall cease to bear interest if funds are available at the office of the Registration Agent for the payment thereof and if notice has been duly provided as set forth herein. In the case of a Conditional Redemption, the failure of the Municipality to make funds available in part or in whole on or before the redemption date shall not constitute an event of default, and the Registration Agent shall give immediate notice to the Depository, if applicable, or the affected Bondholders that the redemption did not occur and that the Bonds called for redemption and not so paid remain outstanding.

(d) The Governing Body hereby authorizes and directs the Mayor to appoint the Registration Agent for the Bonds and hereby authorizes the Registration Agent so appointed to maintain Bond registration records with respect to the Bonds, to authenticate and deliver the Bonds as provided herein, either at original issuance or upon transfer, to effect transfers of the Bonds, to give all notices of redemption as required herein, to make all payments of principal and interest with respect to the Bonds as provided herein, to cancel and destroy Bonds which have been paid at maturity or upon earlier redemption or submitted for exchange or transfer, to furnish the Municipality at least annually a certificate of destruction with respect to Bonds cancelled and destroyed, and to furnish the Municipality at least annually an audit confirmation of Bonds paid, Bonds outstanding and payments made with respect to interest on the Bonds. The Mayor is hereby authorized to execute and the City Administrator is hereby authorized to attest such written agreement between the Municipality and the Registration Agent as they shall deem necessary and proper with respect to the obligations, duties and rights of the Registration Agent. The payment of all reasonable fees and expenses of the Registration Agent for the discharge of its duties and obligations hereunder or under any such agreement is hereby authorized and directed.

(e) The Bonds shall be payable, both principal and interest, in lawful money of the United States of America at the main office of the Registration Agent.

The Registration Agent shall make all interest payments with respect to the Bonds by check or draft on each interest payment date directly to the registered owners as shown on the Bond registration records maintained by the Registration Agent as of the close of business on the fifteenth day of the month next preceding the interest payment date (the "Regular Record Date") by depositing said payment in the United States mail, postage prepaid, addressed to such owners at their addresses shown on said Bond registration records, without, except for final payment, the presentation or surrender of such registered Bonds, and all such payments shall discharge the obligations of the Municipality in respect of such Bonds to the extent of the payments so made. Payment of principal of and premium, if any, on the Bonds shall be made upon presentation and surrender of such Bonds to the Registration Agent as the same shall become due and payable. All rates of interest specified herein shall be computed on the basis of a three hundred sixty (360) day year composed of twelve (12) months of thirty (30) days each. In the event the Bonds are no longer registered in the name of DTC, or a successor Depository, if requested by the Owner of at least \$1,000,000 in aggregate principal amount of the Bonds, payment of interest on such Bonds shall be paid by wire transfer to a bank within the continental United States or deposited to a designated account if such account is maintained with the Registration Agent and written notice of any such election and designated account is given to the Registration Agent prior to the record date.

(f) Any interest on any Bond that is payable but is not punctually paid or duly provided for on any interest payment date (hereinafter "Defaulted Interest") shall forthwith cease to be payable to the registered owner on the relevant Regular Record Date; and, in lieu thereof, such Defaulted Interest shall be paid by the Municipality to the persons in whose names the Bonds are registered at the close of business on a date (the "Special Record Date") for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Municipality shall notify the Registration Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time the Municipality shall deposit with the Registration Agent an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Registration Agent for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this Section provided. Thereupon, not less than ten (10) days after the receipt by the Registration Agent of the notice of the proposed payment, the Registration Agent shall fix a Special Record Date for the payment of such Defaulted Interest which date shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment to the registered Owners. The Registration Agent shall promptly notify the Municipality of such Special Record Date and, in the name and at the expense of the Municipality, not less than ten (10) days prior to such Special Record Date, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to

each registered owner at the address thereof as it appears in the Bond registration records maintained by the Registration Agent as of the date of such notice. Nothing contained in this Section or in the Bonds shall impair any statutory or other rights in law or in equity of any registered owner arising as a result of the failure of the Municipality to punctually pay or duly provide for the payment of principal of, premium, if any, and interest on the Bonds when due.

(g) The Bonds are transferable only by presentation to the Registration Agent by the registered owner, or his legal representative duly authorized in writing, of the registered Bond(s) to be transferred with the form of assignment on the reverse side thereof completed in full and signed with the name of the registered owner as it appears upon the face of the Bond(s) accompanied by appropriate documentation necessary to prove the legal capacity of any legal representative of the registered owner. Upon receipt of the Bond(s) in such form and with such documentation, if any, the Registration Agent shall issue a new Bond or the Bond to the assignee(s) in \$5,000 denominations, or integral multiples thereof, as requested by the registered owner requesting transfer. The Registration Agent shall not be required to transfer or exchange any Bond during the period commencing on a Regular or Special Record Date and ending on the corresponding interest payment date of such Bond, nor to transfer or exchange any Bond after the publication of notice calling such Bond for redemption has been made, nor to transfer or exchange any Bond during the period following the receipt of instructions from the Municipality to call such Bond for redemption; provided, the Registration Agent, at its option, may make transfers after any of said dates. No charge shall be made to any registered owner for the privilege of transferring any Bond, provided that any transfer tax relating to such transaction shall be paid by the registered owner requesting transfer. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and neither the Municipality nor the Registration Agent shall be affected by any notice to the contrary whether or not any payments due on the Bonds shall be overdue. The Bonds, upon surrender to the Registration Agent, may, at the option of the registered owner, be exchanged for an equal aggregate principal amount of the Bonds of the same maturity in any authorized denomination or denominations.

(h) The Bonds shall be executed in such manner as may be prescribed by applicable law, in the name, and on behalf, of the Municipality with the signature of the Mayor and the attestation of the City Administrator.

(i) Except as otherwise provided in this resolution, the Bonds shall be registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Bonds. References in this Section to a Bond or the Bonds shall be construed to mean the Bond or the Bonds that are held under the Book-Entry System. One Bond for each maturity shall be issued to DTC and immobilized in its custody or a custodian of DTC. The Bond Registrar is a

custodian and agent for DTC, and the Bond will be immobilized in its custody. A Book-Entry System shall be employed, evidencing ownership of the Bonds in authorized denominations, with transfers of beneficial ownership effected on the records of DTC and the DTC Participants pursuant to rules and procedures established by DTC.

Each DTC Participant shall be credited in the records of DTC with the amount of such DTC Participant's interest in the Bonds. Beneficial ownership interests in the Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the "Beneficial Owners." The Beneficial Owners shall not receive the Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner shall be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its Bonds. Transfers of ownership interests in the Bonds shall be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. **So Long as CEDE & Co., as Nominee for DTC, is the Registered Owner of the Bonds, the Registration Agent shall Treat Cede & Co. as the Only Holder of the Bonds for all Purposes Under this Resolution, Including Receipt of all Principal of, Premium, If Any, and Interest on the Bonds, Receipt of Notices, Voting and Requesting or Directing the Registration Agent to Take or Not to Take, Or Consenting to, Certain Actions Under this Resolution.**

Payments of principal, interest, and redemption premium, if any, with respect to the Bonds, so long as DTC is the only owner of the Bonds, shall be paid by the Registration Agent directly to DTC or its nominee, Cede & Co., as provided in the Letter of Representation relating to the Bonds from the Municipality and the Registration Agent to DTC (the "Letter of Representation"). DTC shall remit such payments to DTC Participants, and such payments thereafter shall be paid by DTC Participants to the Beneficial Owners. The Municipality and the Registration Agent shall not be responsible or liable for payment by DTC or DTC Participants for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

In the event that (1) DTC determines not to continue to act as securities depository for the Bonds, or (2) to the extent permitted by the rules of DTC, the Municipality determines that the continuation of the Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect their interests or the interests of the Beneficial Owners of the Bonds, then the Municipality shall discontinue the Book-Entry System with DTC or, upon request of such original purchaser, deliver the Bonds to the original purchaser in the form of fully-registered Bonds, as the case may be. If the Municipality fails to identify another qualified securities depository to replace DTC, the Municipality shall cause the Registration Agent to authenticate and deliver replacement Bonds in the form of fully-registered Bonds to

each Beneficial Owner. If the purchaser(s) certifies that it intends to hold the Bonds for its own account, then the Municipality may issue certificated Bonds without the utilization of DTC and the Book-Entry System.

The Municipality and the Registration Agent Shall Not Have Any Responsibility or Obligations to Any Participant or Any Beneficial Owner with Respect to (i) The Bonds; (ii) The Accuracy of Any Records Maintained by DTC or Any DTC Participant; (iii) The Payment by DTC or Any DTC Participant or Any Amount Due to Any Beneficial Owner in Respect of the Principal of and Interest on the Bonds; (iv) The Delivery or Timeliness of Delivery by DTC or any DTC Participant or any Notice Due to Any Beneficial Owner that is Required or Permitted Under the Terms of this Resolution to be Given to Beneficial Owners; (v) The Selection of Beneficial Owners to Receive Payments in the Event of any Partial Redemption of the Bonds; or (vi) Any Consent Given or Other Action Taken by DTC or its Nominee, CEDE & Co., as Owner.

(j) The Registration Agent is hereby authorized to take such action as may be necessary from time to time to qualify and maintain the Bonds for deposit with DTC, including but not limited to, wire transfers of interest and principal payments with respect to the Bonds, utilization of electronic book entry data received from DTC in place of actual delivery of Bonds and provision of notices with respect to Bonds registered by DTC (or any of its designees identified to the Registration Agent) by overnight delivery, courier service, telegram, telecopy or other similar means of communication. No such arrangements with DTC may adversely affect the interest of any of the owners of the Bonds; provided, however, that the Registration Agent shall not be liable with respect to any such arrangements it may make pursuant to this Section.

(k) The Registration Agent is hereby authorized to authenticate and deliver the Bonds to the original purchaser, upon receipt by the Municipality of the proceeds of the sale thereof and to authenticate and deliver Bonds in exchange for Bonds of the same principal amount delivered for transfer upon receipt of the Bond(s) to be transferred in proper form with proper documentation as hereinabove described. The Bonds shall not be valid for any purpose unless authenticated by the Registration Agent by the manual signature of an officer thereof on the certificate set forth herein on the Bond form.

(l) In case any Bond shall become mutilated, or be lost, stolen, or destroyed, the Municipality, in its discretion, shall issue, and the Registration Agent, upon written direction from the Municipality, shall authenticate and deliver, a new Bond of like tenor, amount, maturity and date, in exchange and substitution for, and upon the cancellation of, the mutilated Bond, or in lieu of and in substitution for such lost, stolen or destroyed Bond, or if any such Bond shall have

matured or shall be able to mature, instead of issuing a substituted Bond the Municipality may pay or authorize payment of such Bond without surrender thereof. In every case, the applicant shall furnish evidence satisfactory to the Municipality and the Registration Agent of the destruction, theft or loss of such Bond, and indemnify satisfactory to the Municipality and the Registration Agent; and the Municipality may charge the applicant for the issue of such new Bond an amount sufficient to reimburse the Municipality for the expense incurred by it in the issue thereof.

Section 5. Source of Payment. The Bonds shall be payable from unlimited ad valorem taxes to be levied on all taxable property within the Municipality. For the prompt payment of the principal of, premium, if any, and interest on the Bonds, the full faith and credit of the Municipality are hereby irrevocably pledged. The portions of the Bonds (based on allocation of Bonds and Bond proceeds as determined by the Municipality) that finance, respectively, improvements to the storm water drainage systems, water system, sewer system, electric distribution system and cable television and internet system of the Municipality shall be additionally payable from but not secured by the respective revenues of such systems.

Section 6. Form of Bonds. The Bonds shall be in substantially the following form, the omissions to be appropriate completed when the Bonds are prepared and delivered:

(Form of Bond)

REGISTERED REGISTERED
Number _____ \$ _____

UNITED STATES OF AMERICA
STATE OF TENNESSEE
COUNTY OF HAMBLLEN
CITY OF MORRISTOWN, TENNESSEE
GENERAL OBLIGATION BOND, SERIES 2018

Interest Rate: Maturity Date: Date of Bond: CUSIP No.:

Registered Owner:

Principal Amount:

For Value Received, the City of Morristown, Tennessee (the "Municipality") hereby promises to pay to the registered owner hereof, hereinabove named, or registered assigns, in the manner hereinafter provided, the principal

amount hereinabove set forth on the maturity date hereinabove set forth (or upon earlier redemption as set forth herein), and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on said principal amount at the annual rate interest hereinabove set forth from the date hereof until said maturity date or redemption date, said interest being payable on December 1, 2018, and semi-annually thereafter on the first day of June and December in each year until this Bond matures or is redeemed. The principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft at the principal corporate trust office of _____, _____, _____, as registration and agent and paying agent (the "Registration Agent"). The Registration Agent shall make all interest payments with respect to this Bond on each interest payment date directly to the registered owner hereof shown on the Bond registration records maintained by the Registration Agent as of the close of business on the fifteenth day of the month next preceding the interest payment date (the "Regular Record Date") by check or draft mailed to such owner at such owner's address shown on said Bond registration records, without, except for final payment, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the Municipality to the extent of the payments so made. Any such interest not so punctually paid or duly provided for on any interest payment date shall forthwith cease to be payable to the registered owner on the relevant Regular Record Date; and, in lieu thereof, such defaulted interest shall be payable to the person in whose name this Bond is registered at the close of business on the date (the "Special Record Date") for payment of such defaulted interest to be fixed by the Registration Agent, notice of which shall be given to the owners of the Bonds of the issue of which this Bond is one not less than ten (10) days prior to such Special Record Date. Payment of principal of and premium, if any, on this Bond shall be made when due upon presentation and surrender of this Bond to the Registration Agent.

Except as otherwise provided herein or in the Resolution, as hereinafter defined, this Bond shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Bonds of the series of which this Bond is one. One Bond for each maturity shall be issued to DTC and immobilized in its custody or a custodian of DTC. The Bond Registrar is a custodian and agent for DTC, and the Bond will be immobilized in its custody. A book-entry system shall be employed, evidencing ownership of the Bonds in \$5,000 denominations, or multiples thereof, with transfers of beneficial ownership effected on the records of DTC and the DTC Participants, as defined in the Resolution, pursuant to rules and procedures established by DTC. So long as Cede & Co., as nominee for DTC, is the registered owner of the Bonds, the Municipality and the Registration Agent shall treat Cede & Co. as the only owner of the Bonds for all purposes under the Resolution, including receipt of all principal and maturity amounts of, premium, if any, and interest on the Bonds, receipt of notices, voting and requesting or taking or not taking, or

consenting to, certain actions hereunder. Payments of principal, maturity amounts, interest, and redemption premium, if any, with respect to the Bonds, so long as DTC is the only owner of the Bonds, shall be paid directly to DTC or its nominee, Cede & Co. DTC shall remit such payments to DTC Participants, and such payments thereafter shall be paid by DTC Participants to the Beneficial Owners, as defined in the Resolution. Neither the Municipality nor the Registration Agent shall be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants. In the event that (1) DTC determines not to continue to act as securities depository for the Bonds or (2) to the extent permitted by the rules of DTC, the Municipality determines that the continuation of the book-entry system of evidence and transfer of ownership of the Bonds would adversely affect its interests or the interests of the Beneficial Owners of the Bonds, the Municipality may discontinue the book-entry system with DTC. If the Municipality fails to identify another qualified securities depository to replace DTC, the Municipality shall cause the Registration Agent to authenticate and deliver replacement Bonds in the form of fully-registered Bonds to each Beneficial Owner. Neither the Municipality nor the Registration Agent shall have any responsibility or obligations to DTC Participant or any Beneficial Owner with respect to (i) the Bonds; (ii) the accuracy or any records maintained by DTC or any DTC Participant; (iii) the payment by DTC or any DTC Participant of any amount due to any Beneficial Owner in respect of the principal or maturity amounts of and interest on the Bonds; (iv) the delivery or timeliness of delivery by DTC or any DTC Participant of any notice due to any Beneficial Owner that is required or permitted under the terms of the Resolution to be given to Beneficial Owners; (v) the selection of Beneficial Owners to receive payments in the event of any partial redemption of the Bonds; or (vi) any consent given or other action taken by DTC, or its nominee, Cede & Co., as owner.

Bonds of the issue of which this Bond is one maturing on June 1, 2029 and thereafter shall be subject to redemption prior to maturity at the option of the Municipality on June 1, 2028 and thereafter, as a whole or in part at any time at the redemption price of par plus accrued interest to the redemption date.

If less than all the Bonds shall be called for redemption, the maturities to be redeemed shall be designated by the City Council of the Municipality, in its discretion. If less than all the principal amount of the Bonds of a maturity shall be called for redemption, the interests within the maturity to be redeemed shall be selected as follows:

(i) if the Bonds are being held under a Book-Entry System by DTC, or a successor Depository, the amount of the interest of each DTC Participant in the Bonds to be redeemed shall be determined by DTC, or such successor Depository, by lot or such other manner as DTC, or such successor Depository, shall determine; or

(ii) if the Bonds are not being held under a Book-Entry System by DTC, or a successor Depository, the Bonds within the maturity to be redeemed shall be selected by the Registration Agent by lot or such other random manner as the Registration Agent in its discretion shall determine.

[Subject to the credit hereinafter provided, the Municipality shall redeem Bonds maturing _____ on the redemption dates set forth below opposite the maturity dates, in aggregate principal amounts equal to the respective dollar amounts set forth below opposite the respective redemption dates at a price of par plus accrued interest thereon to the date of redemption. DTC, as securities depository for the series of Bonds of which this Bond is one, or such Person as shall then be serving as the securities depository for the Bonds, shall determine the interest of each Participant in the Bonds to be redeemed using its procedures generally in use at that time. If DTC or another securities depository is no longer serving as securities depository for the Bonds, the Bonds to be redeemed within a maturity shall be selected by the Registration Agent in the same manner as is provided above for optional redemptions. The dates of redemption and principal amount of Bonds to be redeemed on said dates are as follows:

<u>Final Maturity</u>	<u>Redemption Date</u>	<u>Principal Amount of Bonds Redeemed</u>
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*Final Maturity

At its option, to be exercised on or before the forty-fifth (45th) day next preceding any such redemption date, the Municipality may (i) deliver to the Registration Agent for cancellation Bonds to be redeemed, in any aggregate principal amount desired, and/or (ii) receive a credit in respect of its redemption obligation under this mandatory redemption provision for any Bonds of the maturity to be redeemed which prior to said date have been purchased or redeemed (otherwise than through the operation of this mandatory sinking fund redemption provision) and cancelled by the Registration Agent and not theretofore applied as a credit against any redemption obligation under this mandatory sinking fund provision. Each Bond so delivered or previously purchased or redeemed shall be credited by the Registration Agent at 100% of the principal amount thereof on the obligation of the Municipality on such payment date and any excess shall be

credited on future redemption obligations in chronological order, and the principal amount of Bonds to be redeemed by operation of this mandatory sinking fund provision shall be accordingly reduced. The Municipality shall on or before the forty-fifth (45th) day next preceding each payment date furnish the Registration Agent with its certificate indicating whether or not and to what extent the provisions of clauses (i) and (ii) of this subsection are to be availed of with respect to such payment and confirm that funds for the balance of the next succeeding prescribed payment will be paid on or before the next succeeding payment date.]

Notice of any call for redemption shall be given by the Registration Agent not less than twenty (20) nor more than sixty (60) days prior to the date fixed for redemption by sending an appropriate notice to the registered owners of the Bonds to be redeemed by first-class mail, postage prepaid, at the addresses shown on the Bond registration records of the Registration Agent as of the date of the notice; but neither failure to mail such notice nor any defect in any such notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the Bonds for which proper notice was given. The notice may state that it is conditioned upon the deposit of moneys in an amount equal to the amount necessary to effect the redemption with the Registration Agent no later than the redemption date ("Conditional Redemption"). As long as DTC, or a successor Depository, is the registered owner of the Bonds, all redemption notices shall be mailed by the Registration Agent to DTC, or such successor Depository, as the registered owner of the Bonds, as and when above provided, and neither the Municipality nor the Registration Agent shall be responsible for mailing notices of redemption to DTC Participants or Beneficial Owners. Failure of DTC, or any successor Depository, to provide notice to any DTC Participant will not affect the validity of such redemption. From and after any redemption date, all Bonds called for redemption shall cease to bear interest if funds are available at the office of the Registration Agent for the payment thereof and it notice has been duly provided as set forth in the Resolution, as hereafter defined. In the case of a Conditional Redemption, the failure of the Municipality to make funds available in part or in whole on or before the redemption date shall not constitute an event of default, and the Registration Agent shall give immediate notice to the Depository (or if no Depository the affected Bondholders) that the redemption did not occur and that the Bond called for redemption and not so paid remain outstanding.

This Bond is transferable by the registered owner hereof in person or by such owner's attorney duly authorized in writing at the principal corporate trust office of the Registration Agent set forth on the front side hereof, but only in the manner, subject to limitations and upon payment of the charges provided in the Resolution, as hereafter defined, and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond or Bonds of authorized denominations of the same maturity and interest rate for the same aggregate principal amount will be issued to the transferee in exchange therefor. The person in whose name this Bond is registered

shall be deemed and regarded as the absolute owner thereof for all purposes and neither the Municipality nor the Registration Agent shall be affected by any notice to the contrary whether or not any payments due on the Bond shall be overdue. Bonds, upon surrender to the Registration Agent, may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of the Bonds of the same maturity in authorized denomination or denominations, upon the terms set forth in the Resolution. The Registration Agent shall not be required to transfer or exchange any Bond during the period commencing on a Regular Record Date or Special Record Date and ending on the corresponding interest payment date of such Bond, nor to transfer or exchange any Bond after the notice calling such Bond for redemption has been made, nor during a period following the receipt of instructions from the Municipality to call such Bond for redemption.

This Bond is one of a total authorized issue aggregating \$_____ and issued by the Municipality to finance the cost, in whole or in part, of (i) the acquisition of land for and the construction, improvement, renovation, equipping and/or repair of roads, bridges, streets, highways, sidewalks and related equipment, parks and recreation facilities, public buildings, storm water drainage systems, water system, sewer system, electric distribution system, cable television and internet system, fire department equipment and buildings, law enforcement buildings and equipment, libraries, and the acquisition of related vehicles and equipment including, but not limited to, lighting, computers and other technological (collectively, the "Projects") (ii) the acquisition of all property, real or personal, appurtenant thereto, or connected with such Projects; (iii) payment of architectural, engineering, legal, fiscal and administrative costs incident to the foregoing; (iv) refinancing the Municipality's outstanding indebtedness under a Loan Agreement dated as of May 2, 2008, between The Public Building Authority of the City of Clarksville, Tennessee (the "Clarksville Authority") and the Municipality, two Loan Agreements dated as of September 1, 2008, between the Clarksville Authority and the Municipality, a Loan Agreement dated as of November 26, 2008, between the Clarksville Authority and the Municipality, and a Loan Agreement dated as of January 3, 2013, between the Clarksville Authority and the Municipality and a Loan Agreement dated as of July 9, 2008, between The Public Building Authority of the County of Montgomery, Tennessee and the Municipality; and (vi) the issuance costs of the Bonds, pursuant to 9-21-101, et seq., Tennessee Code Annotated, as amended, and pursuant to a resolution adopted by the City Council of the Municipality on July 17, 2018 (the "Resolution").

The Bonds shall be payable from unlimited ad valorem taxes to be levied on all taxable property within the Municipality. For the prompt payment of the principal of, premium, if any, and interest on the Bonds, the full faith and credit of the Municipality are hereby irrevocably pledged.

July 17, 2018

This Bond and the income therefrom are exempt from all present state, county and municipal taxes in Tennessee except (a) Tennessee excise taxes on interest on the Bond during the period the Bond is held or beneficially owned by any organization or entity, other than a sole proprietorship or general partnership, doing business in the State of Tennessee, and (b) Tennessee franchise taxes by reason of the inclusion of the book value of the Bond in Tennessee franchise tax base of any organization or entity, other than a sole proprietorship or general partnership, doing business in the State of Tennessee.

It is hereby certified, recited, and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond exist, happen and be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other indebtedness of the Municipality, does not exceed any limitation prescribed by the constitution and statutes of the State of Tennessee.

In Witness Whereof, the Municipality has caused this Bond to be signed by its Mayor and attested by its City Administrator as of the date hereinabove set forth.

City of Morristown, Tennessee

MAYOR

ATTEST:

CITY ADMINISTRATOR

Transferable and payable at the
principal corporate trust office of: _____
_____, _____

Date of Registration: _____

This Bond is one of the issue of Bonds issued pursuant to the Resolution hereinabove described.

Registration Agent

By: _____
Authorized Officer

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____, whose address is _____ (Please insert Federal Identification or Social Security Number of Assignee _____), the within Bond of City of Morristown, Tennessee, and does hereby irrevocably constitute and appoint _____, attorney, to transfer the said Bond on the records kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature guaranteed:

NOTICE: Signature(s) must be guaranteed by a member firm of a Medallion Program acceptable to the Registration Agent

Section 7. Levy of Tax. The Municipality, through its Governing Body, shall annually levy and collect a tax upon all taxable property within the Municipality, in addition to all other taxes authorized by law, sufficient to pay principal of, premium, if any, and interest on the Bonds when due, and for that purpose there is hereby levied a direct annual tax in such amount as may be found necessary each year to pay principal and interest coming due on the Bonds in said year. Principal and interest falling due at any time when there are insufficient funds from this tax levy on hand shall be paid from the current funds of the Municipality and reimbursement therefor shall be made out of the taxes hereby provided to the levied when the same shall have been collected. The tax herein provided may be reduced to the extent of any direct appropriations from other

funds, taxes and revenues of the Municipality to the payment of debt service on the Bonds including revenues of the systems as described in Section 5 hereof.

Section 8. Sale of Bonds.

(a) The Bonds shall be offered for competitive public sale in one or more series, at a price of not less than 98% of par, plus accrued interest, as a whole or in part from time to time as shall be determined by the Mayor, in consultation with the Financial Advisor. The Bonds, or any series thereof, shall be sold by delivery of bids via physical delivery, mail, fax, or telephone or by electronic bidding means of an internet bidding service as shall be determined by the Mayor, in consultation with the Financial Advisor.

(b) If the Bonds are sold in more than one series, the Mayor is authorized to cause to be sold in each series an aggregate principal amount of Bonds less than that shown in Section 4 hereof for each series, so long as the total aggregate principal amount of all series issued does not exceed the total aggregate of Bonds authorized to be issued herein.

(c) The Mayor is further authorized with respect to each series of Bonds to:

(1) change the dated date of the Bonds, or any series thereof, to a date other than the date of issuance of the Bonds;

(2) change the designation of the Bonds, or any series thereof, to a designation other than "General Obligation Bonds" and to specify the series designation of the Bonds, or any series thereof;

(3) change the first interest payment date on the Bonds, or any series thereof, to a date other than December 1, 2018, provided that such date is not later than twelve months from the dated date of such series of Bonds;

(4) establish and adjust the principal and interest payment dates and the maturity amounts of the Bonds, or any series thereof, provided that (A) the total principal amount of all series of the Bonds does not exceed the total amount of Bonds authorized herein; (B) the final maturity date of each series shall not exceed the calendar year of the final maturity described in Section 4 hereof; (C) the debt service schedule for that portion of the Bonds refunding the Refunded Bonds shall not be materially different than what was presented to the State Director in connection with the Refunding Report and (D) the debt service payments on the Bonds shall not result in the Bonds being balloon indebtedness requiring the approval of the State Director;

(5) adjust or remove the Municipality's optional redemption provisions of the Bonds, provided that the premium amount to be paid on Bonds or any series thereof does not exceed two percent (2%) of the principal amount thereof;

(6) refund less than all of the Outstanding Loans;

(7) sell the Bonds, or any series thereof, or any maturities thereof as Term Bonds with mandatory redemption requirements corresponding to the maturities set forth herein or as otherwise determined by the Mayor, as he shall deem most advantageous to the Municipality; and

(8) cause all or a portion of the Bonds to be insured by a bond insurance policy issued by a nationally recognized bond insurance company if such insurance is requested and paid for by the winning bidder of the Bonds, or any series thereof.

The form of the Bond set forth in Section 6 hereof shall be conformed to reflect any changes made pursuant to this Section 8 hereof.

(d) The Mayor is authorized to sell the Bonds, or any series thereof, simultaneously with any other bonds or notes authorized by resolution or resolutions of the Governing Body. The Mayor is further authorized to sell the Bonds, or any series thereof, as a single issue of bonds with any other bonds with substantially similar terms authorized by resolution or resolutions of the Governing Body, in one or more series as the Mayor shall deem to be advantageous to the Municipality and in doing so, the Mayor is authorized to change the designation of the Bonds to a designation other than "General Obligation Bonds"; provided, however, that the total aggregate principal amount of combined bonds to be sold does not exceed the total aggregate principal amount of Bonds authorized by this resolution or bonds authorized by any other resolution or resolutions adopted by the Governing Body.

(e) The Mayor is authorized to award the Bonds, or any series thereof, in each case to the bidder whose bid results in the lowest true interest cost to the Municipality, provided the rate or rates on the Bonds does not exceed the maximum rate prescribed by Section 4 hereof. The award of the Bonds by the Mayor to the lowest bidder shall be binding on the Municipality, and no further action of the Governing Body with respect thereto shall be required.

(f) The Mayor and City Administrator are authorized to cause the Bonds, in book-entry form (except as otherwise permitted herein), to be authenticated and delivered by the Registration Agent to the successful bidder and to execute, publish, and deliver all certificates and documents, including an official statement and closing certificates, as they shall deem necessary in connection with the sale and

delivery of the Bonds. The Mayor is hereby authorized to enter into a contract with the Financial Advisor, for financial advisory services in connection with the sale of the Bonds and to enter into an engagement letter with Bass, Berry & Sims PLC to serve as bond counsel in connection with the Bonds, and all actions heretofore taken by the officers of the Municipality in that regard are hereby ratified and approved.

(g) No Bonds shall be issued until the passage of twenty (20) days from the date of publication of the Initial Resolution, and in no event shall the Bonds be issued if a legally sufficient petition, as defined by Section 9-21-207, Tennessee Code Annotated, is filed within such twenty-day period.

Section 9. Disposition of Bond Proceeds. The proceeds of the sale of the Bonds shall be disbursed as follows:

(a) An amount sufficient, together with such other Municipality funds as may be identified by the Mayor and, if applicable, investment earnings on the foregoing, to refinance the Outstanding Loans shall be applied to the refinancing thereof by complying with the terms of prepayment thereof and by taking such actions as are required under the Prior Indentures to cause the redemption of the outstanding Prior Bonds, including giving such notices as are required for such prepayment and redemption to the Prior Trustees.

(b) The remainder of the proceeds of the sale of the Bonds shall be deposited with a financial institution regulated by the Federal Deposit Insurance Corporation or similar federal agency in a special fund known as the 2018 Project Fund (the "Project Fund"), or such other designation as shall be determined by the Mayor to be kept separate and apart from all other funds of the Municipality. The Municipality shall disburse funds in the Project Fund to pay costs of issuance of the Bonds, including necessary legal, accounting and fiscal expenses, printing, engraving, advertising and similar expenses, administrative and clerical costs, Registration Agent fees, bond insurance premiums, if any, and other necessary miscellaneous expenses incurred in connection with the issuance and sale of the Bonds. Notwithstanding the foregoing, costs of issuance of the Bonds may be withheld from the good faith deposit or purchase price of the Bonds and paid to the Financial Advisor to be used to pay costs of issuance of the Bonds. The remaining funds in the Project Fund shall be disbursed solely to pay the costs of the Projects and to reimburse the Municipality for any funds previously expended for costs of the Projects. Money in the Project Fund shall be invested, to the extent possible, in such investments as shall be permitted by applicable law.

Section 10. Official Statement. The officers of the Municipality, or any of them, are hereby authorized and directed to provide for the preparation and distribution of a Preliminary Official Statement describing the Bonds. After bids have been received and the Bonds have been awarded, the officers of the

Municipality, or any of them, shall make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this resolution as are necessary or desirable to complete it as a final Official Statement for purposes of Rule 15c2-12(e)(3) of the Securities and Exchange Commission. The officers of the Municipality, or any of them, shall arrange for the delivery to the successful bidder on the Bonds of a reasonable number of copies of the Official Statement within seven (7) business days after the Bonds have been awarded for delivery, by the successful bidder on the Bonds, to each potential investor requesting a copy of the Official Statement and to each person to whom such bidder and members of his bidding group initially sell the Bonds.

The officers of the Municipality, or any of them, are authorized, on behalf of the Municipality, to deem the Preliminary Official Statement and the Official Statement in final form, each to be final as of its date within the meaning of Rule 15c2-12(b)(1), except for the omission in the Preliminary Official Statement of certain pricing and other information allowed to be omitted pursuant to such Rule 15c2-12(b)(1). The distribution of the Preliminary Official Statement and the Official Statement in final form shall be conclusive evidence that each has been deemed in final form as of its date by the Municipality except for the omission in the Preliminary Official Statement of such pricing and other information.

Notwithstanding the foregoing, no Official Statement is required to be prepared if the Bonds, or any series thereof, are purchased by a purchaser that certifies that such purchaser intends to hold the Bonds, or any series thereof, for its own account and has no present intention to reoffer the Bonds, or any series thereof.

Section 11. Discharge and Satisfaction of Bonds. If the Municipality shall pay and discharge the indebtedness evidenced by any series of the Bonds in any one or more of the following ways:

(a) By paying or causing to be paid, by deposit of sufficient funds as and when required with the Registration Agent, the principal of and interest on such Bonds as and when the same become due and payable;

(b) By depositing or causing to be deposited with any trust company or financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or similar federal agency and which has trust powers (an "Agent"; which agent may be the Registration Agent) in trust or escrow, on or before the date of maturity or redemption, sufficient money or Defeasance Obligations, as hereafter defined, the principal of and interest on which, when due and payable, will provide sufficient moneys to pay or redeem such Bonds and to pay interest thereon when due until the maturity or redemption date (provided, if such Bonds are to be redeemed prior to maturity thereof, proper notice of such redemption shall have

been given or adequate provision shall have been made for the giving of such notice); or

(c) By delivering such Bonds to the Registration Agent for cancellation by it;

and if the Municipality shall also pay or cause to be paid all other sums payable hereunder by the Municipality with respect to such Bonds, or make adequate provision therefor, and by resolution of the Governing Body instruct any such Agent to pay amounts when and as required to the Registration Agent for the payment of principal of and interest on such Bonds when due, then and in that case the indebtedness evidenced by such Bonds shall be discharged and satisfied and all covenants, agreements and obligations of the Municipality to the holders of such Bonds shall be fully discharged and satisfied and shall thereupon cease, terminate and become void.

If the Municipality shall pay and discharge the indebtedness evidenced by any of the Bonds in the manner provided in either clause (a) or clause (b) above, then the registered owners thereof shall thereafter be entitled only to payment out of the money or Defeasance Obligations deposited as aforesaid.

Except as otherwise provided in this Section, neither Defeasance Obligations nor moneys deposited with the Registration Agent pursuant to this Section nor principal or interest payments on any such Defeasance Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest on said Bonds; provided that any cash received from such principal or interest payments on such Defeasance Obligations deposited with the Registration Agent, (A) to the extent such cash will not be required at any time for such purpose, shall be paid over to the Municipality as received by the Registration Agent and (B) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Defeasance Obligations maturing at times and in amounts sufficient to pay when due the principal and interest to become due on said Bonds on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Municipality, as received by the Registration Agent. For the purposes of this Section, "Defeasance Obligations" shall mean direct obligations of, or obligations, the principal of and interest on which are guaranteed by, the United States of America, or any agency thereof, obligations of any agency or instrumentality of the United States or any other obligations at the time of the purchase thereof are permitted investments under Tennessee law for the purposes described in this Section, which bonds or other obligations shall not be subject to redemption prior to their maturity other than at the option of the registered owner thereof.

Section 12. Federal Tax Matters Related to the Bonds.

(a) The Bonds are expected to be issued as federally tax-exempt bonds. If so issued, the Municipality hereby covenants that it will not use, or permit the use of, any proceeds of the Bonds in a manner that would cause the Bonds to be subjected to treatment under Section 148 of the Code, and applicable regulations thereunder, as an "arbitrage bond." To that end, the Municipality shall comply with applicable regulations adopted under said Section 148. The Municipality further covenants with the registered owners from time to time of the Bonds that it will, throughout the term of the Bonds and through the date that the final rebate, if any, must be made to the United States in accordance with Section 148 of the Code, comply with the provisions of Sections 103 and 141 through 150 of the Code and all regulations proposed and promulgated thereunder that must be satisfied in order that interest on the Bonds shall be and continue to be excluded from gross income for federal income tax purposes under Section 103 of the Code.

(b) It is reasonably expected that the Municipality will reimburse itself for certain expenditures made by it in connection with the Projects by issuing the Bonds. This resolution shall be placed in the minutes of the Governing Body and shall be made available for inspection by the general public at the office of the Governing Body. This resolution constitutes a declaration of official intent under Treas. Reg. §1.150-2.

(c) The appropriate officers of the Municipality are authorized and directed, on behalf of the Municipality, to execute and deliver all such certificates and documents that may be required of the Municipality in order to comply with the provisions of this Section related to the issuance of the Bonds.

Section 13. Continuing Disclosure. The Municipality hereby covenants and agrees that it will provide annual financial information and event notices if and as required by Rule 15c2-12 of the Securities Exchange Commission for the Bonds. The Mayor is authorized to execute at the closing of the sale of the Bonds an agreement for the benefit of and enforceable by the owners of the Bonds specifying the details of the financial information and event notices to be provided and its obligations relating thereto. Failure of the Municipality to comply with the undertaking herein described and to be detailed in said closing agreement shall not be a default hereunder, but any such failure shall entitle the owner or owners of any of the Bonds to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the Municipality to comply with their undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

Section 14. Reasonably Expected Economic Life. The "reasonably expected economic life" of the Project within the meaning of Sections 9-21-101, et seq.,

Tennessee Code Annotated, is greater than the term of the Bonds financing said Projects.

Section 15. Resolution a Contract. The provisions of this resolution shall constitute a contract between the Municipality and the registered owners of the Bonds, and after the issuance of the Bonds, no change, variation or alteration of any kind in the provisions of this resolution shall be made in any manner until such time as the Bonds and interest due thereon shall have been paid in full.

Section 16. Separability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section 17. Repeal of Conflicting Resolutions and Effective Date. All other resolutions and orders, or parts thereof in conflict with the provisions of this resolution, are, to the extent of such conflict, hereby repealed and this resolution shall be in immediate effect from and after its adoption.

Adopted and approved this the 17th day of July 2018.

GARY CHESNEY, MAYOR

ATTEST:

ANTHONY W. COX, CITY ADMINISTRATOR

Councilmember Senter made a motion to approve Resolution No. 12-18. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Resolution No. 12-18

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 17th day of July 2018.

MAYOR

ATTEST:

CITY ADMINISTRATOR

Councilmember Bivens made a motion to approve the bid from Andrews & Hoskins Construction, Inc., for a total sum of \$1,518,900 for the Heritage Park Phase I project. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Councilmember Alvis made a motion to approve Contract Amendment No. 1 between the City of Morristown & Lose Design adjusting the fee from six point twenty five percent (6.25%) of construction cost to five point seventy five percent (5.75%) of construction cost for the Morristown Public Works Compound project. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Alvis made a motion to approve Contract Amendment No. 1 between the City of Morristown and Lose Design adjusting the fees from \$77,826 to

\$137,826 for the Morristown Park Grant projects. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Councilmember Pedigo made a motion to approve Change Order No. 1 between the City of Morristown and East Tennessee Turf and Landscaping in the amount of \$301,000 to install conduit necessary for electric and fiber utilities at the Public Works Compound site. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Councilmember Alvis made a motion to approve the Contract between the City of Morristown and Lose Design for Community Center Design; Task No. 1 Concept Plan \$25,000, Task No. 2 Schematic Design twenty five percent (25%) of five point eighty five percent (5.85%) of construction cost plus \$20,500 for aquatics design. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve the bid from Whaley Construction, LLC in the amount of \$591,899.40 for the Freddie Kyle Greenway project, pending approval from the Tennessee Department of Transportation (TDOT). Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Councilmember Smith made a motion to approve the bid from King General Contractors in the amount of \$459,505.80 for the South Cumberland Stormwater Project. Councilmember Bivens seconded the motion and upon roll call; all voted "aye".

Councilmember Alvis made a motion to approve the bid from King General Contractors in the amount of \$446,758.70 for the Freshour Stormwater Project. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

Councilmember Smith made a motion to approve the 2019 Airport Maintenance Grant from Tennessee Department of Transportation (TDOT) in the amount of \$19,800. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Councilmember Pedigo made a motion to approve Amendment No. 4 to General Engineering Services Agreement with McGill Associates for general professional engineering services in the amount of \$40,000. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to accept Mayor Chesney's nomination to re-appoint Bryan Dickerson to the Morristown Utilities Commission Board for a

July 17, 2018

five (5) year term to expire on July 31, 2023. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Councilmember Alvis made a motion to approve the promotion of Tim Greene to Deputy Chief, Morristown Fire Department. Councilmember Bivens seconded the motion and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve the hiring of Tillman Strange and Robert Smith, as entry-level Firefighters. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

Mayor Chesney adjourned the July 17, 2018, City Council meeting at 5:53 p.m.

MAYOR

ATTEST:

CITY ADMINISTRATOR



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

SUITE 700, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TN 37243-0349
(615) 741-2848

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

July 10, 2018

The Honorable Gary Chesney, Mayor
City of Morristown
P.O. Box 1499
Morristown, TN 37816-1499

Dear Mayor Chesney:

I am pleased to inform you that your recent project funding request for Moore-Murrell Field has been approved by the Tennessee Department of Transportation, Aeronautics Division.

A grant totaling \$73,000.00 has been approved for the New REIL System, as itemized in your request. Of the project total, 5% will be the responsibility of the City of Morristown.

With this approval, the Aeronautics Division has prepared the enclosed contract. Please obtain required signatures and return it to our office within 15 days from the date the contract is transmitted from this office. If the signed contract is not received within that time frame, the contract is subject to cancelation.

We are pleased to provide funding for this airport improvement project. Our aviation facilities are critical to the economic development of communities across the state. We look forward to continuing our joint efforts to ensure their successful operations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michelle Frazier", with a stylized flourish at the end.

Michelle Frazier
Aeronautics Director

MF: tit

Enclosure

PSR: 6/28/2018

cc: Joey Barnard, Airport Manager



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

AERONAUTICS DIVISION
607 HANGAR LANE, BLDG 4219
NASHVILLE, TENNESSEE 37217
(615) 741-3208

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

July 17, 2018

The Honorable Gary Chesney, Mayor
City of Morristown
P.O. Box 1499
Morristown, TN 37816-1499

Re: Project Description: New REIL System
TAD Project No: 32555016219
TAD Contract No: AERO1917900

Dear Mayor Chesney:

Attached is the grant for the above referenced approved project. Please sign the grant, obtain the appropriate legal counsel's signature and email to: Aero.Grants@tn.gov.

In accordance with Section E: Grantee Match of the grant, a local deposit is required in the amount of \$3,650.00. Make your check payable to the Tennessee Department of Transportation and mail to:

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

Please return this grant, and your deposit (*note your TAD project number on deposit*) within the 15 day requested timeframe so that we may provide you with the required executed documentation necessary to proceed with this project.

If you have any questions, please give me a call at (615) 253-5926.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terri Tanner".

Terri Tanner
Transportation Program Monitor 2



GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

Begin Date 8/10/2018	End Date 8/9/2020	Agency Tracking # 40100-00619	Edison ID 57815		
Grantee Legal Entity Name City of Morristown			Edison Vendor ID 4108		
Subrecipient or Contractor <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor		CFDA # 20.106 Grantee's fiscal year end – June 30			
Service Caption (one line only) New REIL System					
Funding —					
FY	State	Federal	Interdepart mental	Other	TOTAL Grant Contract Amount
2019	\$3,650.00	\$65,700.00		\$3,650.00	\$73,000.00
TOTAL:	\$3,650.00	\$65,700.00		\$3,650.00	\$73,000.00
Grantee Selection Process Summary					
<input checked="" type="checkbox"/> Competitive Selection			For every project, the airport owner, sponsor or educational program must submit a letter of request and an application to the Aeronautics Division. The Aeronautics Division staff reviews all project requests monthly. The review is based on the Division's established criteria and policies. The review results are presented to the Commissioner for approval. Grant award amounts will be based upon available funds and the amount requested, and such funding will be continued in order of application approval.		
<input type="checkbox"/> Non-competitive Selection			Describe the reasons for a non-competitive grantee selection process.		
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				CPO USE - GG	
Speed Chart (optional)	Account Code (optional) 71302				

VENDOR ADDRESS: 1

LOCATION CODE: MAIN

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

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

Grantee Edison Vendor ID # 4108

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. The purpose of this Grant shall be to sponsor a project for the further development of a public airport under Tennessee Code Annotated 42-2-203 and the Airport and Airway Improvement Act of 1982, Title 49 of the United States Code or Tennessee Code Annotated 4-3-2313 and 2314, Aeronautics Economic Development Fund. Pursuant to these provisions, the State shall be designated as the party to apply for, receive, and disburse all funds to be used in the payment of the costs of said project or as reimbursement of costs incurred. The Grantee shall be a recipient of funds from the State Transportation Equity Fund and/or Federal Airport Improvement Program, and/or Aeronautics Economic Development Fund, and shall undertake an airport improvement project.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.
- a. this Grant Contract document with any attachments or exhibits (excluding the items listed at subsections b. and c., below);
 - b. the State grant proposal solicitation as may be amended, if any;
 - c. the Grantee's proposal **Attachment One** incorporated to elaborate supplementary scope of services specifications.
- A.4. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as **Attachment Two**, is incorporated in this Grant Contract.

B. TERM OF CONTRACT:

- B.1. This Grant Contract shall be effective on **8/10/2018** ("Effective Date") and extend for a period of **twenty-four (24) months** after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.
- B.2. Renewal Options. This Grant Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to three (3) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed **Seventy-Three Thousand Dollars and No Cents (\$73,000.00)** ("Maximum Liability"). The Grant Budget, attached and incorporated as **Attachment Three** is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Department of Transportation-Aeronautics Division
aero.grants@tn.gov

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

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

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

C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State.

- a. The Grant Budget specifies a Grantee Match Requirement and the final grant disbursement reconciliation report shall detail all Grantee expenditures recorded to meet this requirement.
 - i. No Grantee expenditure shall be recorded and reported toward meeting a Grantee Match Requirement of more than one grant contract with the State.
 - ii. The final grant disbursement reconciliation report shall specifically detail the exact amount of any Grantee failure to meet a Match Requirement, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the Grant Budget column "Grant Contract," shall be reduced by the amount that the Grantee failed to contribute to the Total Project as budgeted.
- b. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract (including any adjustment pursuant to subsection a.ii. above), the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
- c. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee

costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.

- d. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - e. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.
- C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following, properly completed documentation.
- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once this form is received by the State, all payments to the Grantee under this or any other grant contract will be made by automated clearing house ("ACH").
 - b. The Grantee shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Grantee's

Federal Employer Identification Number or Social Security Number referenced in the Grantee's Edison registration information.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal

contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

The State:

Terri Tanner,
Transportation Program Monitor 2
TN Dept. of Transportation-Aeronautics Division
607 Hangar Lane, Bldg. 4219
Nashville, TN 37217
Telephone: 615-741-3208
Email: Teresa.Tanner@tn.gov

The Grantee:

Gary Chesney, Mayor
City of Morristown
P.O. Box 1499
Morristown, TN 37816-1499
Email Address: kmorilak@mymorristown.com
Telephone #: 423.581.0100
FAX #: 423.585.4699

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

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

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise

unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

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

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

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

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

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

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

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

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

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

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

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.

- D.18. Annual and Final Reports. The Grantee shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Grantee shall submit a final report within three (3) months of the conclusion of the Term. For grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Grantee shall submit annual and final reports to the Grantor State

Agency and the Department of Finance and Administration ("F&A"). Send electronic copies of annual and final reports to F&A at fa.audit@tn.gov. At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.

- D.19. **Audit Report.** The Grantee shall be audited in accordance with applicable Tennessee law.

If the Grantee is subject to an audit under this provision, then the Grantee shall complete **Attachment Four.**

When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

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

- D.20. **Procurement.** If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, procurements by the Grantee shall be competitive where practicable. For any procurement for which reimbursement is paid under this Grant Contract, the Grantee shall document the competitive procurement method. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification for the decision and for the use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.318—200.326 when procuring property and services under a federal award.

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

- D.21. **Strict Performance.** Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

- D.22. **Independent Contractor.** The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

- D.23. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Grantee or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or

otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.
- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. Charges to Service Recipients Prohibited. The Grantee shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided pursuant to this Grant Contract.
- D.27. No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.
- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions

agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.

- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.34. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.

- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Grantee to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Grantee shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E.3. Federal Funding Accountability and Transparency Act (FFATA).

This Grant Contract requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable FFATA requirements, including but not limited to those below, are met and that the Grantee provides information to the State as required.

The Grantee shall comply with the following:

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

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

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Grantee's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial

Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

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

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

- E.4. Equal Opportunity. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.
- E.5. Federal Equal Opportunity Clause for Federally Assisted Construction Contracts. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.
- E.6. Davis-Bacon Act and Copeland Anti-Kickback Act. As a condition for receipt of grant funds, the Grantee agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and the Copeland Anti-Kickback Act at 18 U.S.C. § 874 et seq., as those sections are amended from time to time during the term.
- E.7. Grantee Match. Upon execution of this grant contract, the Grantee will be required to deposit its share of the estimated total project cost to the State.

Additional deposits will be required if actual costs exceed the estimated costs. Any excess in the amount deposited above actual costs will be refunded.

If the cost of this project increases by more than fifteen percent (15%) of the estimated grant contract amount during the progress of the work, the parties agree to enter into a supplemental agreement setting out the respective financial obligations of the State, Grantee, and the Federal Airport Improvement Program.

- E.8. Airport Assurances from Sale or Disposal of Land, Properties, Structures or Materials Related to Airport. The airport owner shall not sell or otherwise dispose of the property identified herein

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

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

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

- E.9. Airport Operations. For all grants that total fifty thousand dollars (\$50,000.00) or more, as consideration for receiving this Grant from the State, the Grantee agrees to operate and maintain the Airport for a period of twenty (20) years from the effective date of this Grant Contract.
- E.10. Compliance with FAA Regulations. For all grants involving federal funds, the Grantee agrees to accomplish the project in compliance with the terms and conditions contained in the U. S. Department of Transportation Federal Aviation Administration *Terms and Conditions of Accepting Airport Improvement Program Grants* hereby incorporated into this document by reference. Said document is on file in the Tennessee Department of Transportation, Aeronautics Division Office. These assurances can also be located on the FAA Website at www.faa.gov/airports/aip/grant_assurances
- E.11. No Retainage Allowed. The Grantee may not withhold retainage on progress payments from the prime contractor and the prime contractor may not withhold retainage from their subcontractors.
- E.12. Printing Authorization. The Grantee agrees that no printing/publication shall be printed pursuant to this Grant Agreement without the prior authorization of the State even if printing costs are included in the budget line items, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement. The Grantee and its employees may publish the results of the research in whole or in part as they deem appropriate without authorization by the State if it is at no cost to the Grantor State Agency.
- E.13. Competitive Procurements. Should this Grant Agreement provide for the reimbursement of the cost of goods, materials, supplies, equipment, or contracted services; such procurements shall be made on a competitive basis, where practicable. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement.

IN WITNESS WHEREOF,

CITY OF MORRISTOWN:

32-0162-19

GRANTEE SIGNATURE

DATE

GARY CHESNEY, MAYOR

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

GRANTEE LEGAL COUNSEL'S SIGNATURE

DATE

DEPARTMENT OF TRANSPORTATION:

JOHN C. SCHROER, COMMISSIONER

DATE

**JOHN H. REINBOLD, GENERAL COUNSEL
APPROVED AS TO FORM AND LEGALITY**

DATE

City of Morristown

Incorporated 1855

ATTACHMENT ONE
PAGE ONE



June 7, 2018

Director Michelle Frazier
Tennessee Department of Transportation
Aeronautics Division
607 Hangar Lane
Nashville, TN 37217

Director Frazier:

The City of Morristown hereby requests financial assistance from the Tennessee Department of Transportation in the amount of \$73,000 for the assistance of replacement of REILS at the Morristown Regional Airport. This is safety project. Approved funding will allow the City of Morristown to replace existing REILS that are antiquated. Repair parts are scarce.

Attached is our engineer, Michael Baker International's estimate of work on this project. The City of Morristown has appropriated funds for the local share of the proposed improvements. Please feel free to contact me or Mr. Joey Barnard, Assistant City Administrator, should you need additional information or have questions associated with this request.

Sincerely,


Mr. Louis "Doe" Jarvis, Chairman
Morristown Airport Commission

REQUEST FOR STATE FUNDING
FOR AIRPORT IMPROVEMENT

ATTACHMENT ONE
PAGE TWO

Airport: Moore-Murrell Field
Project Title: New REIL System
Project Description: New REIL System

UPIN: BCG0002414
Submitted By: Joey Barnard
Date Submitted: 5/23/2018 6:44:05PM
Project Manager: Chuck Hoskins

Applicant: City of Morristown
Phone: 423-586-2483

Project in CIP?: Not Proposed Date Entered in CIP:

Explanation of Need: Existing REILS System is antiquated. Repair parts are scarce and current system manufacturer no longer exists

Estimated Cost:

Fiscal Year: 2,018
Federal: \$65,700
State: \$3,650
Local: \$3,650
Other:

Total: 100%

Matching Funds Available?: 3,650.00

Comments:

TDOT USE ONLY

Staff Recommended:

Approved: ☒

Rejected:

Moved:

PSR Signature:



Date:

7/10/18

TAC Signature:

Date:

Federal Award Identification Worksheet

Subrecipient's name (must match registered name in DUNS)	
Subrecipient's DUNS number	
Federal Award Identification Number (FAIN)	3-47-SBGP-52-2017
Federal award date	October, 2017
CFDA number and name	20.106
Grant contract's begin date	8/10/2018
Grant contract's end date	8/9/2020
Amount of federal funds obligated by this grant contract	65,700.00
Total amount of federal funds obligated to the subrecipient (SPONSOR: TOTAL Federal dollars deposited into YOUR account in current FY (7/18-6/19) from ALL agencies) MUST be UPDATED every 6 months and uploaded into BlackCat Documents	
Total amount of the federal award to the pass-through entity (Grantor State Agency)	13,276,468
Name of federal awarding agency	Federal Aviation Administration
Federal Aviation Administration Memphis Airports District Office Phillip Braden, Manager 2600 Thousand Oaks Blvd., Suite 2250 Memphis, TN 38118 901-322-8180	TN Department of Transportation Aeronautics Division 607 Hangar Lane, Bldg. 4219 Nashville, TN 37217 615-741-3208
Is the federal award for research and development?	N/A
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	N/A

Federal Award Identification Worksheet (FAI) is a required document; it must be completed and returned with signed grant for execution, with an updated copy loaded into BlackCat (32555016219) every six (6) months.

Any questions please contact your Program Monitor, **Terri Tanner**, at 615-741-3208.

GRANT BUDGET				
City of Morristown: New REIL System			AERO-19-179-00	
The Grant Budget line-item amounts below shall be applicable only to expenses incurred during the following				
Applicable Period:		BEGIN: 8/10/2018	END: 8/9/2020	
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE MATCH	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award ²	\$69,350.00	\$3,650.00	\$73,000.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11. 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	GRAND TOTAL	\$69,350.00	\$3,650.00	\$73,000.00

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

² Applicable detail follows this page if line-item is funded.

³ A Grantee Match Requirement is detailed by this Grant Budget, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the "Grant Contract" column above, shall be reduced by the amount of any Grantee failure to meet the Match Requirement.

GRANT BUDGET LINE-ITEM DETAIL:

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
New REIL System	\$73,000.00
TOTAL	\$73,000.00

TAD Project # 32555016219

Project Breakdown:	\$65,700.00	90% Federal # 52 (NPE)
	\$ 3,650.00	05% State
	<u>\$ 3,650.00</u>	05% Local
Grant Total:	\$73,000.00	100%

ATTACHMENT FOUR

Parent Child Information

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

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

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

Grantee's Edison Vendor ID number:

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

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

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

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: _____

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

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

Parent entity's contact information

Name of primary contact person: _____

Address: _____

Phone number: _____

Email address: _____

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

Work Authorization Number 18-1

Date: July 31, 2018

General Services
(Project Identification No.)

It is agreed to undertake the following work in accordance with the provisions of the Agreement between the City of Morristown (OWNER) and Michael Baker International, Inc. (ENGINEER) dated December 31, 2017.

Scope of Services:

Provide General Consulting services not part of a specific and separate Work Authorization. Services shall be limited to work items specific to Morristown Regional Airport (MOR). Work items include, but are not limited to:

- Preliminary/Schematic design and evaluation
- Airport Capital Improvements Program assistance
- Coordination with state funding agencies
- Attend airport related meetings as directed by OWNER
- Miscellaneous airport consulting needs requiring professional services as directed by OWNER.

ENGINEER shall not commence any work under this Work Authorization unless explicitly directed by an authorized OWNER representative in writing. ENGINEER billing under this Work Authorization shall provide work item descriptions with each invoice.

Time of Performance:

As agreed upon when necessary.

Compensation:

Hourly rates and overhead expenses shall be as listed within Attachment 'B' of the Professional Services Agreement.

- Basic Services – Hourly

TOTAL NOT TO EXCEED

\$10,000.00

Agreed as to Scope of Services, Time of Performance and Compensation:

OWNER:
CITY OF MORRISTOWN

ENGINEER:
MICHAEL BAKER INTERNATIONAL

Anthony Cox
Title: City Administrator

Thomas Montgomery, P.E.
Title: Vice President

Date: _____

Date: _____

EXHIBIT "A"

Work Authorization Number 14 – 2018 TAXIWAY RELOCATION PROGRAMMING PROJECT

Date: 11JUL18

TAD No. 31-555-0160-18
(Project Identification No.)

It is agreed to undertake the following work in accordance with the provisions of the Agreement between the **City of Morristown (OWNER)** and **Michael Baker International, Inc. (ENGINEER)** dated **December 31, 2017**.

Scope of Services TAXIWAY RELOCATION PROGRAMMING PROJECT:

The OWNER in conjunction with the Tennessee Department of Transportation, Aeronautics Division, has requested a scoping document be prepared for the taxiway relocation in order to assess the impacts and constraints associated with the relocation, a preliminary concept design approach is proposed. This will establish line and grade of the proposed alignment and provide information for the analysis of the components to be assessed. Services to be provided include:

1. CONCEPTUAL PLAN DEVELOPMENT

A taxiway corridor survey will be performed to provide updated topographic information for the preparation of a preliminary plan and profile. This survey will identify topography constraints and issues that may occur. A geotechnical sub-consultant will be used to perform taxiway centerline and adjacent airport pavement geotechnical investigations. This will aid in the preparation of preliminary pavement design calculations.

Preliminary Taxiway Layout Plans, including apron and runway connectors will be prepared along with preliminary grading and drainage design. The grading will help determine the impacts on adjacent properties and identify additional property needs. The City of Morristown requires Stormwater Management which includes practices, strategies, and controls used to maintain the quality and quantity of stormwater runoff at pre-development levels. Preliminary stormwater management analysis and alternatives will be performed.

From this preliminary alignment data, airport building conflicts will be evaluated and an airport buildings and hangars relocation/modification concept plan will be prepared.

2. ENVIRONMENTAL OVERVIEW

MBI personnel will perform a site visit to assess potential environmental issues. This will be followed by performing a Web-based review of potential impacts to environmental resources. An environmental resources summary narrative and associated exhibits and budget will be prepared.

3. AIRPORT PROPERTY OVERVIEW

A sub-consultant will perform a site visit to assess potential airport property issues. He will perform a review of Property Records to assess potential land acquisition needs and prepare a Land Acquisition Reconnaissance Summary Narrative with associated exhibits and budget. This will provide a more accurate assessment of property acquisition costs.

4. PROGRAM BUDGET DEVELOPMENT

Upon completion of the Conceptual Plan Development, MBI will prepare preliminary cost estimates based on quantities and information generated during this phase. Additional cost items will be identified during the Airport Property Overview and other phases.

A Preliminary Taxiway Relocation Development Program will be generated. This program will include a preliminary listing of projects, a proposed phased implementation plan, and budget estimates for construction and design of these individual projects.

5. PROGRAM COORDINATION

MBI is proposing several meetings to present data as it is received and conduct program progress meetings with Owner/TAD

Any additional services that may be needed that are outside the scope of services described above shall be compensated for in a separate agreement if necessary.

TIME OF PERFORMANCE:

<u>Task</u>	<u>Estimated Time</u>
• Project Application Submittal	3/30/2018
• TAD Review and Approval	4/27/2018
• Grant Execution	5/25/2018
• Project Kickoff & Survey Site Visit	Third Week in July 2018
• 50% Progress Meeting	45 Days from Kickoff Meeting
• 90% Review Meeting	30 Days from 50% Meeting
• Final Review Meeting	30 Days from 90% Meeting
• Project Closeout	To Be Determined

Compensation:

• Basic Services – 50% Programming Milestone (Lump Sum)	\$ 22,843.00
• Basic Services – 90% Programming Milestone (Lump Sum)	\$ 13,743.00
• Basic Services – Final Programming Document (Lump Sum)	\$ 13,422.00
• Basic Services – Construction Administration & Close-out	\$ 1,500.00
• Special Services – Not to Exceed	\$ 36,750.00

TOTAL NOT TO EXCEED

\$ 88,258.00

Agreed as to Scope of Services, Time of Performance and Compensation:

OWNER:
CITY OF MORRISTOWN

ENGINEER:
MICHAEL BAKER INTERNATIONAL, INC.

Title:

Title: Vice President

Date: _____

Date: _____

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ATTACHMENT B-1

**ENGINEER'S ESTIMATE OF COMPENSATION
BASIC SERVICES
WORK AUTHORIZATION NO. 14
MORRISTOWN REGIONAL AIRPORT
MORRISTOWN, TN
TAXIWAY RELOCATION PROGRAMMING PROJECT**

11-Jul-18

Phase / Activity

Hours Labor Rate Total

1. 50% PROGRAMMING MILESTONE

Labor

Senior Project Manager	4	\$184.00	\$736.00
Project Manager	31	\$161.00	\$4,991.00
Project Engineer	61	\$128.00	\$7,808.00
Junior Engineer	60	\$100.00	\$6,000.00
Sr. CADD Technician	27	\$72.00	\$1,944.00
Secretary/Technical Assistant	22	\$62.00	\$1,364.00
			<u>\$22,843.00</u>

Expenses

Travel to/ from Airport (2 Trips at \$75/trip):	\$150.00
Printing, Copying, Postage & Shipping	\$350.00
	<u>\$500.00</u>

Sub-Total 50% Programming Milestone:

\$23,343.00

Phase / Activity

Hours Labor Rate Total

2. 90% PROGRAMMING MILESTONE

Labor

Senior Project Manager	3	\$184.00	\$552.00
Project Manager	27	\$161.00	\$4,347.00
Project Engineer	29	\$128.00	\$3,712.00
Junior Engineer	24	\$100.00	\$2,400.00
Sr. CADD Technician	19	\$72.00	\$1,368.00
Secretary/Technical Assistant	22	\$62.00	\$1,364.00
			<u>\$13,743.00</u>

Expenses

Travel to/ from Airport (2 Trips at \$75 miles/trip):	\$150.00
Printing, Copying, Postage & Shipping	\$350.00
	<u>\$500.00</u>

Sub-Total 90% Programming Milestone

\$14,243.00

ATTACHMENT B-1

ENGINEER'S ESTIMATE OF COMPENSATION
BASIC SERVICES
WORK AUTHORIZATION NO. 14
MORRISTOWN REGIONAL AIRPORT
TAXIWAY RELOCATION PROGRAMMING PROJECT

11-Jul-18

<u>Phase / Activity</u>	<u>Hours</u>	<u>Labor Rate</u>	<u>Total</u>
3. FINAL PROGRAMMING DOCUMENT			
<u>Labor</u>			
Senior Project Manager	3	\$184.00	\$552.00
Project Manager	30	\$161.00	\$4,830.00
Project Engineer	24	\$128.00	\$3,072.00
Junior Engineer	24	\$100.00	\$2,400.00
Sr. CADD Technician	15	\$72.00	\$1,080.00
Secretary/Technical Assistant	24	\$62.00	\$1,488.00
			<u>\$13,422.00</u>
<u>Expenses</u>			
Travel to/ from Airport (2 Trips at \$75 miles/trip):			\$150.00
Printing, Copying, Postage & Shipping			\$350.00
			<u>\$500.00</u>
Sub-TotalFinal Programming			<u>\$13,922.00</u>
BASIC SERVICES - TOTAL LUMP SUM COMPENSATION			<u>\$51,508.00</u>

ATTACHMENT B-2

**ENGINEER'S ESTIMATE OF COMPENSATION
SPECIAL SERVICES
WORK AUTHORIZATION NO. 14
MORRISTOWN REGIONAL AIRPORT
MORRISTOWN, TN
TAXIWAY RELOCATION PROGRAMMING PROJECT**

11-Jul-18

Total

1.SURVEY FOR DESIGN

Subcontracted Services

Ground Surveys - Lump Sum \$16,500.00

Consultant's Administrative Fee (5%)* \$825.00

Sub-Total Survey for Design **\$17,325.00**

2.GEOTECHNICAL TESTING FOR DESIGN

Subcontracted Services- Allowance

Geotechnical Investigation - Lump Sum \$8,500.00

Consultant's Administrative Fee (5%)* \$425.00

Sub-Total Geotechnical for Design **\$8,925.00**

** Administrative Fee of 5% of subcontracted services in accordance with Section II, Paragraph B of the Master Agreement.*

3. ENVIRONMENTAL PLANNING ASSISTANCE

Subcontracted Services- Allowance

Environmental Planning - Lump Sum \$7,500.00

Consultant's Administrative Fee (5%)* \$375.00

Sub-Total Environmental Planning **\$7,875.00**

4. LAND ACQUISITION AND VALUATION ASSISTANCE

Subcontracted Services- Allowance

Land Acquisition and Valuation - Lump Sum \$2,500.00

Consultant's Administrative Fee (5%)* \$125.00

Sub-Total Land Acquisition and Valuation **\$2,625.00**

ATTACHMENT B-2

**ENGINEER'S ESTIMATE OF COMPENSATION
SPECIAL SERVICES
WORK AUTHORIZATION NO. 14
MORRISTOWN REGIONAL AIRPORT
MORRISTOWN, TN
TAXIWAY RELOCATION PROGRAMMING PROJECT**

11-Jul-18

FEE SUMMAARY

BASIC SERVICES - LUMP SUM	\$51,508.00
SPECIAL SERVICES - NOT TO EXCEED	\$36,750.00

GRAND TOTAL

\$88,258.00

EXHIBIT "A"

Work Authorization Number 15 – 2018 REIL SYSTEM RELACEMENT

Date: 26JUL18

TAD No. 31-555-XXXX-18
(Project Identification No.)

It is agreed to undertake the following work in accordance with the provisions of the Agreement between the **City of Morristown** (OWNER) and **Michael Baker International, Inc.** (ENGINEER) dated **December 31, 2017**.

Scope of Services REIL SYSTEM REPLACEMENT:

The existing REIL system is antiquated with replacement parts scarce. A new system is needed. The OWNER in conjunction with the Tennessee Department of Transportation, Aeronautics Division, has requested design and construction documents be prepared for the installation of a new system. Services to be provided include:

1. DESIGN SERVICES

Design documents will be prepared for the installation of a new system. These documents will provided a review of the existing system for any deficiencies that require correction and the purchase and installation of new lights. A construction safety plan will be prepared for the contractor's use during the installation. A Project Manual will be prepared for this work.

2. BID AND AWARD

MBI personnel will assist in the advertisement of the project, attend the pre-bid meeting, respond to Contractor questions during the bid period and open received bids in a public meeting. The bids will be reviewed for completeness and competency. A recommendation of project award will be prepared for the successful Contractor.

3. CONSTRUCTION ADMINISTRATION, RPR & CLOSE-OUT

MBI personnel will provide construction administration services including the review and processing of contractor pay requests. Site representation will be present during the construction to observe the construction process and be available to answer questions. Final close-out documents will be prepared for the completion of the grant with Tennessee Aeronautics Division.

Any additional services that may be needed that are outside the scope of services described above shall be compensated for in a separate agreement if necessary.

TIME OF PERFORMANCE:

<u>Task</u>	<u>Estimated Time</u>
• Project Application Submittal	5/18/2018
• TAD Review and Approval	6/25/2018
• Grant Execution	7/25/2018
• Design Kickoff	8/09/2018
• Bid and Award	September-October 2018
• Begin Construction	October 2018
• Construction Completion	December 2018
• Project Completion/Grant Closeout	February 2019

Compensation:

• Design Services – (Lump Sum)	\$ 4,937.00
• Bid and Award Services – (Lump Sum)	\$ 5,000.00
• CA, RPR & Close-out – (Lump Sum)	\$ 4,936.00

TOTAL NOT TO EXCEED **\$ 14,873.00**

Agreed as to Scope of Services, Time of Performance and Compensation:

OWNER:
CITY OF MORRISTOWN

ENGINEER:
MICHAEL BAKER INTERNATIONAL, INC.

Title:

Title: Vice President

Date: _____

Date: _____

MORRISTOWN AIRPORT HANGAR LEASE AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____ 2018, by and between the CITY OF MORRISTOWN, a municipal corporation with situs in Hamblen County, Tennessee, hereinafter called "LANDLORD" and D & R AERO, INC., a Delaware corporation, hereinafter called "TENANT".

Landlord does hereby lease unto Tenant that property situate in the First Civil District of Hamblen County, Tennessee located within the boundaries of that property known as the Morristown Airport and being more particularly described as Hangar No. 50 located at 5525 Old US 11E (the "leased property" or the "premises"), said premises to consist of approximately 4,800 square feet with a restroom and accompanying parking spaces, and upon the terms and conditions expressed herein:

1. **Rental and Term.** Tenant shall pay to Landlord the monthly rent of Fifteen Hundred Dollars (\$1500.00) in lawful money of the United States, throughout the entire term of this lease. The lease commencement date shall be the date hereof. The rental term shall at a minimum be for a two (2) month period, however should the Tenant so desire and the Landlord so agree, this term shall extend on a month-to-month basis. Rent shall be payable to Landlord at 100 West First North Street, Morristown, Tennessee 37814, or at such other place as Landlord may designate in writing.

2. **Real Property Insurance.** Tenant shall, at Tenant's sole cost and expense, keep the building insured against loss or damage by fire with extended coverage.

3. **Personal Property Insurance.** Tenant shall, at Tenant's sole cost and expense, be responsible for insurance on its personal property located at, on or in the premises. Tenant also agrees to maintain All Risk Physical Damage Insurance for an agreed upon declared value of the building structures, owned by Landlord and all insurable fixed improvements located on the Premises.

4. **Public Liability Insurance.** Tenant shall, at Tenant's sole cost and expense, maintain comprehensive general public liability insurance, with combined limits of at least One Million Dollars (\$1,000,000.00) for bodily injury and property damage.

5. **Designation of the Insured.** All policies of insurance shall name the Landlord and the Tenant as the insured, as their interest may appear.

6. **Utilities.** Tenant shall pay all charges for water, sewer, gas, electricity, light, heat, power and telephone or other communications services used, rendered or supplied upon or in connection with the leased property.

7. **Improvements and Repairs.** Tenant covenants that Tenant shall keep in good order and repair the interior of said premises. Tenant further shall be responsible for keeping in good order and repair any fixtures and appliances installed by Tenant.

8. **Exterior Repairs.** Tenant covenants that during the term of this lease Tenant will, at Tenant's sole cost and expense, keep in good order and repair the roof and the exterior of the premises.

9. **Use of Premises.** Tenant shall use the premises for hangar and incident parking purposes only. Tenant shall neither permit on the premises any act, sale, or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made or permitted to be made that shall result in waste of or on the premises, a public or private nuisance, or any improper, unlawful, or objectionable use. Tenant may not participate directly or indirectly in sales of aircraft at Morristown Airport.

10. **Abandonment of the Premises.** Tenant further covenants that if said premises at any time be abandoned or closed on a permanent basis, Landlord shall have in addition to all other rights and remedies provided by law, the right to terminate this lease and to pursue Landlord's remedies at law.

11. **Assignment and Subletting.** Tenant may not assign or sublet this lease without the prior written consent of Landlord.

12. **As Is.** The taking of possession of the leased premises by Tenant shall be conclusive evidence that Tenant accepts the same "as is" and "with all faults."

13. **Right of Entry.** Landlord and Landlord's representatives may enter the leased property, at any reasonable time, for the purpose of inspecting the leased property.

14. **Landlord Liability.** Landlord shall not be liable for injury or damage to person or property occurring within the leased premises, unless caused by or resulting from the negligence of Landlord or any of Landlord's agents, servants or employees.

15. **Condition of Premises Upon Lease Termination.** Tenant covenants that it will, upon the termination of this lease, deliver to Landlord the premises and any improvements constructed thereon and all appurtenances thereto peaceably and quietly in as good order and condition as same are or may hereafter be put by Tenant, ordinary wear and tear excepted.

16. **Real Property Taxation.** The leased premises are currently exempt from real property taxation, however should that status change, Tenant shall be responsible for its pro rata share.

17. **Miscellaneous.**

A. The specified remedies to which Landlord may resort under the terms of this lease are cumulative and are not to be exclusive of any other remedies or means of redress to which Landlord may be lawfully entitled in case of any breach or threatened breach by Tenant of any provision or provisions of this lease.

B. This lease, together with any written agreements which shall have been executed simultaneously herewith, contains the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this lease or in the simultaneous writings heretofore referred to. All prior understandings, terms or conditions are deemed merged in this lease. This lease cannot be changed or supplemented orally, but only by an agreement in writing.

C. If any provision of this lease shall be declared invalid or unenforceable, the remainder of the lease shall continue in full force and effect.

D. This lease shall be governed by, construed and enforced in accordance with the laws of the State of Tennessee.

E. The covenants, terms, conditions, provisions and undertakings in this lease or in any renewals thereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be construed as covenants running with the land; and wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs, executors, administrators, successors and assigns of such party, as if in each and every case so expressed.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

CITY OF MORRISTOWN, LANDLORD

By: _____
MAYOR

D & R AERO, INC., TENANT
By: D & R AERO, INC.

By: _____
(Authorized Officer)

AIRPORT COMMISSION

By: _____
DOE JARVIS, CHAIRMAN

AIA® Document A107™ – 2007

Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope

AGREEMENT made as of the twenty third day of July in the year 2018
(In words, indicate day, month and year.)

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

City of Morristown
100 West First North Street
Morristown, TN 37814

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

Andrews & Hoskins Construction, Inc. 5270 Cub Circle

Morristown, TN 37814

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

Heritage Park Phase I

The Architect:
(Name, legal status, address and other information)

Lose Design.
2809 Foster Ave.
Nashville, TN 37210
Telephone Number: 615-242-0040

The Owner and Contractor agree as follows.

Construction of Park Improvements, including Base Bid & Alternate No. 1, as submitted
on bid dated July 12, 2018.

ADDITIONS AND DELETIONS:

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

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

Init.

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User Notes:

(3B9ADA21)

TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
- 5 DISPUTE RESOLUTION
- 6 ENUMERATION OF CONTRACT DOCUMENTS
- 7 GENERAL PROVISIONS
- 8 OWNER
- 9 CONTRACTOR
- 10 ARCHITECT
- 11 SUBCONTRACTORS
- 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 13 CHANGES IN THE WORK
- 14 TIME
- 15 PAYMENTS AND COMPLETION
- 16 PROTECTION OF PERSONS AND PROPERTY
- 17 INSURANCE & BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

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

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

Init.

To be determined.

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

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than one hundred eighty (180) days from the date of commencement, or as follows:

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

Portion of Work	Substantial Completion Date
All work	180 day from Notice to Proceed

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

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

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☒ [x] Stipulated Sum, in accordance with Section 3.2 below

☐ [] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

☐ [] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be one million five hundred eighteen thousand nine hundred and zero cents (\$ 1,518,900.00), subject to additions and deductions as provided in the Contract Documents.

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

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

Alternate No. 1, See Attached Bid dated July 12, 2018.

§ 3.2.2 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
NA		

§ 3.2.3 Allowances included in the stipulated sum, if any:

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

Item	Allowance
NA	

§ 3.3 COST OF THE WORK PLUS CONTRACTOR'S FEE

§ 3.3.1 N/A.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

NA

§ 3.4 COST OF THE WORK PLUS CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

NA

§ 3.4.3 GUARANTEED MAXIMUM PRICE

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$ 1,518,900.00), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

See Attached Bid dated July 12, 2018.

§ 3.4.3.3 Unit Prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 3.4.3.4 Allowances included in the Guaranteed Maximum Price, if any:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Item	Allowance
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§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

ARTICLE 4 PAYMENTS

§ 4.1 PROGRESS PAYMENTS

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

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

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 21st day. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than twenty-one (21) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 Retainage, if any, shall be withheld as follows:

5%

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

Legal prevailing rate.

§ 4.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, the method of binding dispute resolution shall be as follows:

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

- ☐ Arbitration pursuant to Section 21.4 of this Agreement
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other (Specify)

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A107–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 6.1.2 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Bid Manual		June 13, 2018	

§ 6.1.3 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See Bid Manual dated June 13, 2018.

Section	Title	Date	Pages
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§ 6.1.4 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See Bid Manual dated June 13, 2018.

Number	Title	Date
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§ 6.1.5 The Addenda, if any:

Number	Date	Pages
Addendum #1	6/7/2018	2
Addendum #2	7/9/2018	2

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 6.

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

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

.2 Other documents:
Bid dated July 12, 2018

.3 Payment and Performance Bonds

(List here any additional documents that are intended to form part of the Contract Documents.)

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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User Notes:

(3B9ADA25)

§ 7.2 THE CONTRACT

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

§ 7.3 THE WORK

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

§ 7.4 INSTRUMENTS OF SERVICE

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

§ 7.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

§ 7.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 8.1.1 The Owner shall furnish all necessary surveys and a legal description of the site.

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

§ 8.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

ARTICLE 9 CONTRACTOR

§ 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

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

§ 9.2 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

§ 9.3 LABOR AND MATERIALS

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

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

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

§ 9.4 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further

warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

§ 9.5 TAXES

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

§ 9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

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

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

§ 9.7 ALLOWANCES

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

§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 SUBMITTALS

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

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

§ 9.10 USE OF SITE

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

§ 9.11 CUTTING AND PATCHING

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

§ 9.12 CLEANING UP

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

§ 9.13 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 9.14 ACCESS TO WORK

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

§ 9.15 INDEMNIFICATION

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

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

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

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

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

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

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

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

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

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

ARTICLE 11 SUBCONTRACTORS

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

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

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

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those

portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.

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

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

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect.

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

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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

ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.4.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 APPLICATIONS FOR PAYMENT

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used in reviewing the Contractor's Applications for Payment.

§ 15.1.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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

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

§ 15.2 CERTIFICATES FOR PAYMENT

§ 15.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.2.3.

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

§ 15.2.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.2.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.2.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;

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- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 15.3 PROGRESS PAYMENTS

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

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

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

§ 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

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

§ 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will

constitute a further representation that conditions stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

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

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 SAFETY PRECAUTIONS AND PROGRAMS

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

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

The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 HAZARDOUS MATERIALS

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property

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

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

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 The Contractor shall purchase from, and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.15. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 17.2 OWNER'S LIABILITY INSURANCE

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

§ 17.3 PROPERTY INSURANCE

§ 17.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

§ 17.3.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 17.3.3 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 12, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 17.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 12, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 17.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.4.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located, except, that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.4.

§ 19.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor.

§ 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 TERMINATION BY THE CONTRACTOR

If the Architect fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 TERMINATION BY THE OWNER FOR CAUSE

§ 20.2.1 The Owner may terminate the Contract if the Contractor

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

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

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

§ 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.8 and Sections 15.5.3 and 15.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

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

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

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

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

§ 21.6 Any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

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

§ 21.8 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

Init.

CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID – HERITAGE PARK – PHASE I

INVITATION TO BID

Office of Finance
100 West First North Street
Morristown, TN 37814

INTRODUCTION

The City of Morristown is accepting sealed bids for the Heritage Park – Phase I with specifications stated herein.

Proposer shall return bids in **SEALED** envelope to:

City of Morristown
Attn: Ashley Ahl, Purchasing Assistant
100 West First North Street
Morristown, TN 37814

Public opening of sealed bids will be held at the above address at the deadline date and time listed below.

DATE ISSUED:	June 13, 2018
BID TITLE:	Heritage Park – Phase I Bid Number: 1901
BID DEADLINE DATE & TIME:	July 12, 2018 at 3:00 pm Eastern Time (local prevailing time)
BID OPENING LOCATION:	Morristown City Center, Training Room on 1 st Floor
BID CONTACT:	Ashley Ahl, Purchasing Assistant
CONTACT PHONE:	423.585.4622
CONTACT EMAIL:	purchasing@mymorristown.com
PRE-BID MEETING	A non-mandatory prebid meeting will be held on Monday, June 25th at 3:00 pm Eastern Time (local prevailing time) Morristown City Center, Training Room on 1st Floor
QUESTIONS	The deadline to submit questions in writing is 4:00 pm Eastern Time on July 2, 2018. Questions to be submitted to Ashley Ahl.

**CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID - HERITAGE PARK - PHASE I
TERMS AND CONDITIONS**

1. REQUIREMENTS FOR SEALED BID SUBMISSION.

- a. COMPLETE, UNBOUND, ORIGINAL, sealed bid.
- b. Complete and original invitation to bid with "Bidder Initial" completed by authorized representative.
- c. All bids shall be submitted SEALED, envelope clearly marked with the bid name, date, and time ON THE OUTSIDE OF THE SEALED ENVELOPE.
- d. Copy of IRS W-9 Form.

2. BIDS RECEIVED ON TIME. Bids and amendments thereto, if received by the City of Morristown's Finance Office after the date and time specified for opening, will not be considered. It will be the responsibility of the BIDDER to see that the bid is received by the City of Morristown's Finance Office by the specified time and date. There will be no exceptions. Date of postmark will not be considered. Telephone, facsimile, electronic, and verbal bids will not be accepted. Any bid received after the opening date and time will remain unopened and on file. The City of Morristown will not be responsible for bids received late because of delays by a third-party delivery service, i.e., U.S. Mail, UPS, Federal Express, etc.

3. TAX EXEMPT. The City of Morristown is a tax-exempt entity. The successful vendor will be provided with an executed copy of tax exempt form.

4. ANTI-COLLUSION. The bidder certifies by signing this document that the bid is made without prior understanding, agreement, or accord with any person submitting a bid for the same services and that this bid is in all respects bona fide, fair, and not the result of any act of fraud or collusion with another person engaged in the same line of business or commerce. Any false statement hereunder constitutes a felony and can result in a fine and imprisonment, as well as civil damages.

5. AWARD IN WHOLE OR IN PART. The City of Morristown reserves the right to: award by item, groups of items, or total bid; to reject any and/or all bids in whole or in part, and to waive any informality if it is determined to be in the best interest of City of Morristown.

6. OPEN RECORDS ACT. Once the bid document is submitted to the City of Morristown and is opened, it constitutes a public record and is subject to open records requests pursuant to the Tennessee Open Records Act.

7. PAYMENT TERMS. The City of Morristown pays from monthly statements for services rendered. Payments are made within 15 days of the previous month's statement being received in the City of Morristown's Finance Office.

8. RECEIPT DOES NOT CONSTITUTE AWARD. Receipt of your bid by the City of Morristown is not to be construed as an award for services.

CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID - HERITAGE PARK - PHASE I

9. **AVAILABILITY OF FUNDS.** Obligations on those contracts that envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following years.
10. **AUTHORIZED SIGNATURE.** All bids must be signed by an authorized, responsible officer or employee having the authority to enter into contracts. Obligations assumed by such signature must be fulfilled.
11. **NO SUBMISSION.** If you choose to not respond to this sealed bid request, advise City of Morristown of your intent and state the reason. Failure to do so may risk removal of your name from our mailing list/e-mail list.
12. **KNOWLEDGE OF LAWS AND REGULATIONS.** The bidder agrees that all applicable Federal, State and Local laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout and they will be deemed to be included in the contract the same as though written in full. The bidder shall observe and comply with all such laws, ordinances, and regulations and shall protect and indemnify the City of Morristown and its representatives against any claim or liability arising from or based on any violations of the same, whether by the bidder, the bidder's subcontractors, suppliers, or others by the bidder or the employee of any of them.
13. **DRUG-FREE WORKPLACE.** The bidder understands that the City of Morristown operates a drug-free workplace program. Any good or service provided to the City of Morristown by the bidder must comply with all State and Federal drug-free workplace laws, rules and regulations. The bidder agrees to comply by the execution of the "Bidder Initial" located at the bottom of the page.
14. **DIRECT CONTACT PROHIBITED.** Direct contact with City Departments other than the City of Morristown's Finance Office representatives on the subject of this bid is expressly forbidden except with the foreknowledge and permission of the City of Morristown Finance's Office.
15. **NON-DISCRIMINATION.** During the performance of this contract, the bidder agrees as follows: he/she will not discriminate against any employees or applicants for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or state law relating to discrimination in employment, except where one or more of these are a bona fide occupational qualification reasonably necessary to the normal operations of the bidder. The bidder agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
16. **RIGHT TO WITHDRAWAL.** Bidders have the right to request withdrawal of their bid from consideration due to error by giving notice at any time before and not later than two (2) days after bids are publicly opened.
17. **ORIGINAL BID DOCUMENT.** The original bid document maintained by the City of Morristown's Finance Office shall be considered the official copy document.

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**CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID - HERITAGE PARK - PHASE I**

18. **CLOSED FOR BUSINESS.** If the City of Morristown is closed for business at the time scheduled for the bid opening, for whatever reason, sealed bids will be accepted and opened on the next business day of the City, at the originally scheduled hour.
19. **BID APPROVAL BY LEGISLATIVE BODY.** The bid awarding must be approved by the City of Morristown, City Council.
20. **REFERENCE TO BRAND NAMES.** Any reference to brand names, trade names, model numbers, catalog numbers or other descriptions peculiar to any item is made to establish a required level of quality and functional capabilities and is for reference only; it is not intended to exclude other products of that level. Please include with bid any specifications, brochures, catalogs, etc., or other data as will provide adequate basis of determining the quality and functional capabilities of the product offered if applicable.
21. **VENDOR POOR PERFORMANCE.** The City of Morristown may cancel the contract with the vendor at any time for vendor poor performance. Cancellation shall not release the vendor from legal remedies available to the City of Morristown.
22. **FORCE MAJEURE.** The City of Morristown or bidder shall not be liable for any failure of or delay in the performance of this contract for the period that such delay or failure is due to causes beyond reasonable control, including but not limited to acts of God, labor disputes, government orders or any other force majeure event.
23. **PURCHASE ORDERS.** The City of Morristown utilizes purchase orders for ordering goods and/or services. An order may not be fulfilled without a purchase order number from the City of Morristown.
24. **IRAN DIVESTMENT ACT.** By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each part thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to TCA 12-12-106.
25. **PAST PERFORMANCE.** If it is determined to be in the best interest of the City of Morristown, the City reserves the right to reject any proposal based on unsatisfactory past performance.
26. **ADDENDA.** In the event that it becomes necessary to revise any part of this bid, written addenda will be issued. Any and all addenda will be numbered in sequence, dated as of the date of issue, and sent via fax or email to all prospective proposers. The proposer shall acknowledge receipt of each addendum by signing in the space provided on the issued addendum and by submitting all addenda with their bid.
27. **QUESTIONS.** All questions shall be directed to the bid contact listed on the first page of this document unless otherwise stated. All communication shall be received by email to purchasing@mymorristown.com.

**CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID – HERITAGE PARK – PHASE I**

Project Description

The project includes mass grading of the site; construction of a new parking area, two structures, and a concrete plaza with brick paver banding; installation of a prefabricated restroom building (building provided by the City); resurfacing and restriping of existing parking lots; concrete sidewalks throughout the site; storm, water, sanitary, and electrical utilities; and landscape improvements. Construction of an additional parking area is included in the project as an alternate bid item.

Rock Classification

For this project all excavation below finish grade will be unclassified and no separate payment will be made for rock.

Earthwork

For this project all earthwork will be unclassified.

Alternate 1

Sidewalk connection from existing north parking lot including concrete sidewalk, pedestrian crossing and signage, and stairs and handrail; and restriping existing parking lot.

Alternate 2

Includes all work in Alternate 1, milling and overlaying the existing parking lot pavement, and construction of concrete sidewalk along the perimeter of both sides of the existing parking lot. (Note that lump sum price to only reflect work under Alternate 2).

Alternate 3

Demolish and remove existing southern parking lot and drive; construct new parking lot and 24 foot wide drive with concrete curb and gutter, asphalt paving, ADA access, and landscaping.

Alternate 4

Construction of concrete sidewalk along west side of entry drive (from point abutting walk between stair and crosswalk to E 6th North Street).

Item

Lump Sum Price

Base Bid

Heritage Park Phase 1 – Base Bid

\$1,469,000.00

Written

One million four hundred sixty nine thousand dollars
400,100's

Alternates:

1. Alternate 1

\$49,900.00

Written

Forty nine thousand nine hundred
400,100's

Bidder Initial

Lab

CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID - HERITAGE PARK - PHASE I

2. Alternate 2 (Note: Provide Price for work in Alternate 2 only, do not include price for work covered under Alternate 1)

\$ 91,000.00

Written Twenty one thousand $\frac{1}{2}$ 00/100's

3. Alternate 3

\$ 211,000.00

Written Two hundred eleven thousand $\frac{1}{2}$ 00/100's

4. Alternate 4

\$ 25,700.00

Written Twenty five thousand seven hundred $\frac{1}{2}$ 00/100's

Total Bid (Base Bid + Alternates)

\$ 1,796,700.00

Materials and Workmanship Warranty Period

Warranty	- 1yr	
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Warranty & Service Information

Manufacturer's standard warranty shall apply to all materials that are warranted for longer than one year. Warranty will begin on date the project is accepted by the owner.

CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID - HERITAGE PARK - PHASE I

VENDOR INFORMATION and ANTI-COLLUSION STATEMENT

Please print or type clearly. Complete each section entirely and verify for accuracy.

By signing this form the proposer agrees that he/she has not divulged to, discussed, or compared his/her bid with other proposers and has not colluded with any other proposer or parties regarding the bid whatsoever. Note: no premiums, rebates or gratuities to any employee or agent are permitted with, prior to, or after any delivery of service and or materials. Any such violation will result in the cancellation and/or return of material (as applicable) and the removal from the bid list and could constitute a felony and result in a fine, imprisonment, as well as civil damages.

In compliance with this sealed bid invitation, and subject to all the conditions thereof, the undersigned offers, if this bid is accepted, to furnish any or all of the items and/or services as described herein. The undersigned certifies that he/she has read, understands, and agrees to all terms, conditions, and requirements of this bid, and is authorized to contract on behalf of the firm named below. This form must be signed personally by the proposer or the proposer's authorized agent. All signatures must be original and not photocopies.

COMPANY NAME:	Andrew & Hoskins Construction, Inc.
CONTACT PERSON:	Leslie A Hoskins
CONTACT PERSON TITLE:	President
SIGNATURE OF AUTHORIZED REPRESENTATIVE:	Leslie A Hoskins
FEDERAL TAX ID # (or Social Security #, if applicable)	62-1253698
LICENSE #	22722
STREET ADDRESS:	5270 Cub Creek
CITY, STATE, ZIP:	Morristown TN 37814
TELEPHONE NUMBER:	423-581-1604
FAX NUMBER:	423-581-2724
EMAIL:	leslie@andrewsconstructioninc.net
DATE:	July 12, 2018

**By signing this form, the proposer signifies understanding and agreement with the City of Morristown's Terms and Conditions.

Bidder Initial 

CITY OF MORRISTOWN, TENNESSEE
INVITATION TO BID - HERITAGE PARK - PHASE I

THE CITY OF MORRISTOWN, TENNESSEE
COMPANY/CONTRACTOR AFFIDAVIT FORM
Conflict of Interest Statement

THE AFFIANT STATES TO CITY OF MORRISTOWN, TENNESSEE:

I (WE) HEREBY CERTIFY THAT IF THE CONTRACT IS AWARDED TO OUR FIRM THAT NO MEMBER OR MEMBERS OF THE GOVERNING BODY, ELECTED OFFICIAL OR OFFICIALS, EMPLOYEE OR EMPLOYEES OF SAID CITY OF MORRISTOWN, TENNESSEE, OR ANY PERSON REPRESENTING OR PURPORTING TO REPRESENT CITY OF MORRISTOWN, TENNESSEE, OR ANY FAMILY MEMBER INCLUDING SPOUSE, PARENTS, CHILDREN OF SAID GROUP, HAS RECEIVED OR HAS BEEN PROMISED, DIRECTLY, OR INDIRECTLY, ANY FINANCIAL BENEFIT, BY WAY OF FEE, COMMISSION, FINDER'S FEES OR ANY OTHER FINANCIAL BENEFIT ON ACCOUNT OF THE ACT OF AWARDED AND/OR EXECUTING THE CONTRACT.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS FULL AUTHORITY TO BIND THE COMPANY AND THAT HE/SHE HAS PERSONALLY REVIEWED THE INFORMATION CONTAINED IN THIS SEALED BID, INCLUDING ALL ATTACHMENTS, ENCLOSURES, APPENDICES, ETC. AND DO HEREBY ATTEST TO THE ACCURACY OF ALL INFORMATION CONTAINED IN THIS BID, INCLUDING ALL ATTACHMENTS, ENCLOSURES, EXHIBITS, ETC.

THE UNDERSIGNED ACKNOWLEDGES THAT ANY MISREPRESENTATION WILL RESULT IN IMMEDIATE DISQUALIFICATION FROM ANY CONTRACT CONSIDERATION.

THE UNDERSIGNED FURTHER RECOGNIZES THAT THE CITY OF MORRISTOWN CITY COUNCIL HAS THE RIGHT TO MAKE THE CONTRACT AWARD FOR ANY REASON CONSIDERED IN THE BEST INTEREST OF CITY OF MORRISTOWN.

This certification shall be included with the bid. Failure of this properly executed document to be included with the bid shall render the bid as incomplete and void.

COMPANY NAME Andrews & Hoskins Construction Inc

NAME (PRINT) Leslie A Hoskins PHONE 423-581-1604

TITLE President FAX 423-581-2724

SIGNATURE Leslie A Hoskins DATE July 12, 2018

(TO BE COMPLETED BY NOTARY)

STATE OF: TN

COUNTY OF: Hamblen

Before me personally appeared Leslie A Hoskins with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing for the purposes therein contained.

Witness my hand and seal at office this 30th day of July 2018
Bethany K... Notary Public

My commission expires: 4-2-19

Bidder Initial LH

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Tennessee

County of Hamblen


Leslie A Hoskins, being first duly sworn, deposes and says that;

1. The undersigned is the (owner, partner, officer, representative, or agent) of Andrews & Hoskins Construction Inc, the bidder submitting the attached bid.
2. Bidder is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
3. Neither the said bidder nor any of its officer, partners, owners, agents, representatives, employees or parties in interest, including this affiant has in any way collude, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit an collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, or, to fix any overhead, profit, or cost element of the bid price or unlawful agreement any advantage against the City of Morristown or any person interested in the proposed contract.
4. The price(s) quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agent, representatives, owners, employees, or parties in interest including this affidavit.

Andrews & Hoskins Construction Inc
Name of Bidder

Leslie A Hoskins, President
Printed Name and Title

Sworn to and subscribed before me, a Notary Public for the above state and county, on
This July day of 12 2018


Notary Public
My Commission Expires 4-2-2022

END OF SECTION

BIDDER AFFIDAVIT ON COMPLIANCE WITH DRUG-FREE WORKPLACE ACT AND CERTIFICATE

State of Tennessee

County of Hamblen

Bidder, after being first duly sworn, affirms that it has a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9, in effect at the time of submission of its bid, at least to the extent required of governmental entities. Bidder affirms that:

1. It has received a Certificate of Compliance with the applicable sections of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this affidavit; or
2. It operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005 and 3008 of the City of Morristown Employee Handbook and shall, upon request, provide documentation of such program to the city.

Andrew & Hoskins Construction Inc
Name of Bidder

Leslie A Hoskins, President
Printed Name and Title of Principal Officer

Leslie A Hoskins
Signature of Principal Officer

Sworn to and subscribed before me a Notary Public for the above state and county, on
This July 12 day of 2019 2019



My Commission Expires

END OF SECTION

ADDENDUM #1

Date: June 27, 2018
Project No. 16137-2
Project Name: Heritage Park Phase I

This addendum supersedes and supplements all portions of the bidding documents and becomes part of the Contract Documents for the above-referenced project.

Failure to acknowledge this addendum in the Bid Form may result in the Bid being deemed non-responsive.

Where any original item is amended, voided, or superseded hereby, the provision of such item not so specifically amended, voided, or superseded shall remain in effect.

NARRATIVE:

This addendum includes revisions to the specifications, including adding a draft form of the Agreement, AIA Document A101, notes from the prebid meeting, and questions that were discussed during the prebid meeting or recieved separately by 06/26/2018.

The following items were discussed at the prebid meeting:

1. The scope of the project was reviewed as outlined in the Project Manual. Listed alternates were described as outlined in the Project Manual.
2. The Contract Time is 180 days for the entire project. Liquidated damages for the project are set at \$300 / day.
3. Bidders must follow the bid specification and state requirements in completing the outside of the bid envelope and complete all required forms.
4. Bids will be opened at 3:00 pm EST, 7/12/2018 in the First Floor Training Center at the City of Morristown.
5. Plans may be obtained by contacting Lose Design. Contact person is Marla Simmons at 615-242-0040.
6. **The deadline for questions is 4:00 PM EST on July 2, 2108.**
7. **The bid date has been changed for the project. Bids must be received by 3:00 pm Eastern Time on July 12, 2018.**

Clarifications

1. There is no geotechnical report for this site. All earthwork is unclassified.

Project Drawing Revisions

1. None

Project Specification Revisions

1. Bidder's Information – Revised to reflect updated Bid Date.
2. Invitation to Bid – Revised to remove references to Geotechnical Report and reflect updated Bid Date.

3. Agreement, AIA Document 101, 2017 Edition, has been added to the Project Manual and is attached to this addendum.
4. Section 312000 – Earth Moving – Revised to remove references to Geotechnical Report.
5. Section 312319 – Dewatering – Revised to remove references to Geotechnical Report, Revised with correct Specification Section Number in header and title.
6. Section 312300 – Excavation Support and Protection – Revised to remove references to Geotechnical Report.

Received Bidder Questions

(The following questions were asked during the prebid meeting)

1. Is there an established budget or target for this project?
 - a. The City has established a budget for this project, however, it will not be disclosed to prospective bidders.
2. Will sales tax be included in the bids?
 - a. Sales tax is to be included in the bids.

(The following questions were received from potential bidders prior to the issue of this addenda)

3. Is the Prebid Meeting mandatory? Is the Prebid Meeting at the City Center?
 - a. The Prebid Meeting was not mandatory and it was held at the City Center.
4. Is there a Geotechnical Report available for this project?
 - a. A Geotechnical Report has not been prepared for this project.

Substitution Requests – APPROVED

1. None

Substitution Requests – DENIED

1. None

Attachments

1. Pre Bid Sign-In Sheet
2. Plan Sheets:
 - a. None
3. Specification Sections:
 - a. Bidders Information
 - b. Invitation to Bid
 - c. Agreement, AIA Document A101, 2017 Edition
 - d. Section 312000 – Earth Moving
 - e. Section 312319 – Dewatering
 - f. Section 315000 – Excavation, Support, and Protection
4. Exhibits:
 - a. None

NOTE: Receipt of this Addendum must be acknowledged on the Bid Form.

END OF ADDENDUM

Lelee A. Hoskins *June 28, 2018*

ADDENDUM #2

Date: July 9, 2018
Project No. 16137-2
Project Name: Heritage Park Phase I

This addendum supersedes and supplements all portions of the bidding documents and becomes part of the Contract Documents for the above-referenced project.

Failure to acknowledge this addendum in the Bid Form may result in the Bid being deemed non-responsive.

Where any original item is amended, voided, or superseded hereby, the provision of such item not so specifically amended, voided, or superseded shall remain in effect.

NARRATIVE:

This addendum includes responses to questions from bidders received between the prebid meeting the deadline for questions and clarification on how to acknowledge receipt of Addenda.

Clarifications

1. Per the invitation to bid, the bidders are required to sign each addendum to acknowledge receipt and include with the bid documents. Since no line was provided on Addendum 1, bidders are asked to sign in the space at the bottom of addendum 1 to show receipt.

Project Drawing Revisions

1. None

Project Specification Revisions

1. Bid Form Revisions to clarify how to bid Alternate 2.

Received Bidder Questions

(The following questions were asked during the prebid meeting)

1. Can dirt be used from the site in lieu of hauling dirt in?
 - a. If additional dirt is needed to balance the site, on-site soil can be used. Borrow areas will need to be seeded and strawed.
2. What are the details for the Mill/Pave area? I have been unable to locate depths.
 - a. Mill depth is 1 1/4", new inlay to be 1 1/4" TDOT "D" Mix.
3. The sidewalk shown on sheet C1.02 is listed as Alternate 3, Is that correct or should it be part of Alternate 4?
 - a. The sidewalk shown along the west side of the existing drive is Alternate 4. The note on Sheet C1.02 has been revised with the correct alternate number.
4. Sheet C2.02 shows limits of mill & overlay in base bid – This is not found on the site layout sheets and I don't believe I have found any mill/pave on base bid.
 - a. The note has been revised to read "Limits of existing pavement removal."
5. Per the bidform Alternate 2 is a total of alternate 1 plus alternate 2, is that how it should be listed instead of and add for alt 1 and an add for alt 2?
 - a. The line item cost for Alternate 2 should reflect the cost to add the work proposed Alternate 2 only. Language has been added to the bid form to clarify this.

6. Are there more pole base details? I don't think 45" deep is good for a 30' pole. Do we know the diameter of the pole bases?
 - a. The details provided are for bidding purposed only. The contractor will be required to submit structural shop drawings, sealed by an engineer registered in Tennessee, for approval showing a pole footing design that is adequate for the local conditions. For bidding purposed the pole footing diameter should be 24".
7. Is the road between the walking trail and colonnade, new for this project? Or is it existing?
 - a. It is existing to remain.
8. Can brush be burned on-site?
 - a. Burning of brush on site is only allowed with the use of a pit burner.
9. Will the electrical conduits going under the existing road be bored or allowed to be cut and trench?
 - a. Cut and trench will be allowed.
10. Where do bidders acknowledge receipt of addenda?
 - a. The process for acknowledging receipt of addenda is outlined on Page 4 of the Invitation to Bid.

Substitution Requests – APPROVED

1. None

Substitution Requests – DENIED

1. None

Attachments

1. General:
 - a. None
2. Plan Sheets:
 - a. C1.02
 - b. C2.02
3. Specification Sections:
 - a. Bid Form
4. Exhibits:
 - a. None

NOTE: Receipt of this Addendum 2 must be acknowledged by signing below:

Lexie A Hoskins

Date: July 9, 2018

END OF ADDENDUM

Request for Taxpayer Identification Number and Certification

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

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Andrews & Hoskins Construction Inc

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:

☐ Individual/sole proprietor ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation; S=S corporation; P=partnership) ▶

☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt. or suite no.)

P.O. Box 298

City, state, and ZIP code

Talbot TN 37877

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

Employer identification number

62-1253698

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person ▶

Leslie A Hoskins

Date ▶

July 12, 2018

General Instructions

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

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

EVANS & BEIER, LLP

ATTORNEYS AT LAW

**818 WEST FIRST NORTH STREET
MORRISTOWN, TENNESSEE 37814**

**C. DWAIN EVANS
DOUGLAS R. BEIER
MATTHEW B. EVANS**

March 23, 2018

**TELEPHONE (423) 587-2800
FAX (423) 587-2804
evansbeier@charter.net**

To Whom It May Concern:

Re: Andrews & Hoskins Construction, Inc.

This is to advise you that the current officers of Andrews & Hoskins Construction, Inc. are:

President: Leslie A. Hoskins

Vice-President: William R. Andrews

Secretary: Robert N. Hoskins

A handwritten signature in dark ink, appearing to read "C. Dwaine Evans", written over a horizontal line.

C. Dwaine Evans

Attorney for Andrews & Hoskins Construction, Inc.

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310 Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE ANDREWS & HOSKINS CONSTRUCTION, INC

PO Box 298, Talbott, TN 37877

as Principal, hereinafter called the Principal, and Westfield Insurance Company

P.O. Box 5001, Westfield Center, OH 44251-5001

a corporation duly organized under the laws of the State of OH

as Surety, hereinafter called the Surety, are held and firmly bound unto CITY OF MORRISTOWN, TN

100 WEST FIRST NORTH ST, MORRISTOWN, TN 37814

as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid

Dollars (\$ 5%),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for HERITAGE PARK, PHASE 1

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 12th day of July 2018

Bethany Keltz
(Witness)

ANDREWS & HOSKINS CONSTRUCTION, INC

(Principal)

(Seal)

By: Leslie A Hoskins

President

(Title)

Sue Foster
(Witness)

Westfield Insurance Company

(Surety)

(Seal)

By: Sue Johnson Hill

Attorney-in-Fact Sue Johnson Hill

(Title)

General
Power
of Attorney

CERTIFIED COPY

POWER NO. 4111942 03

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
WILLIAM K. HAMILTON, SUE JOHNSON HILL, JEREMY C. ROSE, JANICE M. FENNELL, TARA MEALER, JOINTLY OR SEVERALLY

of **KNOXVILLE** and State of **TN** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship**.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact, may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader and Senior Executive** and their corporate seals to be hereto affixed this **21st** day of **MARCH** A.D., **2014**.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Dennis P. Baus, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this **21st** day of **MARCH** A.D., **2014**, before me personally came **Dennis P. Baus** to me known, who, being by me duly sworn, did depose and say, that he resides in **Wooster, Ohio**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this **12** day of **July** A.D., **2014**.



Frank A. Carrino, Secretary

Leslie A Hoskins
President

William R. Andrews
Vice President



Phone: (423) 581-1604
Fax: (423) 581-2724

Residential, Commercial, Industrial Contractors
P.O.Box298
Talbott, TN 37877

We have in excess of 1,000,000.00 in retained earnings and bank credit line available. We also have a superintendent with excess of 75 years in related construction experience. Most of the work for this project will be contracted to sub-contractors who have many years of experience with our company.

Our unlimited license signifies our financial ability to perform this project.

Additional information can be provided if desired.

Leslie A. Hoskins

William R. Andrews

PROJECT MANUAL

Heritage Park – Phase I (#16137-2)

Bid Number 1901

Morristown, Tennessee

June 13, 2018

Prepared for:

City of Morristown
100 West First North Street
Morristown, TN 37814

Prepared by:



Lose & Associates, Inc.
2809 Foster Ave.
Nashville, TN 37210

Phone: (615) 242-0040

GENERAL

Recipients of bidding instruments must consult the Index to determine the full scope of the work involved and to ensure that all pages of the project manual and drawings have been included.

Neither the Owner nor the Owner's Representative will be responsible for bids submitted that are based on incomplete bidding instruments.

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DIVISION 22 – PLUMBING

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S0.3	MISCELLANEOUS DETAILS AND SCHEDULES
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E2.1	ENLARGED SITE LIGHTING PLAN
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BIDDERS INFORMATION

SITE INFORMATION

1. The proposed Heritage Park site is located on the site of the former Morristown College, along the north side of East 6th North Street and east of Buffalo Trail / North Cumberland Street. Access to the property will be along East 6th North Street.

CONSTRUCTION DOCUMENTS

1. Please review the drawings closely and note the items which are listed as "Alternates" and "Not in Contract". Alternate Bid Items shall be included on the Bid Form on the appropriate lines. Not in Contract items are not to be included in the base bid for the Project.

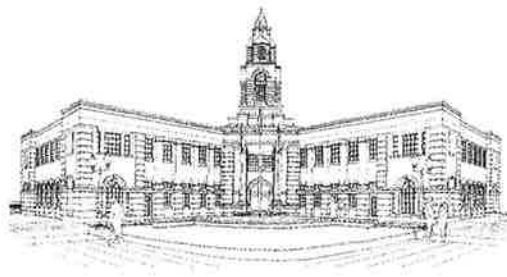
GENERAL INFORMATION

1. Sealed bids are to be addressed to:
City of Morristown
Att. Ashley Ahl, Purchasing Agent
100 West First North Street
Morristown, TN 37814

A non-mandatory pre-bid meeting will be held at 3:00 pm Eastern Time on June 25th, 2018 at the Morristown City Center, First Floor Training Room.

Bids must be received by 3:00 PM Eastern Time on July 9th, 2018 and at that time the bids will be publicly opened at the Morristown City Center, First Floor Training Room.

2. Bidders must visit the site of work and examine the plans, specifications, and form of proposal. Each bidder must make his/her own appraisal of the quantities of material, and the cost of labor and equipment necessary to complete the work.
3. Each bidder shall present in writing with his bid a resume of evidence satisfactory to the Owner showing that he has the necessary capital, credit line, material, equipment, and facilities to perform the work covered by the proposed Contract.
4. Each bidder must familiarize him/herself with all laws, ordinances and regulations, whether federal, state, city or other governmental agency, which by reason of being neglected or violated may affect the work contemplated, and must secure and pay the fees required for any permits which may be necessary.
5. All bidders must comply with Tennessee State law in regard to contractor's licensure.
6. All general contractor license and subcontract license numbers required by Tennessee State law shall be listed on the outside of the bid envelope.
7. The successful contractor must provide proof of insurance.
8. The right is reserved to reject any or all bids or waive any informality in any bid and to accept any proposal considered by the Owner to be, on the whole, in the best interest of the Owner.



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: LDA Engineering

Background / History: In 2011, the City entered into an agreement with LDA Engineering for professional services for Storm Water. This was done via a RFQ process.

Findings / Current Activity: This is to approve professional services for the FY 2019 year for Storm Water items.

Financial Impact: Amount not to exceed \$20,000.

Action options / Recommendations: Approval of contract.

Attachments: Contract



LDA ENGINEERING

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

Reference: City of Morristown
Professional Services Agreement

Mr. Cox:

LDA Engineering appreciates providing Engineering Services to the City of Morristown.

ENGINEER understands that the City of Morristown will engage in multiple stormwater capital improvement projects. Major elements of the projects will be but not limited to:

- Project controls and reporting
- Hydrologic and hydraulic analysis
- Design, surveying, and permitting
- Prepare construction plans and specifications.
- Easement and right-of-way document preparation
- Project construction contract administration
- Project construction observation
- Provide record documents, including information suitable for input to the City of Morristown Geographic Information System (GIS) database.
- Assist the City of Morristown in obtaining regulatory permits

Please see the attached Engineers Joint Contract Documents Committee (EJCDC) for execution.

We are prepared to begin 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

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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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

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1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

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

THIS IS AN AGREEMENT effective as of July 1, 2018 ("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. ~~As a condition~~ **As a condition** 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 requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by 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 July 1, 2018.

OWNER:

By: _____

Name: _____

Title: _____

ENGINEER:

By:  _____

Name: Jason D. Brooks, P.E.

Title: President and CEO

Engineer License or Firm's
Certificate No. 650
State of: Tennessee

DESIGNATED REPRESENTATIVE FOR TASK
ORDER:

Name: _____

Title: _____

Address: _____

E-Mail
Address: _____

Phone: _____

Fax: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name:  _____

Title: Vice President

Address: 110 Tyson Boulevard, Suite 200
Alcoa, TN 37701

E-Mail
Address: gjones@ldaengineering.com

Phone: 865-573-7672

Fax: N/A

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.]*

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.

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: *Jason D. Brooks*

Date: 12-14-12



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: Project oversight for Freshour and Cumberland Storm Water Projects

Background / History: Lamar Dunn Engineering is the engineering firm that assists the City with our Storm Projects.

Findings / Current Activity: Council approved two projects to address storm water concerns on Cumberland and Freshour. They will provide oversight and inspection services for both projects. This includes communication with Norfolk Southern for Cumberland.

Financial Impact: Amounts budgeted within Storm Water. Base amounts are \$20,000 each for oversight. For inspection services and GIS up to budget amounts \$47,000 and \$4,500 respectively for each project.

Action options / Recommendations: Approval of authorization letters

Attachments: Authorization letters.



**WATER
WASTEWATER
STORMWATER
PUBLIC WORKS**

July 18, 2018

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

Reference: City of Morristown
Freshour Culvert Replacement, Phase 1

Mr. Cox:

We appreciate the opportunity to provide you with a proposal for Service's During Construction (SDC) and Resident Project Representative (RPR) services for the referenced project. The project is for the construction of the new drainage system at South Cumberland at the Railroad. The construction site is within a heavily congested traffic area on a Tennessee Department of Transportation Right-of-Way. Therefore, the executed contract construction time for the project is 150 days.

LDA Engineering will provide engineering services during construction such as shop drawing review, attendance at progress meetings, answering contractor questions, site visits and pay estimate reviews for a lump sum fee of \$20,000.00.

RPR services will be provided on an hourly basis, with a budget amount of \$17,000.00. We will be judicious with our hours due to the fact we have capable local senior technicians performing the same services within the City of Morristown. The time for RPR will only be charged relating to the actual construction time.

Record Drawings will be prepared for the project once construction is completed. This will allow your GIS system to be updated to include this project. This will be provided on an hourly basis, with a budget amount of \$1500.00.

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.

A handwritten signature in blue ink, appearing to read 'Greg Jones', written over a horizontal line.

Greg Jones, P.E.
Vice President

GJ:mrc

Authorization: By: _____ Date: _____



**WATER
WASTEWATER
STORMWATER
PUBLIC WORKS**

July 18, 2018

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

Reference: City of Morristown
South Cumberland Drainage Improvements

Mr. Cox:

We appreciate the opportunity to provide you with a proposal for Service's During Construction (SDC) and Resident Project Representative (RPR) services for the referenced project. The project is for the construction of the new drainage system at South Cumberland at the Railroad. The construction site is within a heavily congested traffic area on a Tennessee Department of Transportation Right-of-Way. Therefore, the executed contract construction time for the project is 150 days.

LDA Engineering will provide engineering services during construction such as shop drawing review, attendance at progress meetings, answering contractor questions, site visits and pay estimate reviews for a lump sum fee of \$20,000.00.

RPR services will be provided on an hourly basis, with a budget amount of \$47,000.00. We will be judicious with our hours due to the fact we have capable local senior technicians performing the same services within the City of Morristown. The time for RPR will only be charged relating to the actual construction time.

Record Drawings will be prepared for the project once construction is completed. This will allow your GIS system to be updated to include this project. This will be provided on an hourly basis, with a budget amount of \$4500.00.

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.

A handwritten signature in blue ink, appearing to read 'Greg Jones'.

Greg Jones, P.E.
Vice President

GJ:mrc

Authorization: By: _____ Date: _____



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: Contract for Cumberland Storm Water Project

Background / History: Council approved bids for two Storm Water Projects last month.

Findings / Current Activity: Contract for Cumberland Storm Water Project for the amount of \$459,505.80

Financial Impact: Funds budgeted in FY 2019

Action options / Recommendations: Approval of contract

Attachments: Contract

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between **The City of Morristown** (hereinafter called OWNER) and **KING GENERAL CONTRACTORS, INC** (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: **City of Morristown, Stormwater System Improvements – South Cumberland Drainage Improvements.**

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by **LDA Engineering** who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within **120** days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within **150** days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER **\$500.00** for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **\$500.00** for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, B, and C.

A. For all Work, at the prices stated in CONTRACTOR's Bid (Section 00300), attached hereto as an exhibit.

The Total Contract Amount is: **FOUR HUNDRED FIFTY-NINE THOUSAND FIVE HUNDRED FIVE DOLLARS AND 80/100 (\$ 459,505.80).**

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated on the Contractor's Bid.

ARTICLE - 6 PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of the Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. 95% of the Work completed (with the balance being retainage).
- b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 97.5% of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 – INTEREST - NOT APPLICABLE

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and program incident thereto.

E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, report, studies, and data with the Contract Documents.

H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents which consists of the following:

1. This Agreement (pages 1 to 5, inclusive);
2. Performance Bond (pages 1 to 2, inclusive);
3. Payment Bond (pages 1 to 2, inclusive);
4. Other Bonds (pages ____ to ____, inclusive);
 - a. _____ (pages ____ to ____, inclusive);
 - b. _____ (pages ____ to ____, inclusive);
 - c. _____ (pages ____ to ____, inclusive);
5. General Conditions (pages 1 to 41, inclusive);

6. Supplementary Conditions (pages 1 to 4, inclusive);
7. Special Supplemental Conditions (pages 1 to 3, inclusive);
8. Specifications as listed in the table of contents of the Project Manual;
9. Drawing consisting of a cover sheet and sheets numbered 1 through 8, inclusive, with each sheet bearing the following general title: **City of Morristown, South Cumberland Drainage Improvements.**
10. Addenda (numbers to , inclusive);
11. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed (pages 1 to 1, inclusive);
 - b. CONTRACTOR's Bid (pages 1 to 3, inclusive);
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages to , inclusive);
 - d. Drug Free Work Place Affidavit
12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directive;
 - c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interest in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successor and Assigns*

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed four (4) copies of this Agreement. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, 2018 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

City of Morristown, Tennessee

By _____

By _____

**APPROVED AS TO FORM AND
LEGALITY:**

[CORPORATE SEAL]

City Attorney

Attest _____

Address for giving notices

Address for giving notices

100 West First North Street
Morristown, TN 37814

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attached evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. _____
(Where Applicable)

Agent for service of process _____

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: 100 West First North Street
Morristown, TN 37814

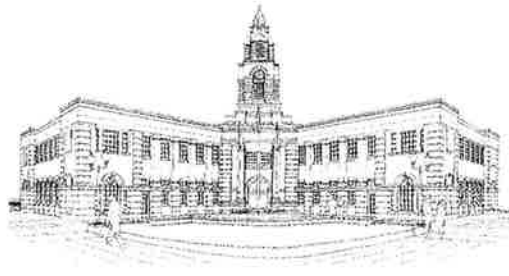
Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: Contract for Freshour Storm Water Project

Background / History: Council approved bids for two Storm Water Projects last month.

Findings / Current Activity: Contract for Freshour Storm Water Project for the amount of \$446,758.70

Financial Impact: Funds budgeted in FY 2019

Action options / Recommendations: Approval of contract

Attachments: Contract

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between **The City of Morristown** (hereinafter called OWNER) and **KING GENERAL CONTRACTORS, INC** (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: **City of Morristown, Freshour Culvert Replacement, Phase I.**

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by **LDA Engineering** who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

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A. The Work will be substantially completed within **120** days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within **150** days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER **\$500.00** for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **\$500.00** for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, B, and C.

A. For all Work, at the prices stated in CONTRACTOR's Bid (Section 00300), attached hereto as an exhibit.

The Total Contract Amount is: FOUR HUNDRED FORTY SIX THOUSAND SEVEN HUNDRED FIFTY EIGHT DOLLARS AND 70/100 (\$ 446,758.70).

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated on the Contractor's Bid.

ARTICLE - 6 PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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- a. 95% of the Work completed (with the balance being retainage).
- b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 97.5% of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 – INTEREST - NOT APPLICABLE

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and program incident thereto.

E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, report, studies, and data with the Contract Documents.

H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents which consists of the following:

1. This Agreement (pages 1 to 5, inclusive);
2. Performance Bond (pages 1 to 2, inclusive);
3. Payment Bond (pages 1 to 2, inclusive);
4. Other Bonds (pages ____ to ____, inclusive);
 - a. _____ (pages ____ to ____, inclusive);
 - b. _____ (pages ____ to ____, inclusive);
 - c. _____ (pages ____ to ____, inclusive);
5. General Conditions (pages 1 to 41, inclusive);

6. Supplementary Conditions (pages 1 to 4, inclusive);
7. Special Supplemental Conditions (pages 1 to 3, inclusive);
8. Specifications as listed in the table of contents of the Project Manual;
9. Drawing consisting of a cover sheet and sheets numbered 1 through 9, inclusive, with each sheet bearing the following general title: **City of Morristown, Freshour Culvert Replacement, Phase I.**
10. Addenda (numbers to , inclusive);
11. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed (pages 1 to 1, inclusive);
 - b. CONTRACTOR's Bid (pages 1 to 3, inclusive);
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages to , inclusive);
 - d. Drug Free Work Place Affidavit
12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directive;
 - c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interest in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successor and Assigns

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

10.04 Severability

A. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed four (4) copies of this Agreement. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, 2018 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

City of Morristown, Tennessee

By _____

By _____

**APPROVED AS TO FORM AND
LEGALITY:**

[CORPORATE SEAL]

City Attorney

Attest _____

Address for giving notices

Address for giving notices

100 West First North Street
Morristown, TN 37814

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attached evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. _____
(Where Applicable)

Agent for service of process _____

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: 100 West First North Street
Morristown, TN 37814

Address: _____

Phone: _____

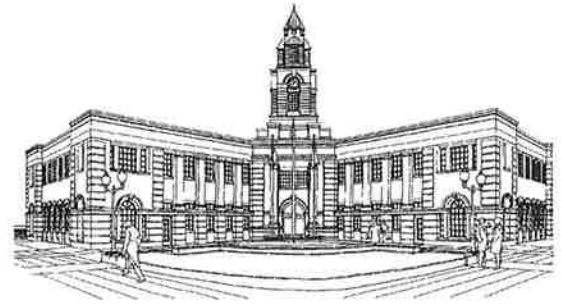
Phone: _____

Facsimile: _____

Facsimile: _____

Morristown Police Department

ROGER OVERHOLT
Chief of Police



MEMORANDUM

To: Mayor Gary Chesney
City Council

From: Chief Roger D. Overholt *RDO*

Date: August 2, 2018

Re: Justice Assistance Grant Application

I am requesting approval to make application for the 2018 Justice Assistance Grant. This is a no match grant. We have received this grant for several years. It is the grant which a percentage is shared with the Hamblen County Sherriff's Department. Total grant funds available this year will be \$13,472.

Thank you.

RDO/ll

MUNICIPAL ADVISORY AGREEMENT
BETWEEN
CITY OF MORRISTOWN, TENNESSEE
AND
CUMBERLAND SECURITIES COMPANY, INC.

THIS AGREEMENT entered into this 7th day of August, 2018, by and between CITY OF MORRISTOWN, TENNESSEE (hereinafter referred to as the “Issuer” or the “City” or the “Municipality”), and CUMBERLAND SECURITIES COMPANY, INC., Independent Consultants on Municipal Finance, Knoxville, Tennessee (hereinafter referred to as “Municipal Advisor”).

W I T N E S S E T H

WHEREAS, the Issuer may in the future require financing for the purpose of providing funds for capital projects; and

WHEREAS, the Issuer must from time to time provide adequate new facilities or improvements to meet the demands placed on the services provided by the Issuer in order to promote the general welfare of the citizens of the Issuer and its area; and

WHEREAS, the Issuer may from time to time desire to refinance debt issued for previous said projects; and

WHEREAS, the Issuer desires that the most complete and accurate economic and financial information possible be provided its officials and to potential bidders and ultimate buyers of the Issuer's bonds and/or notes; and

WHEREAS, due to the rapid changes in financing methods, the complexity of laws governing such financings and the specialization that is required to remain informed and up-to-date, the Issuer desires that a recognized independent registered municipal advisor be retained in the structuring, marketing and sale of the Issuer's bonds and/or notes; and

WHEREAS, the Issuer has evaluated the capabilities of the Municipal Advisor to the complete satisfaction of the Issuer and has requested the Municipal Advisor to assist and advise the Issuer in matters relating to the Issuer's issuance of bonds or other obligations under terms and conditions decided by the Issuer to be suitable and in the best interest of the Issuer and its citizens.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is hereby mutually agreed by and between the Issuer and the Municipal Advisor that

Section 1. The Municipal Advisor, working with the Mayor, City Administrator and other Issuer officials and employees, the Issuer's Attorney, the independent Bond Counsel to the Issuer, and other such independent consultants or consulting engineers as may be engaged by the Issuer from time to time, shall assist in the development of a plan or plans for the financing or refinancing of any improvements through the issuance of bonds or other obligations, including loan agreements.

Section 2. In preparation for the development of any financing plan, or plans, the Municipal Advisor will survey the financial resources of the Issuer to determine its borrowing capacity and analyze the existing debt structure of the Issuer as compared to the existing and projected sources of revenues which may be pledged to secure payment of the debt service on the proposed issues. Such studies will also include a complete analysis of the existing indebtedness of the Issuer to determine the most practical, economical way for the Issuer to fund needed public

improvements and projects. In addition, the Municipal Advisor will consider any future financing requirements projected by Issuer officials, its consultants (if any) and other experts that may be employed from time to time by the Issuer.

Section 3. Based on the information developed by or other information available to the Municipal Advisor, the Municipal Advisor will submit its recommendations on the financing of the proposed public improvements and projects. The Municipal Advisor's recommendation will include among other things, a schedule of principal maturities, options of prior payment, and the necessary security provisions designed to make the issues attractive to potential investors. All recommendations will be based on the Municipal Advisor's experience as to how the debt obligations can best be sold under terms most advantageous to the Issuer, and at the lowest interest cost.

Section 4. In preparing any plan of financing, and in all other services rendered by the Municipal Advisor under this Agreement, it is hereby understood that the Municipal Advisor may rely upon any written data or reports furnished to the Municipal Advisor by the Issuer or its authorized representatives. The Mayor and City Administrator agree to make available to the Municipal Advisor any data, reports, or Issuer personnel for conferences and consultations as may be necessary for the formulation of any financing plans.

Section 5. The Municipal Advisor shall ensure that all the necessary resolutions are prepared for adoption in preparation for the sale and issuance of the bonds, loans and/or notes and that all other necessary proceedings are prepared and executed to complete each sale.

Section 6. The Municipal Advisor will advise on current market conditions, forthcoming bond, loans and note issues, federal tax law considerations, and other general information and

economic data which might normally be expected to influence the interest rates or other bidding or sale conditions, so that the date for the sale of the bonds, loans and/or notes can be set at a time, which in the Municipal Advisor's opinion will be most favorable to the Issuer.

Section 7. The Municipal Advisor will submit a transcript of the entire proceedings to a firm of nationally recognized bond attorneys, acceptable to the Issuer and the purchaser(s), for their approving legal opinion(s) on the bonds.

Section 8. In connection with any bond sale, the Municipal Advisor shall prepare a “near final” Preliminary and Final Official Statement substantially in accordance with the standards recommended by the Government Finance Officers Association (the “GFOA”) and will make a national distribution of such “near final” Preliminary Official Statements to potential bidders or purchasers for the bonds and to other interested parties and will furnish the successful bidder(s) or purchasers a reasonable amount of final Official Statements within seven (7) business days from the sale date as required by the Securities and Exchange Commission Rule 15c2-12.

Section 9. The Municipal Advisor will prepare and assemble all necessary information concerning the Issuer for submission to and consideration by one or more of the major rating services (Moody's Investors Service, Inc., and/or Standard & Poor's Rating Services, and/or Fitch Ratings) in connection with a bond sale either independently or in connection with the use of credit enhancement if in the opinion of the Municipal Advisor, such rating(s), would prove to be economically beneficial to the Issuer. The Municipal Advisor will arrange for conferences or meetings (if necessary) with appropriate personnel analyzing the proposed bond issue(s) in anticipation of a rating(s) on such bonds.

Section 10. The Municipal Advisor will advise the Issuer on the use of credit enhancement

instruments available from municipal bond insurers or others and provide assistance in seeking such insurance or credit enhancement if in the opinion of the Municipal Advisor, such credit enhancement instrument would prove to be economically beneficial to the Issuer.

Section 11. The Municipal Advisor will engage a major commercial bank in Tennessee (after receiving approval from the Mayor or City Administrator), to serve as the Issuer's Registrar, Paying Agent and Escrow Trustee, if required.

Section 12. The Municipal Advisor will prepare forms and coordinate the submission of all advertisements concerning the sale and issuance of bonds and notes as required by law.

Section 13. If the Issuer and the Municipal Advisor determine that it is advantageous to the Issuer to refund any presently outstanding bonds, loans and/or outstanding notes, the Municipal Advisor will submit a plan of refunding and a computation of projected costs savings, if applicable, to the Director for the Office of State & Local Finance for review as required by Section 9-21-1003, Tennessee Code Annotated.

Section 14. The Municipal Advisor will furnish a representative at the sale to assist and advise the Issuer officials in receiving bids or pricing levels and will tabulate all bids or pricing as well as perform computer verification of the mathematical accuracy of said bids or pricing and the compliance of all bids with the published requirements of the sale, if applicable. In addition, the Municipal Advisor will assist and advise the Issuer in the awarding of the bonds to the successful bidders or purchasers.

Section 15. The Municipal Advisor will supervise all closing proceedings so as to ensure the quickest possible delivery of the debt obligations to the purchaser or purchasers, including having the bond forms printed and ready for signatures of the proper officials.

Section 16. After the sale, the Municipal Advisor will deliver to the Issuer, the Registrar/Paying Agent and/or appropriate officials, a schedule of debt service requirements on the debt obligations.

Section 17. The Municipal Advisor will calculate the “Bond Yield” based on the arbitrage provisions of the Internal Revenue Code of 1986 and will advise the Issuer on the maximum allowable yield on such debt obligations. If requested, the Municipal Advisor will advise the Issuer on the investment of the proceeds of debt obligations so as to maximize the arbitrage potential under applicable existing laws.

Section 18. The Municipal Advisor will prepare State Form CT-0253, “Report on Debt Obligations” for execution and submission to the State Comptroller's Office by the Issuer and a representative of the Municipal Advisor pursuant to Section 9-21-151, Tennessee Code Annotated within forty-five (45) days after the issuance of any bonds or notes with a maturity of greater than one (1) year.

Section 19. The Municipal Advisor will prepare or cause to be prepared Form 8038-G “Information Return for Tax-Exempt Governmental Bond Issues” and file or cause to be filed the report with the United States Department of the Treasury on or before the 15th day of the second calendar month after the close of the calendar quarter in which any debt is issued.

Section 20. The Municipal Advisor will maintain all required registrations with the Securities and Exchange Commission (“SEC”) and the Municipal Advisor will disclose on <https://dc.aws-sec.akadns.net/cgi-bin/browse-edgar?action=getcompany&CIK=0001622156&owner=exclude&count=40> any legal or disciplinary events, including information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints,

arbitrations and civil litigation, and other detailed information. The Issuer may electronically access the Municipal Advisor's most recent Form MA and each most recent Form MA-I filed with the Commission at <https://www.sec.gov/edgar/searchedgar/companysearch.html>.

As of the date of this agreement, Cumberland Securities Company, Inc. has never had legal or disciplinary event.

Section 21. The Issuer will be responsible for paying all of the normal bond issuance costs and fees. The normal bond issuance costs that the Issuer will pay will include the following: Bond Counsel fees, registration and paying agent's initial acceptance fees; bond printing costs; any rating agency's fees not associated with bond insurance; costs of preparation, printing and distribution of the Preliminary and Final Official Statements, and all legally required publication costs and if a refunding is involved the acceptance fee of the Escrow Agent and the fee of an accounting firm to verify the accuracy of the escrow fund to defease the bonds or notes being refunded. The Municipal Advisor will bill the Issuer and pay on the Issuer's behalf the above referenced issuance cost unless the Issuer requests to handle such payments itself. It is expressly understood that the Issuer will be responsible for all compensation due (if any) to the Issuer's Attorney, other independent consultants engaged by the Issuer, the annual fees of the Registration and Paying Agent, the annual fee payable to the Municipal Advisor for also serving as the Dissemination Agent and if the Issuer so desires and qualifies, any premiums due and other related rating fees for bond insurance or other credit enhancement instruments purchased directly by the Issuer to enhance the sale of the bonds.

Section 22. In addition to the bond issuance cost outlined in Section 21 above, the Issuer agrees that in consideration for the services rendered by the Municipal Advisor at its expense, the

Issuer shall pay or cause to be paid to the Municipal Advisor a fee at the time of and only upon the successful issuance and delivery of any debt obligation. The determination of any Municipal Advisor fee for all debt obligations will be mutually agreeable between the Issuer and the Municipal Advisor pursuant to a Fee Letter. The fee for any Municipal advisory activity that does not involve any specific financing by the Issuer, will also be mutually determined by the Municipal Advisor and the Mayor in consultation with the City Administrator and Assistant City Administrator for Finance and Administration, or the individuals holding the equivalent positions, pursuant to a Fee Letter.

Under a contingent fee form of compensation, payment of the Municipal Advisor's fee is dependent upon the successful completion of a financing or other transaction. Although this form of compensation may be customary for the Issuer, it presents a conflict because the Municipal Advisor may have an incentive to recommend unnecessary financings or financings that are disadvantageous to the client. The officers of the Municipal Advisor are also officers, directors and shareholders of Cumberland Advisors, Inc. which may receive a fee in connection with services related to the investment of bond proceeds. All recommended financings are reviewed by the firm to confirm that they are suitable for each client. Upon execution of this Municipal Advisory Agreement, the Municipal Advisor will have a legally binding fiduciary responsibility to put the financial interests of the Issuer before its own.

Section 23. Fees charged for note issues shall be mutually agreed to by the Municipal Advisor and the Mayor in consultation with the City Administrator and Assistant City Administrator for Finance and Administration, or the individuals holding the equivalent positions, at the time of sale and delivery of the notes.

Section 24. The Financial Advisor is not a fiduciary of any other party to the transaction and will be neither party to, nor liable under, any contract, agreement, or understanding executed or otherwise existing to affect the Bonds. We will not (i) provide any assurances that any investment made in connection with the Bond or otherwise during our engagement is the best possible investment available for your situation or that every possible alternative or provider has been considered and/or solicited, (ii) investigate the veracity of any certifications provided by any party, (iii) provide legal or accounting assurance that any matter or procedure complies with any applicable law, or (iv) be liable to any party if any of the Bonds or an investment fails to close or for default of same.

Section 25. THIS AGREEMENT shall remain in full force and effect concerning the City's issuance of the Bonds from the date of its execution by the parties hereto, unless either of the parties hereto, shall notify the other party in writing of its desire to terminate this Municipal Advisory Agreement. In the event either party to this Municipal Advisory Agreement elects to terminate the agreement in regard to the City's issuance of the Bonds, such termination shall occur thirty (30) days after the date of written notice delivered to the other party. Upon termination of this Municipal Advisory Agreement by the City, the Municipal Advisor shall be paid the fee in full that would be due for all work completed up to the date of cancellation and authorized by the Mayor and City Administrator.

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Section 26. This Agreement shall take effect immediately.

This 7th day of August 2018.

CITY OF MORRISTOWN, TENNESSEE

By: _____
Gary Chesney
Mayor,
City of Morristown, TN

By: _____
Anthony W. Cox
City Administrator
City of Morristown, TN

CUMBERLAND SECURITIES COMPANY, INC.

By: _____
Chris Bessler
Senior Vice President
Cumberland Securities Company, Inc.



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: Right-of-Way acquisition for West A.J. Project

Background / History: The City is currently in the middle of repaving part of West A.J., from the S curve to the intersection at A.J. and Walters Dr. We are in the Right-of-Way phase. In May, Council approved the initial appraisal report to extend an offer to the property owner of Free Service Tire. This approval also allowed staff to negotiate on behalf of the City if needed.

Findings / Current Activity: As part of this project, part of the corner at Free Service Tire needs to be acquired for improving the signal and expand the turning radius for trucks turning onto Economy. An appraiser (J. Lee Butler, Telics) was hired by Mattern & Craig to conduct the assessment, per TDOT requirements. In these costs are also an amount for sign removal.

The property owner countered with wanting to be paid to repave the entire parking lot and restripe. The appraiser countered with sealing and restriping. The property owner has agreed with this proposal.

Financial Impact: Cost of total acquisition will be negotiated with property owner. This cost is split 80% TDOT and 20% City. Funds are budgeted for this project. The additional amount is \$4,500. This will bring the entire cost of the acquisition to \$39,000.

Action options / Recommendations: Approval of appraisal report and counter offer in the amount of \$4,500 and signature of Mayor or City Administrator.

Attachments: Appraisal documents



July 24, 2018

Mr. Larry Clark
Assistant City Administrator
City of Morristown
P.O. Box 1499
Morristown, Tennessee 37816-1499

RE: Administrative Settlement Approval Request

State Project 32LPLM-F1-052, Tract # 1
Federal Project STP-M-9113(23)
Owner: Free Service Tire Company

Dear Mr. Clark,

I have been in negotiations for the past month with the owners of Free Service Tire Company for the Right of Way and temporary easements we need to construct the proposed highway improvement project along Andrew Johnson Highway. Our original offer, which was based on a TDOT approved appraiser's report was \$34,500.00. This amount included \$9200.00 to replace parking that would be lost along the front of the business due to proposed construction. The property owners feel this figure is insufficient to replace the parking spaces lost plus they feel they will need to seal and re-stripe the parking lot in order to make the front parking area as attractive as it was before this proposed construction. The property owners are requesting an additional \$4500.00 in damages for a total settlement of \$39,000.00.

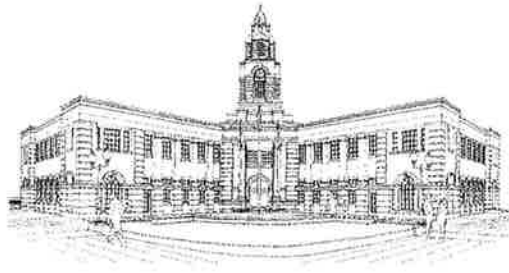
I would recommend accepting this 13% counter offer increase request by the property owners in order to avoid going to the condemnation process. The expense of paying appraisers and other expert witnesses for their time, attorneys, and city staff, would well exceed the additional \$4500.00 the property owners are willing to settle this matter. Based on my forty years experience in this field, it is quite likely a Jury would award the property owners additional damages above what our appraiser has assigned in his appraisal. Additional damages assigned by a Jury plus the expenses involved in going to condemnation could be quite costly. I feel it would be cost effective for the City to settle this matter for the additional amount requested as well as avoiding the negative public relations felt from the public anytime a government entity files a condemnation suit against a property owner.

Please advise if any additional information is needed regarding this settlement request.

Sincerely:

A handwritten signature in blue ink that reads "D. Phil Addison".

D. Phil Addison
ROW Manager Tn. Division TELICS
(423) 341-4242
dphiladdison@outlook.com



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: Testing for Public Safety Positions

Background / History: CPS Consulting is the firm that we purchase tests from for our testing of Public Safety positions.

Findings / Current Activity: The agreement is for 2 years.

Financial Impact: Funds are budgeted. Amounts are based on the amount of tests purchased

Action options / Recommendations: Approval of agreement

Attachments: Agreement

TEST RENTAL AND USE AGREEMENT

This Test Rental and Use Agreement ("Agreement") is by and between Cooperative Personnel Services, dba CPS HR Consulting, a California Joint Powers Authority ("CPS HR") and the Agency or Organization named in the signature block at the end of the Agreement ("Client").

A. Purpose. This Agreement defines CPS HR test rental, use and security policies and procedures.

CPS HR develops and rents tests for a number of purposes and in a number of formats (including but not limited to print and electronic media). For that reason, some of the below paragraphs apply under certain circumstances. But, unless specifically limited, each paragraph applies to all testing purposes and formats.

B. Ownership of CPS HR Tests.

1. CPS HR owns all rights, title and interest, including copyrights, in all tests provided under this Agreement. They are the property of CPS HR and shall remain the property of CPS HR, even while in the custody of Client.
2. Additionally, tests that have been constructed or modified based on information provided by the client shall not be considered works made for hire, as that term is defined under U.S. Copyright Law. CPS HR shall own all rights, title and interest, including the copyright, in any test it creates for the Client.
3. Ownership of tests specifically developed for a client and of individual test questions supplied by Client, if any, shall be governed by a separate Agreement between CPS HR and Client.

C. Test Materials. Test Materials consist of all used and unused test booklets, proctors instructions, proctors manuals, scoring instructions, key sheets, key overlays, keyed booklets, scoring keys, instructions, CDs (for oral tests), and any other materials generated at the test administration, such as completed answer sheets (if applicable), scratch paper, note paper and the like.

D. Test Security. CPS HR security standards are designed to protect the mutual interests of all Clients that use Test Materials as well as the interests of applicants who take CPS HR tests. In order that no person may gain special advantage by having improper access to the material, all users must sign this Agreement and agree to fulfill its terms, before the Agreement is effective.

1. Client agrees to take all reasonable and diligent steps to keep CPS HR tests, sample tests, and testing processes confidential and free from unauthorized access and use. This includes, but is not limited to, client agreeing not to divulge, convey, copy in whole or part, duplicate, convert to another format or medium, or otherwise disseminate tests, portions of tests, or test materials.
2. For on-line tests, client further agrees to take all reasonable and diligent steps to prevent any modification to or reverse engineering of the testing software, and any transfer, storage or dissemination of tests or testing software and data on any storage medium or computer server other than those specifically authorized by CPS HR.
3. Should Client suspect any breach of test security, Client agrees to immediately notify CPS HR and immediately take all steps necessary to preserve

evidence of or related to the breach, whether physical or electronic.

E. Test Review, Ordering and Administration.

1. Review Copies. Review of CPS HR tests, regardless of format, is subject to the test security standards.

- (a) **Test Rental Division:** To help in deciding whether to rent exams, Client may review CPS HR stock tests and other stock test materials free of charge (e.g., stock supplements, structured interview packages, and specialized item sets).
- (b) **SLPP:** CPS HR does not offer review copies of the Spanish Language Proficiency Program (SLPP) tests. However, for new clients, CPS HR can provide a sample written test booklet showing the different components of the test.
- (c) **On-line Testing:** To help in deciding whether to utilize on-line testing, Client may review sample on-line tests free of charge.

2. Ordering Testing Materials and Scheduling of Examinations.

- (a) **Test Rental Division and SLPP:**
 - (i) To ensure materials are received in time, Client must notify CPS HR at least 10 business days prior to the test date of the total number of candidates in each job classification to be tested. If orders are placed less than 10-business-days prior to the test date, rush shipment charges may apply and timely delivery cannot be guaranteed.
 - (ii) Client shall rent one test booklet per candidate to be tested. CPS HR shall provide Client with Test Materials including instructions for administering the test, sufficient test booklets and any other material CPS HR deems necessary.
- (b) **On-line Testing:**
 - (i) To ensure Client equipment is functioning and capable of administering on-line testing, Client must request testing from CPS HR at least 10 business days prior to the test date on the first time Client utilizes on-line testing. After Client has successfully used on-line testing, 5 working days notice is normally sufficient for subsequent testing.
 - (ii) Client recognizes that CPS HR has no control over the functioning of the internet, and any problems with on-line testing due to the failure thereof are not attributable to CPS HR.

3. After the test date.

(a) Test Rental Division and SLPP:

- (i) Within 10 business days of the test date, Client shall return to CPS HR all Test Materials including all materials provided by CPS HR for the test administration.
- (ii) Client shall not reuse printed tests on the test date or on any other date but shall return Test Materials to CPS HR, whether or not the test was administered.

(b) On-line Testing:

- (i) After the scheduled test date(s), CPS HR will suspend access to the on-line test site.
- (ii) Within 10 business days of the test date, Client shall destroy all CPS HR Test Materials including scratch paper and note paper in a way that make the materials unrecoverable.

F. Billing, Pricing, and Payment.

- 1. CPS HR shall bill Client at the billing address provided in Exhibit A, unless notified in writing of a new billing address.
- 2. The bill shall be derived from the most current applicable Rate Sheet (s): Exhibit B for Test Rental, Exhibit C for SLPP, and Exhibits D. Client acknowledges and understands that the Test Price List(s) are only effective as of the date shown each of them and are subject to change.
- 3. Client shall be billed for any work done on a canceled or postponed test up to the time CPS HR is notified of such cancellation or postponement. Under certain circumstances, and in CPS HR's sole discretion, credit may be given for work already performed if the test is rescheduled.
- 4. CPS HR may charge Client for lost or compromised tests if Test Materials are not returned according to 3(a) above. Client shall be liable for the actual cost associated with the creation of a substantially similar replacement test up to a maximum of \$15,000.
- 5. Client agrees to and shall pay all invoices within thirty (30) days of receipt of invoice.

G. Candidate Inspections

1. Test Materials.

CANDIDATE INSPECTION OF TEST MATERIALS SHALL **NOT** BE ALLOWED EXCEPT IN CASE OF ANSWER SHEETS AS DESCRIBED BELOW

2. Answer Sheets.

- (a) If a candidate files a protest regarding the scoring of his or her test, inspection of a candidate's own answer sheet(s) for the purpose of detecting whether any clerical or other error has been made in the scoring of the answer sheets shall be allowed, upon request by the Client, for a 10-business-day period immediately following the notification to the candidate of test results.
- (b) Candidates are not allowed to review the question booklet during this inspection period.
- (c) Not more than one hour will normally be allowed for answer sheet(s) review. A representative of Client's Personnel or Administrative office shall be present to assure that no changes or marks of any kind are made

by the candidate on the answer sheet(s) or keyed answer sheet.

H. Client Responsibilities.

- 1. Client shall perform all parts of the testing process which are not performed by CPS HR. Client has the responsibility for assuring that the testing process performed by Client conforms to any applicable laws, rules or ordinances, and for the test as a whole. Under the federal Uniform Guidelines on Employee Selection Procedures, the Client as test user is responsible for local validation efforts (e.g., SME review, job analysis studies) and the results of the selection process, and Client understands and acknowledges that it must be prepared to demonstrate that the process is valid and meets other testing standards if it adversely affects groups protected by fair employment laws.
- 2. Client is responsible for insuring that all persons who handle or have access to Test Materials in any capacity for Client shall do so in compliance with this Agreement, and are trained to handle Test Materials and administer tests before they do so.

I. Legal Proceedings Involving Test Materials.

- 1. If Client receives notice of any administrative or court proceeding involving a CPS HR test, or a request for disclosure of Test Materials, such as a subpoena, or a public records or freedom of information request, Client shall notify CPS HR of such request immediately and well before a response is due.
- 2. Upon CPS HR request, Client shall maintain the confidentiality of the Test Materials pending the grant or denial of a protective order or the decision of a court or administrative body as to whether the requested Test Materials must be disclosed under the applicable public records statute.
- 3. Client shall cooperate with CPS HR in seeking any relief necessary to maintain the confidentiality of the Test Materials.
- 4. Client shall indemnify and hold CPS HR harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorney fees and costs) arising out of or in connection with administration of a test, or with maintaining confidentiality of Test Materials.

J. Term and Termination of Agreement.

- 1. Term. This Agreement is effective beginning the date it is signed by both parties and continuing for two years thereafter unless earlier terminated by either party as stated below.
- 2. Immediate Termination upon Material Breach. Either party may terminate this Agreement immediately upon any material breach by the other party. For purposes of this Agreement, but without limiting the meaning of material breach, any breach of the test security provisions, however minor, shall be considered a material breach. Client understands and acknowledges that immediate termination by CPS HR may result in the withholding or recall of Test Materials.
- 3. Termination Without Cause. CPS HR and Client may terminate the Agreement without cause upon thirty days written notice to the other party.

4. **Return of Test Materials.** Upon termination of the Agreement, Client shall immediately return to CPS HR any Test Materials that it possesses.

K. Miscellaneous.

1. **Notices.** Any notice to the parties required or permitted under this Agreement shall be given in writing and shall be sent to Client at the address provided for the Principal Signer and to CPS HR at 2450 Del Paso Rd, Ste 220, Sacramento, CA 95834.
2. **Dispute Resolution; Remedies.**
- (a) In the event of a dispute, the parties may agree to pursue mediation or either binding or nonbinding arbitration to resolve their dispute, under such rules as the parties may agree.
- (b) Client acknowledges that breach of this Agreement may result in irreparable harm to CPS HR for which damages would be an inadequate remedy and, therefore, in the event of a breach, in addition to its rights and remedies otherwise available by law, CPS HR shall be entitled to seek equitable relief, including injunction.
3. **Attorneys Fees.** If any legal action or arbitration or other proceeding is brought to enforce or construe the term of this Agreement or because of an alleged dispute, breach or default in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys fees and other costs incurred in that action, arbitration or proceeding in addition to any other relief to which it may be entitled.
4. **Waiver.** The failure of any party at any time or times to require performance of any provisions of this Agreement shall in no manner affect its right to

enforce such provision at a later time. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. No waiver shall be enforceable unless made in writing and signed by the party granting the waiver.

5. **Entire Agreement; Modifications.** This Agreement constitutes the entire Agreement between the parties regarding the subject matter hereof and supersedes all other Agreements, representations and warranties. All modifications and supplements to this Agreement must be in writing and signed by both parties.
6. **Counterparts; Facsimile Signature; Electronic Signature.** This Agreement may be executed in any number of counterparts. If this Agreement or any counterpart is signed and then faxed or e-mailed by PDF or otherwise, the faxed or e-mailed copy bearing the signature shall be as good as the original wet-ink signed copy for all intents and purposes.
7. **Interpretation; Jurisdiction.** This Agreement shall be interpreted and enforced under the laws of the State of California and jurisdiction shall be in Sacramento County, California. The Agreement shall be interpreted in a fair and balanced manner to best preserve its intent, and without bias against the drafter.
8. **Authority to Sign.** The person signing this Agreement on behalf of the Client (the Principal Signer) represents that he or she is the head of the agency or is otherwise duly authorized to sign this Agreement and to bind the Client.

Principal Signer By signing below, I represent that the persons(s) listed in Exhibit A and on any attached sheets is/are authorized to handle CPS HR Test Materials on Clients behalf. I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect, and that I will ensure all individuals handling and/or administering tests are properly trained.

**Cooperative Personnel Services dba
CPS HR Consulting,
A California Joint Powers Authority**

Client

By: _____
Authorized Signature

Name: Amy Bigone

Title: Test Rental Program Manager

Date: _____

By: _____
Authorized Signature (Head of Agency)

Name: Larry Clark

Title: Assistant City Administrator


Email: lclark@mymorristown.com

Date: 7/24/18

Exhibit A

Authorized Representative(s) *(use an additional page if needed)* By signing as an Authorized Representative, I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect.

Name, Title Kathy Frank, Admin Coor'd	Signature
E-mail Address kfrank@mymorristown.com	Phone Number 423-585-4690

Name, Title Nicole Sizemore, HR Coor'd	Signature 
E-mail Address nsizemore@mymorristown.com	Phone Number 423-585-4618

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

II. Billing Contact

Contact Name and Title Kathy Frank, Admin Coor'd		
Agency City of Morristown		
Street Address, City, State, Zip 100 W 1st N Street Morristown, TN 37814		
E-Mail kfrank@mymorristown.com	Phone Number 423-585-4690	Fax Number 423-585-4687

III. Physical Address

Agency / Department Name City of Morristown
Street Address, City, State, Zip 100 W 1st N Street Morristown, TN 37814

Exhibit B
CPS HR Test Rental Division Rates (Effective March 25, 2009 – Subject to Change)

	STOCK TESTS*	MODULAR TESTS	SEMI-STOCK TESTS	CUSTOM TESTS	AGENCY TESTS
Base Fee (per order) ‡	\$295.00	\$395.00	\$595.00	\$995.00	\$350.00
1-100 Candidates (per candidate)	\$9.00	\$12.00	\$14.00	\$15.00	\$10.00
101-500 Candidates (per candidate)	\$8.50	\$11.00	\$13.00	\$14.00	\$9.50
501+ Candidates (per candidate)	\$8.00	\$10.00	\$12.00	\$13.00	\$9.00
New Item Writing/Entry	N/A	N/A	N/A	\$35 per item	N/A
Pick Up/Handling	5%	5%	5%	5%	5%
Standard Shipping/Handling **	10%	10%	10%	10%	10%
Expedited Shipping/Handling **	15%	15%	15%	15%	15%
Premium Shipping/Handling **	20%	20%	20%	20%	20%
Shipping outside contiguous U.S.	CALL FOR DETAILS				
Entry Law/Fire Candidate Preparation Manuals **Now available Online**			Structured Interview Packages		
Quantity Per Booklet/Candidate Fee 10 - 1000 \$ 3.00 1001+ Call for volume discount details			Base Fee: \$ 595.00 Per Candidate Fee: 1 - 500 \$7.50		

*CPS HR will apply a credit of \$35.00 for each fully paid UNOPENED package of Stock Exams of test booklets on the current **STOCK test order**.

**Standard shipping applies to orders placed at least 10 business days prior to test date. Expedited shipping applies to orders placed less than 10 business days prior to test date. Orders placed 3 or less than business days prior to the test date will be charged at the premium shipping rate.

‡ Base fee includes the following at no additional charge: Proctor's Manual, Scoring Manual, CPS HR Scoring, CPS HR answer sheets and a scoring report.

SPECIAL SERVICES

Stock Supplements	\$ 2.00 per book when ordered with a Stock test
Writing Proficiency Exam	\$ 350.00 Base Fee + \$ 15.00 per candidate (Professional Scoring included)
Scoring Keys	Available at no additional charge
Re-Scoring/Hand-Scoring of Answer Sheet	\$ 30.00 (Requested directly by Agency)
Non-specified special services	CALL FOR DETAILS (Billed at applicable hourly rate)

Test Rental Contact Information:

CPS HR Consulting
Attn: Test Rental Division
2450 Del Paso Rd., Ste. 220, Sacramento CA 95834

Telephone: 916.263.1800 / Toll Free 866.867.5272
Fax: 916.921.6240 / E-mail: testrental@cpshr.us

Exhibit C

Spanish Language Proficiency Test Rental Division Rates Effective March 25, 2009 -- Subject to Change

	WRITTEN TEST	ORAL TEST
Base Fee (per order)	\$295.00	\$295.00
**Per Booklet Fee	\$9.00	N/A
***Per Tape Scoring Fee	N/A	\$120.00
Expedited Shipping	*20%	*20%
*Orders placed less than two weeks prior to the exam date will incur expedited shipping charges		
**Per Booklet Fee will be charged for number of books ordered		
***Billed for the number rated		

SPECIAL SERVICES	
Faxing/Emailing Test Results	Available at no additional charge
Hand Scoring	\$30.00
Proctoring Services	Call for details/quote
SLPP Extended Use Program	Call for details

Exhibit D

CPS HR On-line Skills Test Pricing Schedule Effective August 2015 – Subject to Change

Online Skills Test Pricing Schedule	Single-Subject Test	Two-Subject Test	Each Additional Subject
1 - 25 Candidates (per candidate)	\$20.00	\$30.00	\$6.00
26 - 100 Candidates (per candidate)	\$18.00	\$27.00	\$6.00
101 - 250 Candidates (per candidate)	\$17.00	\$25.50	\$6.00
251 - 1,000 Candidates (per candidate)	\$15.00	\$22.50	\$6.00
1,001+ Candidates (per candidate)	\$12.00	\$18.00	\$6.00

Access 2007 or 2010	Excel 2007 or 2010	Word 2007 or 2010
Advanced Skills	Advanced Skills	Advanced Skills
Basic Skills	Basic Skills	Basic Skills
Standard	Standard	Standard
PowerPoint 2007 or 2010	Windows XP	Digital Literacy 2008
Advanced Skills	Advanced Skills	Computing
Basic Skills	Basic Skills	Internet
Standard	Standard	Software Skills
Other Exams		
Basic Computer Literacy	Typing Test	
Excel Functions	Ten Key Test	
Publisher 2003 - Standard	Data Entry Test - Numeric	
Outlook 2007 or 2010 - Standard	Data Entry Test - Alphanumeric	

**CITY OF MORRISTOWN**

PURCHASING DIRECTOR

P.O. Box 1499

Morristown, TN 37815-0647

Phone: (423) 585-4622 Fax: (423) 585-4687

Purchase Order

Fiscal Year 2019

Page 1

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKAGES AND SHIPPING PAPERS.Purchase
Order #**19000247-01***Retain this purchase order for proof of tax exemption.***Tax Exempt #62-6000369****V
e
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r**WAVETRONIX LLC
78 E 1700 S

PROVO, UT 84606

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o**City of Morristown
400 Dice Street
aahl@mymorristown.com
Morristown, TN

37813

Vendor Phone Number		Vendor Fax Number	Requisition Number	Delivery Reference/Contact	
801-734-7241			19000251	MATTHEW MANNING	
Date Ordered	Vendor Number	Date Required	Interoffice Delivery		Department/Location
07/23/18	007271				43190
Item#	Description/Part No.		Qty/Unit	Cost Each	Extended Price
001	QUOTE#: QUO-02969-V6Y9T6 QTY: 22 SS-225 SMART SENSOR MATRIX QTY: 4 SS-200E SMART SENSOR ADVANCE QTY: 26 SS-611 SMAART SENSOR MOUNT QTY: 26 SS-704-020 CABLE, 20FT, 6 CONDUCTOR QTY: 26 SS-710 SENSOR CABLE JUNCTION BOX QTY: 7 102-0451 CLICK 656 QTY: 7 102-0449 SDLC FOUR CONNECTOR HUB QTY: 3 101-0448 SMART SENSOR 6CONDUCTOR CABLE, 500' SPOOL 43190-365		1.00 EACH	127833.75000	128,458.75
002	QUOTE #: QUO-03031-P9S8L4 QTY: 4 SS-225 SMART SENSOR MATRIC QTY: 4 SS-611 SMART SENSOR MOUNT QTY: 4 SS-704-020 CABLE 20FT, 12-8 PIN, 6 CONDUCTOR QTY: 4 SS-710 SENSOR CABLE JUNCTION BOX QTY: 1 102-0451 CLICK 656 6 SENSOR SDLC SERVER RACH CABINET INTERFACE		1.00 EACH	19716.25000	19,816.25

The City of Morristown is an equal
employment / affirmative action
employer EOE / AA

Authorized Signature

Date

Authorized Signature

Date



CITY OF MORRISTOWN
PURCHASING DIRECTOR

P.O. Box 1499
Morristown, TN 37815-0647
Phone: (423) 585-4622 Fax: (423) 585-4687

Purchase Order

Fiscal Year 2019

Page 2

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKAGES AND SHIPPING PAPERS.

Purchase Order # **19000247-01**

Retain this purchase order for proof of tax exemption.

Tax Exempt #62-6000369

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WAVETRONIX LLC
78 E 1700 S
PROVO, UT 84606

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City of Morristown
400 Dice Street
aahl@mymorristown.com
Morristown, TN 37813

Vendor Phone Number		Vendor Fax Number		Requisition Number	Delivery Reference/Contact	
801-734-7241				19000251	MATTHEW MANNING	
Date Ordered	Vendor Number	Date Required	Interoffice Delivery		Department/Location	
07/23/18	007271				43190	
Item#	Description/Part No.			Qty/Unit	Cost Each	Extended Price
	DEVICE					
	QTY: 1 102-0449 SDLC FOUR CONDUCTOR					
	HUB					
	QYT: 1 101-0448 SMARTSENSOR					
	6-CONDUCTOR CABLE, 500' SPOOL					
	43190-365			19,816.25		
	Total Freight			725.00		
					PO Total	148,275.00

The City of Morristown is an equal
employment / affirmative action
employer EOE / AA

VENDOR COPY

Authorized Signature

Date

Authorized Signature

Date



DATE: 05/18/18

TO: Mr. Matthew Manning

FROM: Wavetronix, LLC
COMPANY

Nichole Vincent
NAME

Regional Sales Coordinator
TITLE

RE: **SOLE SOURCE DECLARATION**
Product/Service: Wavetronix Matrix Radar Sensor
Supplier: Wavetronix, LLC
Address: 78 E 1700 S, Provo, UT, USA 84606

Mr. Manning:

We hereby declare and affirm in good faith and to the best of our knowledge after exhaustive study that the products and/or services requested for purchase are impossible of award by competitive bidding due to the unique and/or proprietary nature of said product or service, the accrued critical and necessary functional benefits of the aforementioned unique characteristics being essential to the performance-based expectations inherent in the purchase decision, and as a consequence of the absence of a functionally equivalent product or service sufficient of fulfilling the mission-sensitive needs and expectations or alternative source for the purchase of said product or service.

I. UNIQUE CHARACTERISTICS:

The requested product or service consists of the following unique, exclusive and/or proprietary characteristics, functions, design elements, quality or safety standards, certifications or compatibility features deemed elemental, necessary and essential to the function, performance or mission-related accomplishment for which this purchase is initiated:

1. Installed TDOT Matrix Detection Sensors are manufactured solely by Wavetronix.
2. Patented Digital Wave Radar 16 Beams
3. True Presence Radar Detection
4. Up to 10 lanes and 16 channels of detection simultaneously

II. FUNCTIONAL APPLICABILITY TO MISSION

The unique, exclusive and/or proprietary characteristics, functions, design elements, quality or safety standards, certifications or compatibility features inherent in the requested product or service are elemental, necessary and essential to the function, performance or mission-related accomplishment of TDOT, as related to the purposes for which this product or service is purchased, as follows:

1. Non-Intrusive, Radar Based detection to allow superior detection in all-weather elements to include Fog, poor lighting, zero visibility, snow, rain, wind, glare, and shadowing effects.

III. ABSENCE OF COMPETITIVE PRODUCT OR SERVICE ALTERNATIVE

We hereby affirm in good faith that to the best of our knowledge, after exercising due diligence in our attempts to locate alternate sourcing opportunities, that no other manufacturer, distributor or provider exists who can sell, deliver or service within the State of Tennessee a comparable competitive product or service capable of accomplishing the declared functional and productive expectations of the Tennessee Department of Transportation as relates to the purposes for this purchase.

IV. ABSENCE OF ALTERNATIVE SOURCING

We further attest that, in the case of a sole source distributor, reseller or manufacturer's representative, that as a consequence of our exclusive protected territory representation agreement with the manufacturer or wholesaler, and the refusal of the manufacturer or wholesaler to sell or deliver directly to the end user, no other entity has the legal right to sell, deliver, service or solicit sales for the foregoing product or service within the geographical confines of the State of Tennessee, or within the prescribed local geographical area of the State of Tennessee consistent with the location of the requisitioning Division or Bureau of the Tennessee Department of Transportation.

Thank you for your immediate and affirmative attention.

Respectfully,

Nichole Vincent
Regional Sales Coordinator





DATE: 05/18/18

TO: Mr. Matthew Manning

FROM: Wavetronix, LLC
COMPANY

Nichole Vincent
NAME

Regional Sales Coordinator
TITLE

RE: **SOLE SOURCE DECLARATION**
Product/Service: Wavetronix Advance Radar Sensor
Supplier: Wavetronix, LLC
Address: 78 E 1700 S, Provo, UT, USA 84606

Mr. Manning:

We hereby declare and affirm in good faith and to the best of our knowledge after exhaustive study that the products and/or services requested for purchase are impossible of award by competitive bidding due to the unique and/or proprietary nature of said product or service, the accrued critical and necessary functional benefits of the aforementioned unique characteristics being essential to the performance-based expectations inherent in the purchase decision, and as a consequence of the absence of a functionally equivalent product or service sufficient of fulfilling the mission-sensitive needs and expectations or alternative source for the purchase of said product or service.

I. UNIQUE CHARACTERISTICS:

The requested product or service consists of the following unique, exclusive and/or proprietary characteristics, functions, design elements, quality or safety standards, certifications or compatibility features deemed elemental, necessary and essential to the function, performance or mission-related accomplishment for which this purchase is initiated:

1. Installed ADOT Advance Extended Range Detection Sensors are manufactured solely by Wavetronix.
2. Dilemma Zone Protection
3. Dynamic ETA Tracking
4. Patented safe arrival technology

II. FUNCTIONAL APPLICABILITY TO MISSION

The unique, exclusive and/or proprietary characteristics, functions, design elements, quality or safety standards, certifications or compatibility features inherent in the requested product or service are elemental, necessary and essential to the function, performance or mission-related accomplishment of TDOT, as related to the purposes for which this product or service is purchased, as follows:

1. Non-Intrusive, Radar Based detection to allow superior detection in all-weather elements to include Fog, poor lighting, zero visibility, snow, rain, wind, glare, and shadowing effects.

III. ABSENCE OF COMPETITIVE PRODUCT OR SERVICE ALTERNATIVE

We hereby affirm in good faith that to the best of our knowledge, after exercising due diligence in our attempts to locate alternate sourcing opportunities, that no other manufacturer, distributor or provider exists who can sell, deliver or service within the State of Alabama a comparable competitive product or service capable of accomplishing the declared functional and productive expectations of the Alabama Department of Transportation as relates to the purposes for this purchase.

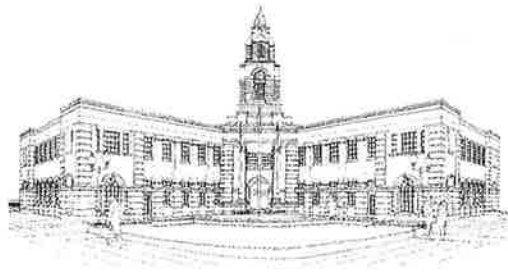
IV. ABSENCE OF ALTERNATIVE SOURCING

We further attest that, in the case of a sole source distributor, reseller or manufacturer's representative, that as a consequence of our exclusive protected territory representation agreement with the manufacturer or wholesaler, and the refusal of the manufacturer or wholesaler to sell or deliver directly to the end user, no other entity has the legal right to sell, deliver, service or solicit sales for the foregoing product or service within the geographical confines of the State of Alabama, or within the prescribed local geographical area of the State of Alabama consistent with the location of the requisitioning Division or Bureau of the Alabama Department of Transportation.

Thank you for your immediate and affirmative attention.

Respectfully,

Nichole Vincent
Regional Sales Coordinator



Morristown City Council Agenda Item Summary

Date: July 31, 2018

Agenda Item: Approval of Payment – MUS Boring

Prepared by: Joey Barnard

Subject: Water Line Boring – Merchants Greene to Durham Landing

Background/History: During the construction of the Public Works and Community Center property, it became necessary to bore under Merchants Greene to extend the water line to the property. Morristown Utility Systems and their contractor performed the bore on behalf of the City of Morristown.

Financial Impact: Funds have been appropriated for water utilities related to the Public Works project.

Action options/Recommendations: It is staff recommendation to make payment to MUS for the water line extension and boring.

Attachments: Copy of Invoice

Sales / Invoices

Page 1/1
Sales / Invoices W718004
Date 7/30/2018

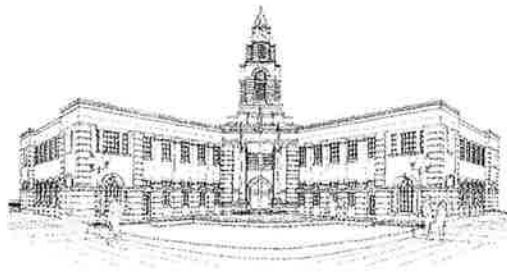
Morristown Utilities Commission

441 WEST MAIN
P.O. BOX 667
MORRISTOWN TN 37815

Customer: City of Morristown Public Works
400 Dice St
Morristown TN 37814

Purchase Order	Customer ID	Salesperson ID	Shipping Method	Payment Terms ID
	W-CITY OF MTOWN			
Description: W718004				Amount \$64,500.00

Subtotal	\$64,500.00
Misc	\$0.00
Tax	\$0.00
Freight	\$0.00
Trade Discount	\$0.00
Payment	\$0.00
Total Due	\$64,500.00



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: Surplus Plotter Equipment

Background / History: Equipment has been identified to be declared as surplus for removal.

Findings / Current Activity:

An OCE' TCS 500 Plotter is outdated and no longer under maintenance. Parts are no longer available for the plotter to function. Cannon does not support.

Financial Impact: None

Action options / Recommendations: Approval of declaring equipment surplus.

Attachments:



Morristown City Council Agenda Item Summary

Date: August 7, 2018

Agenda Item:

Prepared by: Larry Clark

Subject: Surplus Plotter Equipment

Background / History: Equipment has been identified to be declared as surplus for removal.

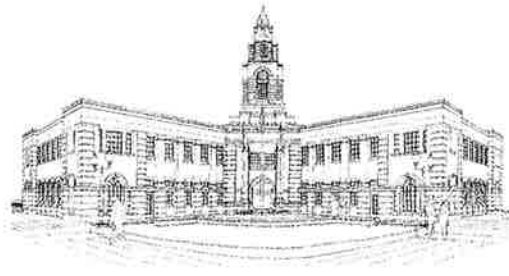
Findings / Current Activity:

An OCE' TCS 500 Plotter is outdated and no longer under maintenance. Parts are no longer available for the plotter to function. Cannon does not support.

Financial Impact: None

Action options / Recommendations: Approval of declaring equipment surplus.

Attachments:



Morristown City Council Agenda Item Summary

Date: July 31, 2018

Agenda Item: Sale of Station #4

Prepared by: Joey Barnard

Subject: Declaring Station #4 Surplus Property

Background/History: The construction of a new Station #4 on Central Church Road has been completed. With the new Station opening for services, the old Station #4 located at 3835 West Andrew Johnson Highway is no longer needed.

Financial Impact: Funds received from the sale of the property will be applied toward the costs of the construction of the new Station #4. This will provide additional bond funds for the Public Works Project and the proposed Community Center.

Action options/Recommendations: It is staff recommendation to declare the old Station #4 located at 3835 West Andrew Johnson Highway as surplus property and move forward to sell the property.

Attachments: None.

Morristown Emergency
Rescue Squad

Inspection and Maintenance Agreement

(I&M Agreement)

City of Morristown, TN

100 West 1st North Street

Morristown, TN 37814

(423) 581-0100

Inspection and Maintenance Agreement (I&M Agreement)

THIS AGREEMENT, made and entered into this 5th day of JULY, 2018, by and between MORRISTOWN EMERGENCY? hereinafter called the "Landowner", and
(Insert Full Name of Owner) RESCUE SQUAD, LLC
the City of Morristown, TN hereinafter called "City".

WITNESSETH, that

WHEREAS, the Landowner is the owner of certain property described as 5639 EAST ANDREW
HAMBLEEN COUNTY TAX ID # 018 126.06 as recorded by deed in the last land records of
(Insert Hamblen County Tax & Parcel Number) JOHNSON HWY

Hamblen County, TN, Deed Book 1517 Page 858 hereafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Site Plan/Subdivision known as EMS CONSTRUCTION / SITE PLAN
(Name of Plan/Development)

hereafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for management of stormwater within the confines of the property; and

WHEREAS, the City and the Landowner, its successors and assigns, agree that the health, safety and welfare of the residents of the City of Morristown, Tennessee, require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site stormwater management/BMP facilities, as shown on the Plan, be constructed and adequately maintained by the Landowner, its successors and assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors, and assigns, in accordance with the plans and specifications identified in the Plan and shall, upon construction completion, be certified as such by the Plan's Engineer of Record.
2. The Landowner, its successors, and assigns, shall adequately maintain the stormwater management/BMP facilities as outlined in the Plan and contained within the Landowner's property. This includes all pipes and channels built to convey stormwater to and from the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition, so that these facilities

are performing their design functions. Those maintenance procedures outlined in the Plan and the City's approved BMP guidelines shall be practiced at a minimum. Common maintenance shall include the removal of debris (leaves, lawn clippings, sticks, etc.) and trash after rainfall events, checking outlet structures for clogging and cleaning, as necessary, repairing erosive areas promptly upon observation, and removing accumulated sediment.

3. The Landowner, its successors, and assigns, shall inspect the stormwater management/BMP facility and report to the City Engineer if any major repairs (i.e. structural) are necessary. The purpose of the inspection and reporting is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc and shall be performed at such times and such manner as to accomplish these objectives.
4. The Landowner, its successors, and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the stormwater management/BMP facilities (including sediment removal) is outlined on the approved plans or in the City's BMP guidelines, the Landowner, its successors, and assigns, shall adhere to the schedule.
5. The Landowner, its successors, and assigns, hereby grant an easement to the City, its authorized agents, and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever the City deems necessary. The purpose of inspection may be to check the facility for proper functioning, to follow-up on reported deficiencies or repairs, to respond to citizen complaints, and/or to check for any other reasons the City deems necessary. If problems are observed, the City shall provide the Landowner, its successors, and assigns, copies of the inspection findings and a directive to commence with the repairs within a specified timeframe.
6. In the event the Landowner, its successors, and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the City, the City may enter upon the Property and take the steps necessary to correct deficiencies identified in the inspection report. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Landowner, outside of the easement, for the stormwater management/BMP facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
7. In the event the City, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors, and assigns, shall reimburse the City upon demand, within sixty (60) days of receipt thereof, for two hundred percent (200%) of all actual costs incurred by the City hereunder.
8. If the Landowner fails to pay the City for two hundred percent (200%) of their incurred expenses within sixty (60) days of receipt of written notice, the Landowner authorizes the City to place a lien against the property in an amount equal to two hundred percent (200%) of said expenses.
9. If the Landowner fails to reimburse the City, as described above, the Landowner further authorizes the City to collect said expenses from the Landowner through other appropriate legal action, with the Landowner to be liable for the reasonable costs of collection, court costs, and attorney fees.

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10. This Agreement imposes no liability of any kind whatsoever on the City, and the Landowner agrees to hold the City harmless from any liability in the event the stormwater management/BMP facilities fail to operate properly.
11. This Agreement shall be recorded among the land records of Hamblen County, Tennessee, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interest.

WITNESS the following signatures and seals:

Marristown Hamblen EMS
Company/Corporation/Partnership Name (Seal)

By: [Signature]

Danny Houseight
(Type Name)

Director
(Type Title)



State of TN

County of HAMBLEN

The foregoing Agreement was acknowledged before me this 5th day of JULY, 2018

by TRACY L. STROUD

[Signature]
Notary Public

My Commission Expires 8/22/19

Approved as to form: [Signature] 7-16-18
City Attorney Date

Approved by the City: _____
Mayor Date