

WORK SESSION
October 20, 2020
Pre-Meeting Work Session – Cancelled

AGENDA
CITY OF MORRISTOWN, TENNESSEE
CITY COUNCIL MEETING
October 20, 2020
5:00 p.m.

1. CALL TO ORDER

Mayor Gary Chesney

2. INVOCATION

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

5. APPROVAL OF MINUTES

1. October 6, 2020

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

1. Ordinance No. _____

Entitled an Ordinance to Close and Vacate Certain Rights-of-Way within the City of Morristown {Undeveloped Alley between Lennie Avenue and Sunrise Avenue and S. Jackson Street and Baird Avenue}.

{Public Hearing Date November 3, 2020}

9-c. Awarding of Bids/Contracts

1. Approval to enter into contract with Andrews and Hoskins Construction for the Shuck Shelter Renovation Project at Frank Lorino Park in the amount of \$27,700.
2. Approval of Purchase Order No. 21000825-00 in the amount of \$66,515 for State Fire Marshal Review of the Community Center Plans.
3. Approval of Easement to Atmos Energy at East Tennessee Progress Center.
4. Approval of Purchase Order No. 21000826-00 in the amount of \$44,409.85 for disinfectant sprayers and disinfectant/sanitizing solution via Omnia Partners Cooperative. Purchase is fully funded through CARES Act.
5. Approval of agreement for Hamblen County Government to provide Animal Control and Shelter Services to the City of Morristown.
6. Approval of Addendum #2 to the original lease for office space located at 1748 West Andrew Johnson Hwy., Morristown, TN to extend the current lease from November 1, 2020 to October 31, 2023 at the current monthly rent of \$1,650.
7. Approval for Narcotics to declare inventory items as surplus and to be donated to Walters State Community College.
8. Approval of Inspection and Maintenance Agreement between the City of Morristown and Morristown Hospitality Inn - Fairfield Inn.
9. Approval to submit Notice of Intent to Apply for the Tennessee Department of Health, Healthy Built Environment Grant for development of multi-use trail design at Frank Lorino Park.

9-d. Board/Commission Appointments

9-e. New Issues

1. Approval of four (4) Entry-Level Patrol Officers, Morristown Police Department.

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:

November 3, 2020	Tuesday	2:30 p.m.	Finance Committee Meeting
November 3, 2020	Tuesday	4:00 p.m.	Work Session – Agenda Review
November 3, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
November 13, 2020	Friday	9:00 a.m.	City Council Work Session – 9:00 a.m. P.W. Facility, 4360 Durham Landing
November 17, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
November 17, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
November 26-27, 2020	Thurs/Fri		City Center Closed – Thanksgiving Holiday
December 1, 2020	Tuesday	2:30 p.m.	Finance Committee Meeting
December 1, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
December 1, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
December 15, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
December 15, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
December 24-25, 2020	Thurs/Fri		City Center Closed – Christmas Eve/Christmas Holiday
January 1, 2021	Friday		City Center Closed – New Year’s Holiday
January 5, 2021	Tuesday	2:30 p.m.	Finance Committee Meeting
January 5, 2021	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
January 5, 2021	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
January 18, 2021	Monday		City Center Closed - Martin Luther King Day
January 19, 2021	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
January 19, 2021	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session

WORK SESSION Post-Meeting Work Session October 20, 2020

1. Pavement Patching Policy

**STATE OF TENNESSEE
COUNTY OF HAMBLEN
CORPORATION OF MORRISTOWN
October 6, 2020**

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, October 6, 2020, with the Honorable Mayor Gary Chesney presiding and the following Councilmembers present: Al A'Hearn, Chris Bivens, Bob Garrett, Kay Senter and Ken Smith. Councilmember Tommy Pedigo was Absent.

Councilmember A'Hearn led in the invocation and the "Pledge of Allegiance".

Councilmember A'Hearn made a motion to approve the September 15, 2020 minutes as circulated. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

Mayor Chesney opened the floor for citizens comments related to Agenda items; No one spoke.

Mayor Chesney announced that the Public Hearing for the adoption of the Plan of Services and Ordinance 3661 has been pulled from agenda and moved to the November 3rd meeting.

Councilmember Bivens made a motion to approve Resolution No. 12-21. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

**Resolution No. 12-21
Being a Resolution of the City of Morristown, Tennessee Specifying Municipal
Court Procedures.**

Councilmember A'Hearn made a motion to approve the recommendation of best and lowest bid for the Shuck Shelter Renovations at Frank Lorino Park and award to Andrew and Hoskins Construction for a base bid amount of \$27,700. Councilmember Bivens seconded the motion and upon rollcall; all voted "aye".

Councilmember Senter made a motion to approve the proposal from LDA Engineering to provide design services for the North Cumberland Street Improvements (Heritage Park) in the amount of \$17,500. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve the Hangar Ground Lease Agreement, as approved by the Morristown Regional Airport Commission, between the City of Morristown Regional Airport Commission and Southeast Industrial, LLC. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember A'Hearn made a motion to approve the contract with Michael Baker International for the Morristown Regional Airport Taxiway Design Project in an amount not to exceed \$46,556. Councilmember Bivens seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve the contract with Michael Baker International to conduct a Land Acquisition Study for the Morristown Regional Airport Taxiway Relocation Project in an amount not to exceed \$84,464 and to be fully funded with Federal Funds. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember A'Hearn made a motion to accept the best and lowest bid from Howard Technologies for Getac Notebook Computers for the Morristown Police Department. Councilmember Bivens seconded the motion and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve repairs from BST Fire Apparatus to the Fire Department's Aerial Fire Truck #479 for an estimated cost of \$30,000. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Councilmember Smith made a motion to approve the purchase of Firefighting PPE - Self-Contained Breathing Apparatus Cylinders and Air-Paks via Sourcewell Cooperative Purchasing Agreement from Municipal Emergency Services for the Morristown Fire Department. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve Parks and Recreation Department to declare inventory items as surplus and sell via online auction website, GovDeals. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve Public Works Department to declare equipment as surplus and sell via online auction website, GovDeals. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Councilmember A'Hearn made a motion to approve the purchase of the Delinquent Tax Sale Properties acquired at public auction on September 29, 2020. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Senter nominated Dwayne Nelson to the Morristown-Hamblen Library Board to fill the unexpired term of Terry Winstead: term expiring July 1, 2021. Councilmember seconded the nomination and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve the Promotion of Mike Bacon to Detective Sergeant, Morristown Police Department. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember A'Hearn made a motion to approve the Promotion of Ricky Sanders to Detective Corporal - Investigations, Morristown Police Department. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve the Promotion of Josh Akard to Detective, Morristown Police Department. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve the Promotion of Todd King to Training Captain, Morristown Police Department. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Councilmember Smith made a motion to approve the Promotion of Scott Seal to Driver, Morristown Fire Department. Councilmember Bivens seconded the motion and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve adding Tuesday, December 24, 2020, as a Holiday. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Mayor Chesney opened the floor for members of the audience to speak subject to the guidelines provided and the following spoke: Darlene Ely, Dr. Paul Fuller, Anthony Eckel, Brandon Moore, Steve Lawrence, William Isom, Betsy Hurst, Reverend Sherry Fouke, Reverend Walter Weikel, Reverend Ed Cunningham, Tannika Walthall, Alex Rom-Roginski, William Butler, Yolanda Treece, KC Cuberson-Alverado, Reverend John Jones.

Mayor Gary Chesney adjourned the October 6, 2020 Morristown City Council meeting at 6:26 p.m.

Mayor

Attest:

City Administrator

City of Morristown

Incorporated 1855

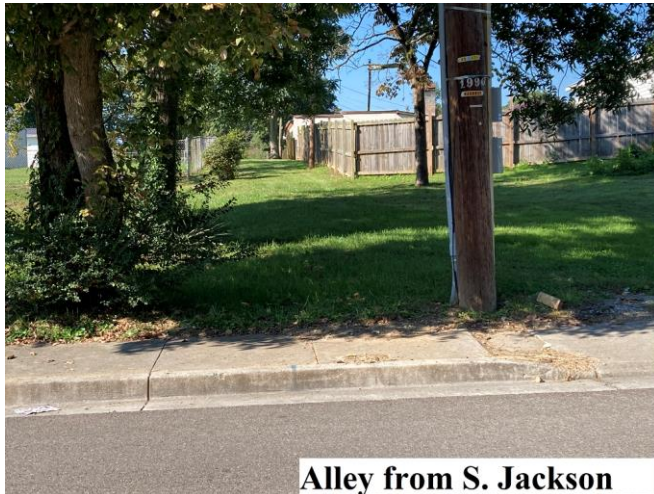
DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown City Council
FROM: Josh Cole, Planner
DATE: October 20th, 2020
SUBJECT: Right-of-Way Abandonment
Undeveloped Alley between Lennie Ave & Sunrise Ave and S. Jackson St. & Baird Ave

BACKGROUND:

Mr. James Brady, the property owner of 513 Lennie Avenue, is requesting the right-of-way abandonment for an undeveloped 10' alley that has Lennie Avenue to the north, Sunrise Avenue to the south, S. Jackson St. to the east, and Baird Ave to the west (see the attached map). The reason stated for the request is due to foot traffic utilizing this alley and creating a nuisance. Specifically, Mr. Brady states "criminal activity and dumping trash."



Alley from S. Jackson



Alley from Baird Ave

RECOMMENDATION:

This 10' alley is an undeveloped grass strip with no utilities. Per discussion with staff, it was previously used for garbage pickup, but this is no longer the case. Staff recommends approval of this right-of-way abandonment request and Planning Commission voted 9-0 in support of this request at their monthly October meeting.



Lennie Ave / Sunrise Ave Proposed 10' Right-of Way Alley Closure



ORDINANCE NO. _____

ENTITLED AN ORDINANCE TO CLOSE AND VACATE CERTAIN RIGHTS-OF-WAYS WITHIN THE CITY OF MORRISTOWN
{Unnamed right-of-way between Lennie Avenue & Sunrise Avenue and S. Jackson Street & Baird Avenue, the general location being shown on the attached Exhibit A.}

Section I. WHEREAS, the City Council of the City of Morristown has the power to, when expedient, close, vacate and abandon rights-of-way within the municipality; and

WHEREAS, the following action is deemed to be in the best interest of the municipality;

NOW THEREFORE:

Section II. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MORRISTOWN that the following right-of-way is hereby closed, vacated and abandoned:

Beginning at the point of intersection of Parcel 005.00 of Hamblen County Tax Map 042A Group D and an unnamed right-of-way and the western boundary of S. Jackson Street right-of-way and heading in a westerly direction along Parcels 005.00, 004.00, 003.00, 002.00, and 001.00 of Hamblen County Tax Map 042A Group D to the point of intersection with the eastern boundary of Baird Avenue right-of-way; Thence, in a southerly direction along the common boundary line shared by the unnamed right-of-way with the eastern boundary of the Baird right-of-way to the point of intersection with Parcel 022.00 of Hamblen Tax Map 042 A Group D; Thence, in a easterly direction along the southern boundary of the unnamed right-of-way along Parcels 022.00, 021.00, 020.00, 019.00, 018.01, and 018.02 of Hamblen County Tax Map 042A Group D to the point of intersection with the western boundary of S. Jackson Street; Thence, in a northerly direction along the common boundary line shared by the unnamed right-of-way and the western boundary line of S. Jackson Street to the point of beginning.

Section III. BE IT FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith be, and the same are, hereby repealed.

Section IV. BE IT FURTHER ORDAINED that this ordinance takes effect from and after its passage, the public welfare requiring it.

Passed on first reading the 20th day of October 2020.

Mayor

ATTEST:

City Administrator

Passed on second and final reading this the 3rd day of November 2020.

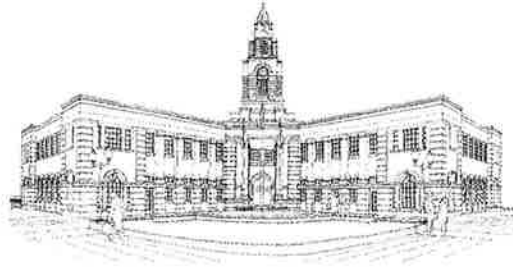
Mayor

ATTEST:

City Administrator

Exhibit A:





Morristown City Council Agenda Item Summary

Date: October 13, 2020

Agenda Item: Approval of Contract – Shuck Shelter Renovation

Prepared by: Joey Barnard, Assistant City Administrator

Subject: Shuck Shelter Renovation Contract

Background/History: The City of Morristown and the Parks and Recreation Department identified the need to renovate the existing Shuck Shelter located at Frank Lorino Park. The City of Morristown reached out to Design Innovations Architects, Inc for design and construction documents and bidding services suitable for construction permitting. The bid was issued and two (2) responses were received.

Findings/Current Activity: Design Innovations Architects, Inc. recommended to accept the best and lowest bid submitted by Andrews and Hoskins Construction. Council approved the recommendation at the Council meeting on October 6, 2020.

Financial Impact: Funds have been appropriated in the 20-21 fiscal year.

Action options/Recommendations: Council's approval is sought to allow Tony Cox, City Administrator, to enter into a contract with Andrews and Hoskins Construction for the Shuck Shelter Renovation Project in the amount of \$27,700.00.

Attachments: Contract.

AIA® Document A101® – 2017

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

AGREEMENT made as of the 20th day of October in the year 2020
(In words, indicate day, month and year.)

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

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

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

Andrews & Hoskins Construction
P. O. Box 298
Talbot, TN
37877

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

Shuck Shelter Renovation
3100 Lorino Park Road
Morristown, TN 37814

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

Design Innovation Architects, Inc.
402 S. Gay Street, Suite 201
Knoxville, TN
37902

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The Date of Commencement shall be the latter of the following:

1. The date in which a Notice to Proceed is received by Andrews & Hoskins Construction.
2. The date in which a Building Permit is received by Andrews & Hoskins Construction.
3. The date in which a signed contract is received by Andrews & Hoskins Construction.
4. The date in which a letter of appropriated funds is received by Andrews & Hoskins Construction.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☒ [X] Not later than Sixty (60) calendar days from the date of commencement of the Work.

☐ [] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Twenty-Seven Thousand Seven Hundred Dollars and zero cents (\$ 27,700.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item

Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item

Price

Conditions for Acceptance

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

(Identify each allowance.)

Item

Price

§ 4.4 Unit prices, if any:

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

Item

Units and Limitations

Price per Unit (\$0.00)

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Two Hundred Fifty Dollars and zero cents (\$250.00) per calendar day.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 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.

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 21st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified 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.)

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

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

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

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

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

§ 5.3 Interest

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.)

One and a half percent monthly 1.5%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

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

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other *(Specify)*

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

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

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

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Joey Barnard
City of Morristown
100 West First North Street
Morristown, TN 37814
Telephone: 423-585-4622
Email: aahl@mymorristown.com

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Ms. Leslie Hoskins, President
Andrews & Hoskins Construction P. O. Box 298
Talbot, TN
37877
leslie@andrewsconstructioninc.net
telephone: 423-581-1604

Init.

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

Number	Title	Date
G000	Cover	7/20/2020
S201	Roof Framing Plan	7/20/2020
AG001	Legends & Abbreviations	7/20/2020
AD101	Architectural Demolition & Removal Plan	7/20/2020
A101	Plans and Elevations	7/20/2020
E101	Floor Plan - Electrical	7/20/2020

.6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

.7 Addenda, if any:

Init.

Number

Date

Pages

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

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Title

Date

Pages

☐ Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

Leslie Hoskins, President

(Printed name and title)

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:09:54 ET on 10/12/2020.

PAGE 1

AGREEMENT made as of the ~~day of~~ 20th day of October in the year 2020

...

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

...

Andrews & Hoskins Construction
P. O. Box 298
Talbot, TN
37877

...

Shuck Shelter Renovation
3100 Lorino Park Road
Morristown, TN 37814

...

Design Innovation Architects, Inc.
402 S. Gay Street, Suite 201
Knoxville, TN
37902

PAGE 2

- [☒] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The Date of Commencement shall be the latter of the following:

1. The date in which a Notice to Proceed is received by Andrews & Hoskins Construction.
2. The date in which a Building Permit is received by Andrews & Hoskins Construction.
3. The date in which a signed contract is received by Andrews & Hoskins Construction.
4. The date in which a letter of appropriated funds is received by Andrews & Hoskins Construction.

PAGE 3

- [☒] Not later than Sixty (60) calendar days from the date of commencement of the Work.

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Twenty-Seven Thousand Seven Hundred Dollars and zero cents (\$ 27,700.00), subject to additions and deductions as provided in the Contract Documents.

...

Two Hundred Fifty Dollars and zero cents (\$250.00) per calendar day.

PAGE 4

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 21st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Twenty-One (21) days after the Architect receives the Application for Payment.

PAGE 5

Five percent (5%)

...

%—One and a half percent monthly 1.5%

PAGE 6

[X] Arbitration pursuant to Section 15.4 of AIA Document A201-2017

...

Joey Barnard
City of Morristown
100 West First North Street
Morristown, TN 37814
Telephone: 423-585-4622
Email: aahl@mymorristown.com

...

Ms. Leslie Hoskins, President
Andrews & Hoskins Construction P. O. Box 298
Talbot, TN
37877

...

telephone: 423-581-1604

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<u>G000</u>	<u>Cover</u>	<u>7/20/2020</u>
<u>S201</u>	<u>Roof Framing Plan</u>	<u>7/20/2020</u>
<u>AG001</u>	<u>Legends & Abbreviations</u>	<u>7/20/2020</u>
<u>AD101</u>	<u>Architectural Demolition</u>	<u>7/20/2020</u>
	<u>& Removal Plan</u>	
<u>A101</u>	<u>Plans and Elevations</u>	<u>7/20/2020</u>
<u>E101</u>	<u>Floor Plan - Electrical</u>	<u>7/20/2020</u>

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:09:54 ET on 10/12/2020 under Order No. 1161983131 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Shuck Shelter Renovation
3100 Lorino Park Road
Morristown, TN 37814

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

Design Innovation Architects, Inc.
402 S. Gay Street, Suite 201
Knoxville, TN
37902

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ADDITIONS AND DELETIONS:

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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

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

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

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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

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

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

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

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

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to 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. 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

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

§ 9.6 Progress Payments

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

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

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

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

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

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

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; 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.

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's 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. 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 the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or

expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during

that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;

- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

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

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

§ 15.4.4 Consolidation or Joinder

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

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

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

Additions and Deletions Report for

AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:09:37 ET on 10/12/2020.

PAGE 1

Shuck Shelter Renovation
3100 Lorino Park Road
Morristown, TN 37814

...

(Name, legal status and address)

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

...

(Name, legal status and address)

Design Innovation Architects, Inc.
402 S. Gay Street, Suite 201
Knoxville, TN
37902

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:09:37 ET on 10/12/2020 under Order No. 1161983131 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

State of Tennessee
Department of Health
Division of Licensure and Regulation
Office of Health Care Facilities, Plans Review
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
Office Phone: 615-741-6998
Fax Number: 615-253-1868



(For Office Use Only)

State Project #

PLANS REVIEW SUBMITTAL

Description of Project 120,130 sq ft Community Center with Gymnasium and Natatorium

Type of Project (check one) *New Construction* [X] *Renovation* [] *Addition* []

Project Name Morristown Community Center

Street Address 3455 Durham Landing

City Morristown

Zip Code 37813

County Hamblen

Project Owner City of Morristown

Contact Person Joey Barnard

Telephone (423) 525-4614

Fax ()

Mailing Address 100 West First North Street

City Morristown

State TN

Zip Code 37814

Project Architect/Engineer Sean Guth

A/E Firm Lose Design

Telephone (615) 242 - 0040

Fax ()

Contact Person Sean Guth

Mailing Address 2809 Foster Avenue

Nashville

State TN

Zip Code 37210

City

Sprinkler Contractor n/a

Telephone ()

Contact Person

Fax ()

Mailing Address

State

Zip Code

City

Construction start (approximate date) 03 / 01 / 2021 **Construction completion** (estimated date) 07 / 01 / 2022
(month) (day) (year) (month) (day) (year)

Occupancy Type (as defined by NFPA *Life Safety Code* 101, 2012 edition) Assembly> 300 people

Construction Type (as defined by *International Building Code*, 2012 edition) IA IB IIA **IIB** IIIA IIIB IV VA VB
(circle one)

Building Area (outside wall to outside wall as defined by *International Building Code*)

New Construction 83970 sq. ft. per largest floor

Total (all floors) 120130 sq. ft.

Existing Construction sq. ft. per largest floor

Total (all floors) sq. ft.

Existing Building Construction Type

One Hour Protected? **YES** NO **Sprinklered?** **YES** NO **Height** 48 ft. **Number of Stories** 1 with Mezzanine
(circle one) (circle one)

Certificate of Need (C.O.N.)? YES NO (If yes, attach copy of Certificate of Need) **C.O.N. Expiration Date** / /
(circle one) (month) (day) (year)

Licensing Application and Fee Required? YES NO (If fee is required, it must be paid prior to review)
(circle one)

Ship Approved Drawings to Joey Barnard

FED/EX #

USPS #

Other

In accordance with Rule 1200-24-5-.03(5) of the *Rules and Regulations of the State of Tennessee*, I hereby certify that, to the best of my knowledge and belief, the total construction cost (excluding land cost and site preparation) of this project will be:

(NOTE: The State reserves the right to request verification of costs.)

Estimated Construction Cost: \$ 33,000,000.00

Fee Due (see following table on page 2 to calculate): \$ 66,515.00

Owner or Authorized Representative's Name (Type or Print)

Signature

Date

PH-4096 (REV 5/17)

RDA-0495

When calculating fee, round the construction cost up to the nearest one-thousand dollars (e.g., 125,101.00 to \$126,000.00). Submit two copies of plans and specifications sealed, with signature and date.

ESTIMATED CONSTRUCTION COST

TO CALCULATE FEE

Total Project Construction Cost
\$0.00 to 1,000,000.00

\$2.50 per thousand or fraction thereof
(\$250.00 minimum)

\$1,000,000.01 or more

\$2,500.00 for the first \$1,000,000.00 plus
\$2.00 for each additional thousand or fraction thereof

The fee for obtaining a letter stating that plans are not required to be reviewed (a “no review letter”) shall be one hundred dollars (\$100.00). This fee shall be applied to the review if it is determined plans and specifications are required to be reviewed.

The fee for review of plans and specifications for minor renovations, locking hardware, hood and duct suppression shall be three hundred dollars (\$300.00).

The fee for review of plans and specifications for Homes for the Aged (RHA’s) licensed for six (6) beds or less shall be three hundred dollars (\$300.00).

Authority: T.C.A. 68-11-202, 68-11-209 and 68-11-216.

**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 2021

Page 1

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKAGES AND SHIPPING PAPERS.Purchase Order # **21000825-00***Retain this purchase order for proof of tax exemption.***Tax Exempt #62-6000369****V
e
n
d
o
r**STATE OF TENNESSEE
FIRE MARSHAL'S OFFICE/ADMIN
500 JAMES ROBERTSON PKY 3RD
NASHVILLE, TN 37243**S
h
i
p
t
o**CITY OF MORRISTOWN
100 W. 1ST NORTH STREET
purchasing@mymorristown.com
MORRISTOWN, TN 37814

Vendor Phone Number		Vendor Fax Number	Requisition Number	Delivery Reference/Contact	
615-741-2981		000-000-0000	21000958	ASHLEY AHL	
Date Ordered	Vendor Number	Date Required	Interoffice Delivery		Department/Location
10/14/20	015640				41610
Item#	Description/Part No.		Qty/Unit	Cost Each	Extended Price
001	ORIGINAL		1.00	66515.00000	66,515.00
	STATE FIRE MARSHAL REVIEW OF MORRISTOWN COMMUNITY CENTER 91150-399-1704		EACH		
			66,515.00		
				PO Total	66,515.00

The City of Morristown is an equal
employment / affirmative action
employer DOE / AA

Authorized Signature

Date

[Return to Agenda](#)**VENDOR COPY**

Authorized Signature

Date

This instrument was prepared by and should be returned to:
Atmos Energy Corporation
810 Crescent Centre Drive
Suite 600
Franklin, TN 37067

Line: _____
R/W#: _____

PIPELINE EASEMENT

THIS PIPELINE EASEMENT (the “Pipeline Easement”) is dated as of 8th Day of September, 2020, and made by the undersigned City of Morristown (herein called “Grantor” whether one or more) to **Atmos Energy Corporation**, a Texas and Virginia corporation with its principal office at 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, together with its successors and assigns (said entity and its successors and assigns are herein collectively called “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located in Jefferson County, Tennessee, as more particularly described on Exhibit A attached hereto; and

WHEREAS, Grantee desires to obtain an easement from Grantor for the purposes described herein and in further consideration for the agreements set forth herein and Grantor has agreed to grant the easement to Grantee across Grantor’s real property described on Exhibit A attached hereto pursuant to the terms of this Pipeline Easement.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration paid by Grantee to Grantor, the receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grantor hereby grants, sells and conveys unto Grantee, an easement for the purpose of laying, constructing, operating, maintaining, inspecting, repairing, replacing, changing the size of, relocating and changing the route or routes of, abandoning in place and removing at will, in whole or in part, a pipeline and the appurtenances thereto for the transportation of natural gas, and the products thereof, together with such above ground drips, valves, fittings, meters, pressure relief facilities, aerial markers, graphite and steel anodes, rectifier poles and other devices for the control of pipeline corrosion, and other appurtenances as may be necessary or convenient in the operation of said line, over, across, under and upon the real property described on Exhibit B attached hereto and made a part hereof (the “Easement Area”).

2. Grantee shall also be entitled to use temporary workspace as described and shown on Exhibit B (the “Temporary Workspace”) to carry out the initial construction of the facilities, which rights shall include, but not be limited to, boring activities, clearing, leveling, temporary storage, and staging equipment and materials. Grantee’s right to utilize this Temporary Workspace will terminate and cease on the date on which initial construction of Grantee’s facilities have been completed and the same are placed into service.

3. Grantee shall have the right to select the exact location of said pipeline within the Easement Area, and to do whatever may be requisite for the use and enjoyment of the rights herein granted, including the right of ingress and egress over Grantor’s adjacent or additional lands to or from the Easement Area in the event that Grantee cannot, within its sole discretion, reasonably access the Easement Area by staying within the boundaries of same. Further, if Grantee determines it is necessary to use Grantor’s adjacent lands for access, then Grantee shall exercise such ingress and egress rights as follows:

- a. Grantee shall first use those existing interior roadways as designated by Grantor which provide reasonable access from a public right-of-way to the Easement Area;
- b. If no such interior roadways exist, Grantee shall use such route as is most reasonably direct to get from a public right-of-way to the Easement Area, taking into account Grantor’s existing uses of the adjacent lands and avoiding damages to such existing uses to the extent reasonably possible;
- c. In the event there is an impediment to access within the Easement Area which requires Grantee to get onto Grantor’s adjacent lands in order to get around such impediment to access, then Grantee shall only use such portion of Grantor’s adjacent lands as is reasonably necessary to get around such impediment and back onto the Easement Area as soon as is reasonably practical.
- d. A width of twenty feet (20’) shall be considered reasonable for any routes of ingress and egress unless a greater width is necessary to accommodate turning radiuses of Grantee’s construction equipment and vehicles. These rights of ingress and egress across Grantor’s adjacent lands shall not in any way be a limitation on Grantee’s rights to use the Easement Area and the Available Space as provided for above.

4. Grantor further agrees not to change the grade, remove dirt from the surface of the Easement Area or impound water over the Easement Area without the prior written approval of Grantee. Notwithstanding the foregoing, in connection with the installation of a road which crosses the Easement Area in accordance with the terms of Paragraph 7.b, Grantor shall be permitted to increase the grade of the Easement Area only to the extent necessary to maintain spatial separation/clearance of not less than sixty inches (60”) between the surface of such road and the top of Grantee’s pipeline.

5. The aforesaid consideration paid from Grantee to Grantor includes any and all damages that may be sustained by the original construction of said pipeline, including without limitation, cutting trees and damages to land, trees, buildings, fences, growing crops and grasses;

however, after the original construction of the pipeline Grantee will pay to the owner of the land and, if leased, to his tenant, as they may be respectively entitled, actual damages done to fences and growing crops by reason of entry to repair, maintain and remove said pipeline, or for any future construction. Should the amount of such damages contemplated by this paragraph not be agreed upon by Grantor and Grantee, then the amount of such damages shall be determined by final and binding arbitration before three disinterested arbitrators, with one arbitrator being appointed by Grantor, one arbitrator being appointed by Grantee, and the third arbitrator being appointed by the two other arbitrators. If not unanimous, the award may be determined by any two of the three arbitrators and shall be in writing and shall be non-appealable. A judgment upon any award rendered by the arbitrators may be entered by any state or federal court having jurisdiction thereof.

6. In relation to the Easement Area, Grantee has the right to trim, cut down or eliminate trees or shrubbery to the extent, in the sole judgment of Grantee as may be necessary to prevent possible present or future interference with the convenient operation or convenient inspection of said pipelines and to remove possible present or future hazard to such pipelines, and the right to remove or prevent the construction of any and all buildings, structures, reservoirs, or other obstructions on the Easement Area and to prevent activities on the Easement Area any of which, in the sole judgment of the Grantee may presently or in the future endanger or interfere with the efficiency, safety, convenient operation or convenient inspection of said Easement Area, pipelines and appurtenances.

7. In addition to any other rights stated herein, Grantor retains:

- a. the right to grow and cultivate crops, graze cattle, and use for recreational purposes said Easement Area as will not interfere with Grantee's use of the Easement Area for the purposes herein granted;
- b. the right to construct streets, roads, and alleyways which accommodate standard vehicular traffic across the Easement Area and right-of-way described in Exhibit B at angles of not less than seventy-five degrees (75°), provided that spatial separation/clearance of not less than sixty inches (60") is maintained between the surface of such road and the top of Grantee's pipeline;
- c. the right to cross the Easement Area with underground utilities and buried communications cables provided they are installed parallel to grade and where feasible, cross underneath Grantee's pipeline, and if not, cross over Grantee's pipeline. In either case, said utilities or communications cables shall be installed with a minimum twenty-four inches (24") spatial separation and cross at or near right angles relative to Grantee's pipeline but in no event less than a seventy-five degree (75°) angle; and
- d. all of Grantor's rights, title, and interest in and to all oil, gas, and other minerals (whether by law classified as part of the mineral estate or the surface estate) in, on, and under the Easement Area described herein; provided, however, that Grantor shall not drill or prospect for oil, gas, and other minerals from the surface of said Easement Area and right-of-way described in Exhibit B for the pipeline, but Grantor will be permitted to extract oil, gas, and other minerals

from and under the Easement Area by directional drilling, mining, or other means, so long as Grantee's use of the Easement Area and right-of-way described in Exhibit B for the pipeline is not disturbed, which shall include the right of Grantee to physical and/or lateral support for the pipeline, as well as the right that the pipeline shall not be endangered, obstructed, or interfered with by such operations.

8. If Grantee should abandon the rights granted herein and if such abandonment should continue for a continuous period of ten years, all rights of Grantee herein shall ipso facto terminate and revert to Grantor, his heirs, legal representatives, and assigns.

9. Grantor and Grantee agree that the failure to assert any right under this Pipeline Easement shall not constitute a waiver of any other right hereunder. Further, it is hereby agreed that any delay by Grantee in asserting any right granted it in this Pipeline Easement, regardless of the length of any such delay, shall not prevent Grantee from later asserting or otherwise enforcing that same right, including but not limited to the right to prevent or remove any encroachments within the Easement Area as provided in Paragraph 6 above.

10. Both Grantor and Grantee hereby represent and warrant that they have read and have fully understood the terms of this Pipeline Easement, that they have had the opportunity to have same reviewed by an attorney, and that in entering into this Pipeline Easement they are relying solely upon their independent review and the advice of their respective counsel. Further, Grantor and Grantee acknowledge that this Pipeline Easement has been negotiated by the parties, and this Pipeline Easement shall be construed as one prepared by the joint efforts of Grantor and Grantee and shall not be construed against either party as the drafter.

11. Grantor and Grantee shall be entitled forthwith to full and adequate relief by injunction and to all other legal and equitable remedies for the consequences of any breach of this Pipeline Easement. If Grantor or Grantee institutes any litigation to enforce any of the terms, covenants, easements, or obligations set out in this Pipeline Easement, the prevailing party in such litigation shall be entitled to collect court costs and reasonable attorneys' fees from the non-prevailing party.

12. Nothing contained herein shall be construed to make Grantor and Grantee partners or joint venturers or to render any of said parties liable for the debts or obligations of the other.

13. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery to the address set forth herein. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party.

14. BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY

PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

TO HAVE AND TO HOLD the above described easements and rights unto the said Grantee, and Grantee's successors and assigns, until abandoned as provided for herein.

This instrument and covenants and agreements herein contained shall constitute covenants running with the land, binding upon Grantor, his heirs, legal representatives, successors and assigns, for the benefit of Grantee, and Grantee's successors and assigns.

Grantor represents that Grantor is the owner in fee simple of Property, free and clear of any unstated liens or encumbrances and warrants title to the Property, subject to outstanding mortgages, if any, now on record in the count where the Property is located. Grantor hereby binds himself, his heirs, legal representatives and assigns to warrant and forever defend all and singular the above described easements and rights, unto the said Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

It is hereby understood that the party securing this grant on behalf of Grantee is without authority to make any covenant or agreement not herein expressed.

<Signature pages to follow>

EXECUTED this _____ day of _____, _____.

GRANTOR(S):

(SIGNATURE)

(SIGNATURE)

(NAME)

(NAME)

(ADDRESS)

(ADDRESS)

STATE OF _____)
COUNTY OF _____)

Before me, the undersigned, a Notary Public within and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who upon oath acknowledged that _____ executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, at office in _____,
_____, this the ____ day of _____, 20____.

Notary Public

My Commission Expires:

STATE OF _____)
COUNTY OF _____)

Before me, the undersigned, a Notary Public within and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who upon oath acknowledged that _____ executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, at office in _____,
_____, this the ____ day of _____, 20_____.

Notary Public

My Commission Expires:

I hereby swear or affirm that the actual consideration or true value of this transfer, whichever is greater, is \$2,500.00.

Affiant

Sworn to and subscribed before me this the ____ day of _____, 20____.

Notary Public

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY OWNED BY GRANTOR

GAS EASEMENT

SITUATED in District No. 3 of Jefferson County, Tennessee, and being a Gas Easement across the property of the City of Morristown; Tax Map 18, Parcel 46 as recorded in the Jefferson County Register's Office Deed Book 418, Page 99 and being more particularly bounded and described as follows:

“COMMENCING” at a point in the southerly right-of-way line of Progress Parkway, said point having state plane coordinates of Northing 667524.94, Easting 2765500.58; thence departing said point and continuing across the land of the City of Morristown S57°51’26”W 438.09’ to a rebar and cap stamped “TN 1964”, said rebar being the “POINT of BEGINNING”; thence departing said rebar and continuing across the land of the City of Morristown the following four calls: S57°51’26”W 25.00’ to a rebar and cap stamped “TN 1964”; thence N32°08’34”W 20.00’ to a rebar and cap stamped “TN 1964”; thence N57°51’26”E 25.00’ to a rebar and cap stamped “TN 1964”; thence S32°08’34”E 20.00’ to the “POINT of the BEGINNING” containing 500 Square Feet more or less as shown on a drawing title “Gas Easement for Atmos Energy” by Miller Land Surveying, LLC (1394 Existing.dwg).

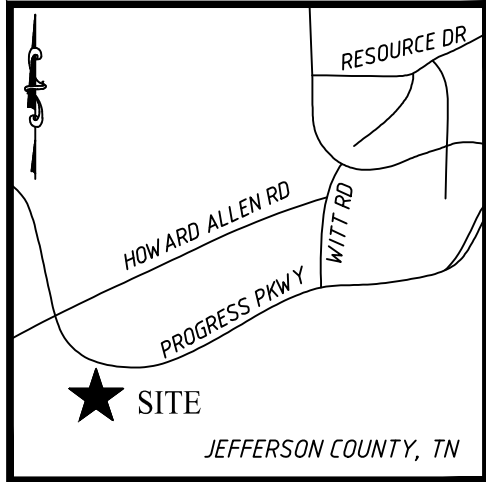
ACCESS EASEMENT

SITUATED in District No. 3 of Jefferson County, Tennessee, and being a 15’ Wide Access Easement across the property of the City of Morristown; Tax Map 18, Parcel 46 as recorded in the Jefferson County Register's Office Deed Book 418, Page 99 and being more particularly bounded and described as follows:

BEGINNING” at a point in the southerly right-of-way line of Progress Parkway, said point having state plane coordinates of Northing 667524.94, Easting 2765500.58; thence departing said point and continuing across the land of the City of Morristown the following three calls: S57°51’26”W 438.09’ to a rebar and cap stamped “TN 1964”; thence N32°08’34”W 15.00’ to a point; thence N57°51’26”E 417.06’ to a point in said right-of-way line; thence departing said point and continuing coincident with said right-of-way line with the arc of a curve to the left having a chord bearing and distance of S86°38’38”E 25.83’, a radius of 1025.00’ and an arc length of 25.83’ to the “POINT of the BEGINNING” containing 6412 Square Feet more or less as shown on a drawing title “Gas Easement for Atmos Energy” by Miller Land Surveying, LLC (1394 Existing.dwg).

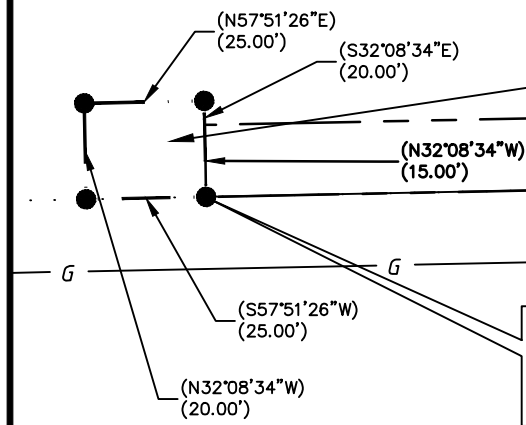
EXHIBIT B
EASEMENT AREA
N/A

C:\Users\jeff\Miller Surveys Dropbox\ML S\1394 Progress Parkway\Drawings\1394 Existing.dwg



VICINITY MAP

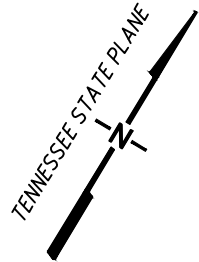
NOT TO SCALE



P.O.B.
GAS
EASEMENT

GAS EASEMENT FOR ATMOS ENERGY

3RD CIVIL DISTRICT, JEFFERSON COUNTY, TN



15' WIDE ACCESS EASEMENT
6412 SQ.FT.±

CITY OF MORRISTOWN
TAX MAP 18, PARCEL 46
DEED BOOK 418, PAGE 99

P.O.B.
ACCESS
EASEMENT

(CH B=S86°38'38"E)
(CH D=25.83')
(R=1025.00')
(L=25.83')

EXISTING
EAST TENNESSE NATURAL GAS CO. EASEMENT
PLAT BOOK H, PAGE 45

TN STATE PLANE COORD.
N: 667524.95
E: 2765500.58

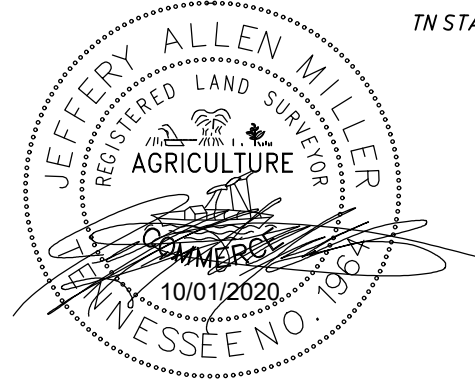
MILLER
Land Surveying, LLC

116 ROBINDALE COURT
KINGSPORT, TENNESSEE 37663
PHONE: 423-552-5300
www.millersurveys.com

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LEGEND

- - Rebar and Cap (Set This Survey)
WITH CAP STAMPED
TN 1964 VA 2404



JOB NO:	1394
SCALE:	1" = 40'
DATE:	10/01/2020
FILE NAME:	1394 Existing



Morristown City Council Agenda Item Summary

Date: October 14, 2020

Agenda Item: Disinfectant Sprayers

Prepared by: Joey Barnard

Subject: Purchase of Disinfectant Sprayers

Background/History: The City of Morristown has identified the need to purchase electrostatic sprayers along with disinfectant and sanitizing solutions to continue the City's best efforts in providing a safe environment for its citizenry and employees. These sprayers are designed to effectively disinfect and sanitize all areas that manual cleaning and/or traditional disinfecting tools may not be able to reach. The sprayers will be used by all City facilities in efforts to provide a healthier workplace throughout. Sprayers, disinfecting solution, and sanitizing solution will be purchased from Home Depot Pro via US Communities/Omnia Partners; a cooperative purchasing entity. Benefits of utilizing a cooperative contract include time and expense savings and the quality of goods and service. Procurement requirements are being fulfilled. Research has been done to ensure that we are receiving competitive pricing and service through the cooperative contract.

Financial Impact: Funds were not appropriated in the 20-21 budget; however, grant funds have become available through the CARES (Coronavirus Aid, Relief, and Economic Security) Act. A budget amendment will be made to account for the grant funds. The City will receive full reimbursement through the CARES Act for this necessary purchase.

Action options/Recommendations: The City of Morristown is seeking approval for the purchase of electrostatic sprayers, disinfecting and cleaning solutions via US Communities/Omnia Partners cooperative purchasing agreement.

Attachments: Purchase Order.

**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 2021

Page 1

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKAGES AND SHIPPING PAPERS.Purchase Order # **21000826-00***Retain this purchase order for proof of tax exemption.***Tax Exempt #62-6000369****V
e
n
d
o
r**THE HOME DEPOT PRO, DBA SUPPLYWORKS
2455 PAVES FERRY ROAD

ATLANTA, GA 30339

**S
h
i
p
t
o**CITY OF MORRISTOWN
100 W. 1ST NORTH STREET
purchasing@mymorristown.com
MORRISTOWN, TN 37814

Vendor Phone Number 423-676-9201		Vendor Fax Number		Requisition Number 21000963		Delivery Reference/Contact ASHLEY AHL			
Date Ordered 10/14/20		Vendor Number 008690		Date Required		Interoffice Delivery		Department/Location 41610	
Item#	Description/Part No.				Qty/Unit	Cost Each		Extended Price	
001	ORIGINAL				3.00 EACH	3999.99000		11,999.97	
	PURCHASE VIA US COMMUNITIES/OMNIA PARTNERS CONTRACT # 17-21								
	CLOROX TOTAL 360 SPRAYER STOCK #: 308643567								
002	41530-801-02011 11,999.97				21.00 EACH	1439.00000		30,219.00	
	VICTORY ELECTRO BACKPACK SPRAYER STOCK #: 312823135								
003	41530-801-02011 30,219.00				4.00 EACH	93.32000		373.28	
	CASE OF CLOROX TOTAL 360 DISINFECTANT STOCK #: CLO31650								
004	41530-801-02011 373.28				4.00 EACH	93.32000		373.28	
	CASE OF CLOROX SANITIZING ANYWHERE SURFACE CLEANER STOCK #: CLO31651								
005	41530-801-02011 373.28				68.00 EACH	21.24000		1,444.32	
	BIOESQUE DISINFECTANT 1 GALLON CONTAINER								

The City of Morristown is an equal
employment / affirmative action
employer EOE / AA

Authorized Signature

Date

[Return to Agenda](#)**VENDOR COPY**

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 2021

Page 2

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKAGES AND SHIPPING PAPERS.Purchase
Order #**21000826-00***Retain this purchase order for proof of tax exemption.***Tax Exempt #62-6000369**V
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rTHE HOME DEPOT PRO, DBA SUPPLYWORKS
2455 PAVES FERRY ROAD

ATLANTA, GA 30339

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OCITY OF MORRISTOWN
100 W. 1ST NORTH STREET
purchasing@mymorristown.com
MORRISTOWN, TN 37814

Vendor Phone Number 423-676-9201		Vendor Fax Number		Requisition Number 21000963		Delivery Reference/Contact ASHLEY AHL			
Date Ordered 10/14/20		Vendor Number 008690		Date Required		Interoffice Delivery		Department/Location 41610	
Item#	Description/Part No.				Qty/Unit	Cost Each		Extended Price	
	STOCK #: 310650028 41530-801-02011				1,444.32				
						PO Total		44,409.85	

The City of Morristown is an equal
employment / affirmative action
employer EOE / AA**VENDOR COPY**_____
Authorized Signature_____
Date[Return to Agenda](#)_____
Authorized Signature_____
Date

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2020 by and between the CITY OF MORRISTOWN, TENNESSEE, a municipal corporation, created by the Private Acts of the Tennessee Legislature for 1903, Chapter 103 ("CITY") and HAMBLLEN COUNTY, TENNESSEE, a political subdivision of the State of Tennessee ("COUNTY").

WHEREAS

1. The COUNTY has created an Animal Control Division to County Government for the purpose of providing animal control services to the citizens of the County;
2. The COUNTY has contracted with the Morristown-Hamblen Humane Society to provide shelter services for the citizens of the County;
3. The CITY wishes to provide animal control and shelter services to the citizens within its corporate limits by contracting with the COUNTY to supply both services to city residents;
4. The COUNTY and CITY enter this agreement to accomplish the above stated goals.

TERMS AND CONDITIONS

IT IS THEREFORE AGREED BY AND AMONG THE PARTIES THAT:

- a) **Animal Control Services.** During the term of this agreement, including extensions and renewals, the COUNTY shall provide animal control services for residents of the CITY that will include but not limited to, a) enforcement of all state and local animal laws, ordinances and resolutions; b) investigate and prosecute animal cruelty and neglect complaints, c) respond to animal complaint calls from citizens, d) impound strays, e) respond to emergency animal calls when an animal or a human is eminently in danger or when a law enforcement officer deems their assistance is needed due to a dangerous animal regardless of time of day or day of the week.
- b) **Animal Shelter Services.** During the term of this agreement, including extensions and renewals, the COUNTY shall provide animal shelter services for CITY residents through its contract with the Morristown Hamblen Humane Society. The Shelter Services shall consist of a) housing and caring for all stray dogs and cats picked up by Animal Control or surrendered by City residents with a sliding –scale feestructure ; b) animal adoption services; and c) end of life services for the very sick, older or injured animals with a sliding scale fee structure.
- c) **Education Services.** The COUNTY ACO DIVISION will provide public education programs to promote spay/neuter issues, questions and/or concerns. It will also help educate the public how to resolve animal behavior issues that are causing problems for pet owners and/or their families.

- d) **Budget and Financial Reports.** During the term hereof and any renewal term, the COUNTY shall submit to the CITY administration each budget cycle a budget request for funding for the subsequent fiscal year based on the needs of the ACO department to provide its services to the residents of the CITY and COUNTY. The COUNTY shall supply the CITY administration with quarterly expenditure reports.
- e) **Termination.** Any party may terminate this contract for cause by providing written notice of the cause alleged to entitle the notifying party to terminate the agreement. If the alleged cause is not corrected within forty-five (45) days of notification, the notifying party may declare default and terminate the agreement on a date certain which shall not be less than thirty (30) days. During the notice period, the COUNTY agrees to continue providing care for the animals until the notice period expires. Thereafter, it shall be the responsibility of the CITY and COUNTY to care for the animals and comply with their obligations concerning animal control.
- f) **Term.** Unless earlier terminated pursuant to this agreement, the term shall commence as of November 1, 2020 ending at midnight June 30, 2021. This agreement will automatically renew for a period of one (1) year on July 1, 2021 and each subsequent year unless either party notifies the other in writing no less than sixty (60) days prior to the end of the term that it does not wish to renew the agreement.
- g) **Funding.** During the term of this agreement, the CITY shall make quarterly payments to the COUNTY for the services provided for the amount agreed upon during the budget process.
- h) **Binding Parties.** This agreement shall be binding on parties hereto, their successors and assigns.

EXECUTED on this day and date first above appearing

CITY OF MORRISTOWN, TENNESSEE ("CITY")

BY: _____
GARY CHESNEY, MAYOR

HAMBLETON COUNTY, TENNESSEE ("COUNTY")

BY: _____
BILL BRITTAIN, MAYOR

Hamblen County Government

Animal Control Department - Proposed Budget

FY 2020-21

Proposed Operational Expenditures - Animal Control

Account Number	Account Description	8 mo. Budget Amount	Annual	
105	Supervisor/Director	\$ 25,500	\$ 38,000	
106	Deputy(ies) (ACO)	18,700	28,000	
187	Overtime	2,500	5,000	
201	Social Security	2,750	4,100	
204	TCRS/Pension	3,200	4,625	
206	Life Insurance	70	100	
207	Medical Insurance	11,500	17,000	
212	Employer Medicare	675	1,000	
307	Communications	1,500	3,000	2 cells/1 land line/2 jet packs for MDTs
312	Contracts w/Private Agencies	160,000	240,000	MHHS
333	Licenses	200	600	
336	Maintenance/Repair Equipment	300	300	
337	Maintenance/Repair Office Equipment	400	400	
338	Maintenance/Repair Vehicle	500	1,000	
355	Travel	725	725	Training
359	Disposal Fees	250	250	
425	Gasoline	8,000	12,000	\$1,000/mo.
435	Office Supplies	500	600	
450	Tires & Tubes	500	1,500	
451	Uniforms	1,000	1,000	Uniforms/Boots
499	Other Supplies/Materials	2,000	2,000	
524	In Service / Staff Development	525	525	Training
719	Office Equipment	1,000	1,000	PC in office / Printer
790	Other Equipment (Taser)	1,000	1,000	\$500/yr. per Taser w/ license
Total		\$ 243,295	\$363,725	

Proposed Capital Expenditures - Public Health and Welfare Projects

Used Vehicles (Van, SUV)	\$ 55,000	
MDT/Mount (2)	5,000	\$1,500 MDT; \$1,000 mount /each
Animal Cages for Vehicles	5,250	
Body camera	1,050	\$522/each
Radio (2)	1,200	\$600/each
Outer vest (2)	1,000	\$500/each
Handgun (2)	1,000	G17 \$500/each
Handgun belt and holster	500	\$240/set
Total	\$ 70,000	

Proposed Revenue From City of Morristown

Operations	\$ 121,647.50	Half of Proposed Operational Expenses
Capital	35,000.00	Half of Proposed Capital Expenses
Total	\$ 156,647.50	

Addendum #2: Attached to the original lease for office space at 1748 West Andrew Johnson Hwy, Morristown, TN dated November 1, 2011.

The parties mutually agree to extend the current lease from November 1, 2020 to October 31, 2023 at the current monthly rent of \$1,650. All other lease provisions remain unchanged.

STP, LLC

By: _____

Title: _____

Dated: _____

Hamblen County, Tennessee

By: _____

Title: _____

Dated: _____

City of Morristown

By: _____

Title: _____

Dated: _____

Addendum #1: Attached to the original lease for office space located at 1748 West Andrew Johnson Hwy, Morristown, TN dated November 1, 2011.

The parties mutually agree to extend the current lease from November 1, 2017 to October 31, 2020, at the current monthly rent of \$1,650. All other lease provisions remain unchanged.

STP, LLC

By: _____

Title: _____

Dated: _____

City of Morristown

By: _____

Title: _____

Dated: _____

Hamblen County, Tennessee

By: _____

Title: _____

Dated: _____

Care Here
Clinic Lease
Addendum #1

COMMERCIAL LEASE

THIS COMMERCIAL LEASE is hereby made and entered into this 1st day of November, 2011, by and between STP, LLC (“Landlord”) and Hamblen County, a political subdivision of the State of Tennessee, and the City of Morristown, a Tennessee municipality (“Tenant”).

WITNESSETH:

For and in consideration of the rental, undertakings and mutual covenants hereinafter set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the terms and conditions hereinafter expressed, certain office space more particularly described and located within the Landlord’s real estate described on attached Exhibit A.

Street Address: 1748 West Andrew Johnson Highway, Morristown, Tennessee, 37814.

The “Leased Premises” shall be a one thousand five hundred fifty four (1,554) square foot interior office suite located within the eastern portion of the landlord’s building. Further included in the leased premises is the joint use of the parking area in the front and rear of the landlord’s building, together with all appurtenances thereto. Also included in the Leased Premises is Tenant’s right to park on adjacent land next to Landlord’s premises and owned by Dr. Sam Fulk as set out in attached Exhibit B hereto. Should Dr. Fulk cancel these parking privileges, Tenant shall have the option to terminate this Lease within thirty (30) days of any written notice to Tenant from Landlord of Dr. Fulk’s cancellation. Said improved real estate, together with the appurtenances, is hereinafter referred to sometimes as the “Leased Premises.”

The covenants and conditions of this Lease are as follows:

1. **Term.** This Lease shall commence on November 1, 2011 and end on October 31, 2014 (the “Initial Term”). Tenant shall have the option to renew the Lease for an additional three (3) year term (the “Renewal Term”) by providing Landlord with written notice of its desire to exercise this option at least six (6) months prior to the end of the Initial Term. Landlord shall send written notice to Tenant of its option to renew at least seven (7) months prior to the end of the Initial Term.

Landlord shall have the right within the last six months of the Initial Term or within the last six (6) months of the Renewal Term to show the Leased Premises to prospective tenants.

2. Rent. Tenant agrees to pay, without demand, to Landlord as rent for the Leased Premises during the Initial Term one thousand five hundred (\$1,500.00) dollars per month beginning with the first day of this lease and on the same day of each calendar month thereafter for a total of thirty six (36) months.

The rental terms for the three year Renewal Term will be one thousand six hundred and fifty dollars (\$1,650.00) per month beginning on November 1, 2014 and ending on October 31, 2017. All other terms of the lease shall continue to be in effect.

3. Build out provisions. Landlord and Tenant agree that Landlord will contract for and pay for the installation of two sinks with cabinets in the interior of the leasehold premises not to exceed \$2,500 in cost.

4. Alternations and Improvements. Tenant shall make no alterations, additions or improvements, including but not limited to painting of walls and attachment of wall furnishings, without the prior written consent of Landlord. All additions and improvements made in and upon the Leased Premises, either by Tenant or Landlord, shall be the Landlord's sole property or shall remain upon the Leased Premises at the termination of this Lease, without compensation to the Tenant.

5. Maintenance and Repair. Tenant agrees to maintain the Leased Premises in the same general condition as when received, ordinary wear and tear and damage by the elements excepted. Tenant also agrees to keep the Leased Premises free from trash, garbage and other waste.

Notwithstanding anything else herein contained and surviving the expiration or termination of this Lease, Tenant agrees to pay Landlord, upon demand, for any and all loss or damage to the Leased Premises caused by Tenant's misuse, waste or neglect, or caused by any of Tenant's employees, agents, clients, visitors or anyone else invited by or under the control of Tenant, again, normal wear and tear excepted.

Tenant shall not allow any unlawful activities to take place upon the Leased Premises.

Tenant shall promptly notify Landlord of any accident to or defect in the water pipes, sewer pipes, gas pipes, electric wiring, heating or air conditioning systems or fixtures. It is agreed that Landlord shall not in any case be liable in damages for any temporary breakdown of said facilities or discontinuance of services provided by such facilities. Tenant agrees to take all reasonable steps to protect the plumbing during freezing weather.

Specific duties of Tenant: Plumbing repairs and ordinary maintenance shall be the responsibility of the Tenant. Repairs will include the cost of backup of services and drains from fixtures within the Leased

Premises. The cost of such service and repair from “backup” will be the sole expense of the Tenant.

Tenant is responsible for all HVAC issues, maintenance of all fixtures and components and replacement of any such fixtures and or components.

Tenant shall be responsible for all janitorial service, supplies and associated appliances to be used in connection with janitorial services, including paper towels dispensers, paper goods, etc.

Any sign attached to the outside of the building is the responsibility of the Tenant. Such sign must be approved by appropriate municipal authorities and the Landlord. There shall be no signage at the street or along the right of way of the public street.

Tenant shall have the right to inspect or have inspected the electrical, plumbing and HVAC systems prior to the commencement of the Initial Term. Should any material defect be found, Landlord, at Landlord’s expense, shall correct same prior to November 1, 2011. For purposes of this paragraph, the term “material” shall be defined as any repair costing more than two hundred fifty (\$250.00) dollars.

6. Utilities and Other Charges. Tenant shall be responsible for arranging for and paying for all electricity, water, telephone, alarm system, gas and other utility charges for the Leased Premises and the deposits for same. Tenant agrees to assume the contract with USA Security, Inc. (“USA”) for monitoring the alarm system for the Leased Premises and shall reimburse Landlord monthly in the amount of forty-four and 95/100 dollars (\$44.95) per month. It shall be Tenant’s responsibility to terminate, renew or extend the alarm service at the end of the assumed contract with USA, with USA or some third party provider.

7. Quiet Possession. Landlord warrants that Tenant shall have quiet and peaceful possession of the Leased Premises without hindrance on the part of Landlord for so long as Tenant is not in default under the terms of this Lease.

8. Right of Inspection. Landlord shall have the right to enter the Leased Premises at all reasonable hours during the day to inspect the same or to make such repairs and alterations as may be necessary for the safety or preservation of the Leased Premises. Landlord shall make every reasonable effort to notify Tenant of inspections.

9. Insurance Provisions. Landlord shall maintain property and casualty insurance on said property. Tenant shall not use or permit upon the Leased Premises anything that will invalidate any insurance policy now or hereafter in effect on the Leased Premises or that will increase the rate of insurance or cause such insurance to be canceled.

Tenant shall provide his own insurance covering personal property and premises liability with minimum liability limits of \$1,000,000.00, and shall name S.T.P., LLC as Additional Insured. A copy of said policy, or acceptable Certificate of Insurance shall be given to Landlord within five (5) business days of inhabiting the premises.

10. Landlord duties. Landlord shall be responsible for all repairs to the structure and roof of the building. Landlord will maintain and clean the exterior of the Building, the grounds and the parking lot. Landlord will support Tenant placing approved signage on the outside of the building.

11. Abandonment. If any time during the term of this Lease, Tenant abandons the Leased Premises, Landlord may, at his option, enter the Leased Premises by any means without being liable for any prosecution therefore, and without becoming liable to Tenant for damages of any kind whatsoever.

Landlord may then at his discretion release the Leased Premises for the whole or any part of the then unexpired term and may receive and collect all rents payable by virtue of such releasing and, at Landlord's option, under this Lease during the balance of the unexpired term, if this Lease had continued in force. If Landlord's right of re-entry is exercised following the abandonment of the Leased Premises, then he may consider any of Tenant's personal property remaining there in any matter which he shall deem proper and which is lawful, and Landlord is hereby relieved of all liability for doing so.

12. Damage or Destruction. If, during the Initial Term of this Lease or the Renewal Term, the demised premises shall be or become damaged by fire or by elements, such damage shall be promptly repaired by the Landlord, unless the damage to said premises hereby leased or demised be so great that the same cannot be repaired with reasonable diligence so as to be fit for occupancy. In such event, the rent herein provided to be paid for the said Lease Premises shall abate and be suspended for a period of time from the date of the damage to the Leased Premises hereby leased until the date when the said premises are so repaired as to be fit and ready for occupancy by the Tenant. In such event the tenancy of the Leased Premises hereby leased or demised shall not be terminated, but shall remain in force and effect under and by virtue of the terms and conditions of this Lease, unless the damage done to the Leased Premises hereby leased shall be so great as to make it impossible to repair the premises within the period of ninety (90) days, in which case the Tenant shall have the option of vacating the premises hereby leased or demised and of bringing to an end and terminating this Lease; provided, however, that the said Tenant shall not have such option and shall not be allowed to be relieved from the obligations of this Lease if the damage done to the premises shall in any wise be caused by the intentional act of any agent or representative of the Tenant while acting on behalf of the Tenant.

13. **Default.** All rents shall be due and payable the first day of each month. A \$25 late charge will be assessed if rent is paid after the tenth (10) day of the month. Each of the following events shall constitute a default or breach of this Lease by Tenant:

(a) If Tenant shall fail to pay Landlord any rent within five (5) days after Landlord notifies Tenant in writing that it is unpaid; and or

(b) If Tenant shall fail to perform or comply with any of the other condition, term or agreement in this Lease as set forth herein within thirty (30) days after notice written by Landlord to Tenant specifying the condition to be performed or complied with.

In the event of any default hereunder, Landlord, at any time thereafter, may terminate the Lease at its option and/or re-enter the Leased Premises and expel, remove and put out Tenant or any person or persons occupying the Leased Premises and remove all personal property there from as allowed by law.

Upon re-entry Landlord may, at its option, release the Leased Premises or any part thereof as the agent of Tenant, and Tenant shall pay Landlord the difference between the rent herein reserved and imposed for the portion of the term remaining at the time of re-entry and the amount received under such releasing for such portion of the term; additionally, Landlord may also recover from Tenant any other sums (including rents) then due. Landlord may also terminate this Lease and recover from Tenant any sums then due.

Notwithstanding any other provision herein contained, Tenant shall be responsible for all losses (including loss of rents) and damages resulting from any default and/or termination of this Lease. If this Lease is placed in the hands of an attorney, after default or breach, for the enforcement of any rights of Landlord herein, Tenant agrees to pay all costs of such enforcement or collection, including reasonable attorneys' fees.

14. **Surrender of Premises.** At the termination of this Lease, Tenant shall return and surrender the Leased Premises hereby demised without demand of the Landlord in the same condition and properly cleaned, as they were at the time of execution of this Lease, normal wear and tear excepted.

15. **Assignment and Subletting.** Tenant shall not assign this Lease or sublease the Leased Premises, or any part thereof, without the prior written consent of Landlord, which consent will not be unreasonably withheld.

16. **Notice.** Any written notice required under this Lease shall be given to Landlord by certified United

States mail, postage prepaid, return receipt requested, at the following address,

1750 West Andrew Johnson Highway, Morristown, TN 37814.


Any notice to Tenant provided for in this Lease shall be given to Tenant in writing either personally, or by mailing, delivering or leaving the same at the address of the Leased Premises or by e-mail to:

Bill Brittain, County Mayor, Hamblen County Courthouse, 511 West Second North Street, Morristown, TN 37814, or BBrittain@co.hamblen.tn.us (with a "read, receipt message").


17. Miscellaneous. The terms and provisions of this Lease are severable such that if any term or provision is declared to be invalid or unenforceable by a court of proper jurisdictions, such invalidity or unenforceability shall not affect the remaining terms and provisions of this Lease, which shall otherwise remain in full force and effect. The entire understanding between the parties is set out in this Lease, this Lease supersedes and voids all prior proposals, letters and agreements, oral or written, and no modification or alteration of this Lease shall be effective unless evidenced by an instrument in writing signed by all parties. This Lease shall be interpreted and construed in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties have executed this instrument this 24th day of September, 2011.

LANDLORD: STP, LLC

BY: 
Date: 9-24-2011

TENANT: Hamblen County, Tennessee

BY: 
Date: 9-26-11

TENANT: City of Morristown, Tennessee

BY: 
Date: 10/5/2011

O:\Documents\Hamblen County 2011\Commercial Lease-rev2.wpd

EXHIBIT - A

SITUATE in the **FIRST** Civil District of **HAMBLEN** County, Tennessee, and within the corporate limits of the City of Morristown and being more particularly described as follows:

BEGINNING at an old iron pin in the northern margin of West Andrew Johnson Highway corner with McGuffin; thence with the line of McGuffin North 04 deg. 04 min. 45 sec. East 299.91 feet to an old iron pin corner with Fulk and Maran; thence with the line of Maran North 83 deg. 31 min. 44 sec. East 149.75 feet to an old iron pin, corner with Maran and ORNL; thence with the line of ORNL South 04 deg. 09 min. 12 sec. West 299.91 feet to an old iron pin in the northern margin of West Andrew Johnson Highway; thence with the northern margin of West Andrew Johnson Highway South 83 deg. 30 min. 00 sec. West 149.37 feet to an old iron pin, the point of beginning and containing 1.0121 acres, more or less, according to a survey of William H. Shockley, Tennessee Registered Land Surveyor No. 973, dated March 10, 2008.



STRATE
insurance group, inc.

INSURANCE

RISK MANAGEMENT

EMPLOYEE BENEFITS

August 26, 2011

Dr. Sam Fulk, M.D.
400 East Economy Road
Morristown, TN 37814

Dear Sam,

On July 29th my assistant, Pamela Andrew, talked to Debby Daniel requesting that you allow a tenant in our building to park on your land that fronts West Andrew Johnson Hwy. and adjoins our parking lot. Debby verbally confirmed that this is acceptable to you.

Our potential tenant has requested that we confirm this with you in writing. Please sign below and return this letter to me.

I, Dr. Sam Fulk, owner of the vacant land located at 1826 West Andrew Johnson Hwy. grant permission for the tenant occupying the space at 1748 West Andrew Johnson Hwy. to occasionally park on the land adjoining the parking lot at 1750 West Andrew Johnson Hwy. for short periods of time typically less than one hour, for the term of the lease, November 1, 2011 to October 31, 2014. This agreement may be canceled at any time with 30 days notice and is not transferable.

Signed: _____

Dated: _____

Sam, Tom Porter and I sincerely appreciate your cooperation in this matter.

Sincerely,



Thomas M. Strate, CIC, CRM

President

1750 West Andrew Johnson Hwy · Morristown, TN 37814 · (423) 587-2204 · FAX (423) 581-4504
www.strateinsurance.com





Morristown City Council Agenda Item Summary

Date: October 13, 2020

Agenda Item: Surplus Inventory

Prepared by: Joey Barnard

Subject: Approval to declare inventory items as surplus

Background/History: The Morristown Police Department has accumulated several items in inventory that can no longer be utilized, and the City of Morristown wishes to declare these items as surplus. The City of Morristown wishes to donate items to Walters State Community College from the surplus inventory list. The college will use these items for a historical Public Safety Display. The items that are highlighted on the attached list will be donated; the remaining items will be properly disposed of.

Action options/Recommendations: The City of Morristown is seeking approval to declare inventory items as surplus and to dispose of properly. Additionally, some items will be donated to Walter State Community College upon approval.

Attachments: Letter from Walters State Community College and Inventory List.



WALTERS STATE
COMMUNITY COLLEGE

Chief Overholt,

We have been active in trying to display Public Safety equipment for its historical value and strive to illustrate to our community the history and tools of the trade. More than ever it's important that we document our history.

We have dedicated display cabinets inside the Public Safety building that are monitored and recorded for the preservation of the Public Safety equipment. The core purpose would be to display the equipment to students and visitors to offer them exposure to Public Safety equipment in a fashion that does not harm the field of investigations. This is one of the many ways in which we can give back, but we can't do it alone. That is why we are writing to you today.

With a donation of Public Safety equipment, it can impact young minds already interested in the profession of Public Safety which in turn keeps the evolution of interest turning.

If the opportunity exists, the Public Safety Division requests the following items for historical display purposes:

LEA 6300
AID BXR-2202
Spectratek Tape Measure
LEA-Cigarette Pack
LEA- Garage Door Opener
Saul Mineroff- Pager
LEA Watch
LEA Pager
DAC-SSABR G2
DAC-SSABR G2
DAC-SSABR G2
Orion ST-811
Spectratek 166 Tactical Video Surveillance Unit

If you'd like to donate, please contact our office at 423-585-2671 or we'd always love to talk in person, so feel free to visit us at the Public Safety Building on campus.

Thank you again,

Chad Bryant, Dean
Division of Public Safety
423.585.2677
Chad.bryant@ws.edu



**City of Morristown
Office of the Police Department
Narcotics/Vice Division**



Narcotics Inventory List

Surplus Equipment:

Receivers	Serial Numbers
LEA 6300	09062
Spectratek 121	01877
Repeaters	Serial Numbers
LEA 6359	32326
AID BXR-2202	1506
LEA 6369	14969
Voice Filter	Serial Numbers
DAC-PICODAC	697
Transmitters	Serial Numbers
Spectratek Tape Measure	33-599
LEA – Cigarette Pack	V080Y61A4
LEA – Garage Door Opener – GT912	3803
Saul Mineroff - Pager	306918
AID – 925A	Serial Number worn off
LEA Watch	Unknown
LEA Pager	2985
Digital Audio Recorders	Serial Numbers
DAC-SSABR G2	Inaccessible
DAC- SSABR G2	Inaccessible
DAC- SSABR G2	Inaccessible
Tracker	Serial Numbers
Orion ST-811	1162
Digital Video Recorders	Serial Numbers
Sting Video System UMHD – TD100	1321
Spectratek 166 Tactical Video Surveillance Unit	01297

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 7 day of October, 2020, by and between Morristown Hospitality Inc. hereinafter called the "Landowner", and
(Insert Full Name of Owner)
the City of Morristown, TN hereinafter called "City".

WITNESSETH, that

WHEREAS, the Landowner is the owner of certain property described as FairField Inn
340 - A - 01207 as recorded by deed in the last land records of
(Insert Hamblen County Tax & Parcel Number)

Hamblen County, TN, Deed Book _____ Page _____, hereafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Site Plan/Subdivision known as FairField Inn
(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.

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:

Morrisdown Hospitality Inc
 Company/Corporation/Partnership Name (Seal)

By: [Signature]

SANDIP PATEL
 (Type Name)

President
 (Type Title)

State of Tennessee

County of Hamblen

The foregoing Agreement was acknowledged before me this 7th day of October, 2020,
 by Katherine Morilak

Notary Public

My Commission Expires 9/9/23



Approved as to form:

Approved by the City:

City Attorney _____

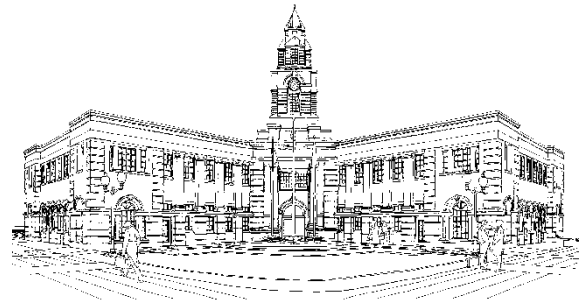
Date

Mayor _____

Date

City of Morristown

Incorporated 1855



FINANCE OFFICE

Memorandum

To: City Council

From: Joey Barnard, Assistant City Administrator

Date: October 14, 2020

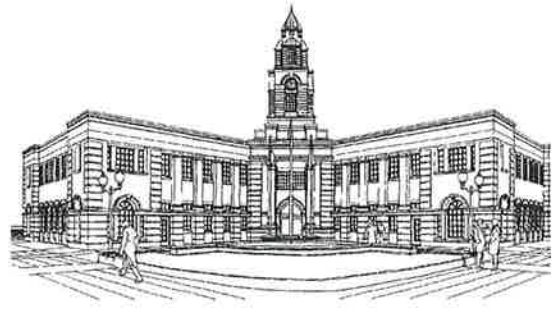
RE: Notice of Intent to apply for Healthy Built Environment Grant

The City of Morristown is requesting approval to submit a Notice of Intent to apply for the Tennessee Department of Health, Healthy Built Environment Grant. Built Environment funding can be used to build publicly accessible infrastructure that promotes physical activity for a community or population that currently has limited access to these types of facilities. This grant is 100% funded but gives preference for applicants that provide a local match or in-kind donations. The grant funds are capped at \$80,000.00.

Application to be made to fund the development of the multi-use trail design for Frank Lorino Park.

Morristown Police Department

ROGER OVERHOLT
Chief of Police



MEMORANDUM

To: Mayor Gary Chesney
City Council

From: Chief Roger D. Overholt *RDO*

Date: October 15, 2020

Re: Entry Level Patrol Officers

I am requesting to hire four entry level patrol officers at the October 20th council meeting contingent upon their successful completion of all pre-employment requirements. This is to backfill existing vacancies. Attached is the current civil service roster of eligible candidates.

Thank you.

CIVIL SERVICE BOARD

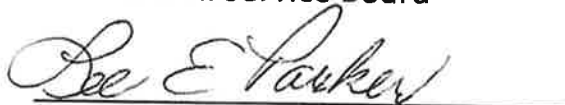
P O BOX 1499 * MORRISTOWN, TN 37816

POLICE DEPARTMENT ENTRY LEVEL ROSTER

Revised on October 13, 2020 to Reflect Recent Testing, Hiring and/or Corrections

	RANK AND NAME		EXPIRES
1	Hunter	Owens	10/31/2020
2	Greg	Johnson	10/31/2020
3	Christopher	Cary	10/31/2021
4	Logan	Gilmer	10/31/2021
5	Anthony	Smith	10/31/2021
6	Luke	Jarnigan	10/31/2020
7	Jonathan	Carpenter	10/31/2021
8	Josh	Sauls	10/31/2021

For the Civil Service Board



Lee Parker, Chairman