

WORK SESSION
July 21, 2020
Pre-Meeting Work Session - Cancelled

AGENDA
CITY OF MORRISTOWN, TENNESSEE
CITY COUNCIL MEETING
July 21, 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. July 7, 2020

6. PROCLAMATIONS/PRESENTATIONS

1. Retirement Proclamation for Bonnie Langdon.
2. Retirement Proclamation for Lieutenant Billy Gulley.
3. Presentation of Service Weapon to Retired Lieutenant Billy Gulley.

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

8. OLD BUSINESS

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

1. Ordinance No. 3653
An Ordinance of the City Council of Morristown, Tennessee an Ordinance
setting the Tax Rate at \$1.3958 for the Fiscal Year 2020-2021.

9. NEW BUSINESS

9-a. Resolutions

1. Resolution No. 3-21

A Resolution of the City Council of the City of Morristown, Tennessee adopting the “City of Morristown Fire Department Brady Act – Occupational Medical Evaluations Policy” for the City of Morristown.

10-b. Introduction and First Reading of Ordinances

1. Ordinance No. _____

Being an Ordinance of the City Council of Morristown, Tennessee Amending Title 14 (Zoning and Land Use Control), of The Morristown Municipal Code Amendment – Domestic Violence Shelters.
{Public Hearing Date August 4, 2020}

11-c. Awarding of Bids/Contracts

1. Approval of Facility Management Agreement between the City of Morristown and Sports Facilities Management (SFM) for Construction Review and Operations of the Community Center.
2. Acceptance of the 2021 Airport Maintenance Grant Contract between the the City of Morristown and Tennessee Department of Transportation (TDOT) in an amount of \$15,000; this is a 5% local match grant.
3. Approval to submit Notice of Intent to Apply for the Tennessee Department of Transportation (TDOT) Multimodal Grant for Phase 5 of Freddie Kyle Greenway.
4. Approval to Surplus the Service Weapon assigned to Lieutenant Billy Gulley, Glock .357 Model 32, Serial Number BAXZ897 and transfer to Lieutenant Gulley in honor of his years of service to the Morristown Police Department.

12-d. Board/Commission Appointments

9-e. New Issues

1. Approval of Promotion to Deputy Fire Marshal, Morristown Fire Department.
2. Confirmation of Disciplinary Action 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:

July 21, 2020	Tuesday	4:00 p.m.	Cancelled – City Council Work Session
July 21, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
August 4, 2020	Tuesday	2:30 p.m.	Cancelled - Finance Committee Meeting
August 4, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
August 4, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
August 14, 2020	Friday	9:00 a.m.	City Council Work Session
August 18, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
August 18, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
August 28, 2020	Friday	9:00 a.m.	City Council Work Session
September 1, 2020	Tuesday	2:30 p.m.	Finance Committee Meeting
September 1, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
September 1, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
September 7, 2020	Monday		City Employee's Holiday – Labor Day
September 15, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
September 15, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
October 6, 2020	Tuesday	2:30 p.m.	Finance Committee Meeting
October 6, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
October 6, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
October 20, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
October 20, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
November 3, 2020	Tuesday	2:30 p.m.	Finance Committee Meeting
November 3, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session

**WORK SESSION
Post-Meeting Work Session
July 21, 2020**

1. Gateway Overlay District – Steve Neilson, Director of Planning
2. Property Maintenance/Demolition Lien and Tax Sale Policy – Lauren Carroll, City Attorney

**STATE OF TENNESSEE
COUNTY OF HAMBLLEN
CORPORATION OF MORRISTOWN
July 7, 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, July 7, 2020, with the Honorable Mayor Gary Chesney presiding and the following Councilmembers present: Chris Bivens, Bob Garrett, Kay Senter, Ken Smith. The following Councilmembers absent: Al A'Hearn and Tommy Pedigo

Councilmember Smith led in the invocation and Mayor Chesney led in the "Pledge of Allegiance".

Councilmember Senter made a motion to approve the June 16, 2020 minutes as circulated. Councilmember Bivens seconded the motion and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve Resolution No. 1-21. Councilmember Smith seconded the motion and upon roll call; all voted "aye"

Resolution No. 1-21

A Resolution of the City Council of the City of Morristown, Tennessee authorizing the City of Morristown to participate in Public Entity Partners "Safety Partners" Matching Grant Program.

Councilmember Smith made a motion to approve Resolution No. 2-21. Councilmember Senter seconded the motion and upon roll call; all voted "aye"

Resolution No. 2-21

A Resolution of the City Council of the City of Morristown, Tennessee requesting approval to apply for the Hazardous Materials Emergency Preparedness Grant Program.

Councilmember Senter made a motion to approve Ordinance No. 3653 on first reading and schedule a public hearing relative to final passage of said ordinance for July 21, 2020. Councilmember Smith seconded the motion and upon rollcall; all voted "aye"

Ordinance No. 3653

An Ordinance of the City Council of Morristown, Tennessee an Ordinance setting the Tax Rate at \$1.3958 for the Fiscal Year 2020-2021.

Councilmember Senter made a motion to approve Change Order #3 with Merit Construction for the City Center Plaza and Garage project increasing the amount \$48,360.79 bringing the total of the contract to \$2,689,518.42. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Bivens made a motion to approve the contract between the City of Morristown and Morristown Air Services for Fixed Based Operator at the Morristown Regional Airport. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve the Community Development Block Grant CDBG Annual Action Plan for the 2020-17th Plan Year. Councilmember Garrett seconded the motion and upon roll call; Mayor Chesney and Councilmembers Bivens, Garrett and Senter voted “aye”. Councilmember Ken Smith abstained.

Councilmember Bivens made a motion to approve Sponsorship Agreement between the City of Morristown and Dicks Sporting Goods. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Smith made a motion to approve the Hold Harmless Agreement with Gail Noe-Kilgore for the use of the Talley Ward Recreation Center. Councilmember Garrett seconded the motion and upon roll call; all voted “aye”.

Mayor Chesney nominated David Wild for appointment to the Morristown Utilities Commission for a five (5) year term to expire on July 31, 2025. Upon roll call, all voted “aye” confirming the appointment.

Mayor Chesney appointed Amy Hancock to the Morristown Regional Planning Commission to fill the unexpired term of Sylvia Hinsley. Term expires March 1, 2024.

Councilmember Smith made a motion to appoint Billy Hale to the position of Fire Marshal for the Morristown Fire Department. Councilmember Senter 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; no one spoke.

Mayor Gary Chesney adjourned the July 7, 2020 Morristown City Council meeting at 5:35 p.m.

Mayor

Attest:

City Administrator

ORDINANCE NO. 3653

AN ORDINANCE SETTING THE TAX RATE AT \$1.3958 FOR THE FISCAL YEAR 2020-2021

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCILMEMBERS OF THE CITY OF MORRISTOWN, TENNESSEE:

SECTION I. That the tax rate for the fiscal year 2020-2021 be and is hereby fixed at \$1.3958 on each one hundred dollars (\$100) assessed value of taxable property located within the City of Morristown, Tennessee.

SECTION II. That the tax rate hereby set forth is the equalized property tax rate as presented by the State of Tennessee, State Board of Equalization.

SECTION III. That a public hearing will be held at the next scheduled meeting for final consideration of this ordinance on second reading, and the City Clerk has hereby prepared and has published, proper notice of said public hearing not less than ten (10) days prior to the date of said public hearing.

SECTION IV. This ordinance shall take effect upon its final passage.

Passed on first reading this the 7th day of July, 2020.

Mayor

Attest:

City Administrator

Passed on second and final reading this the 21st day of July, 2020.

Mayor

Attest:

City Administrator

RESOLUTION NO. 3-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRISTOWN, ADOPTING “THE CITY OF MORRISTOWN FIRE DEPARTMENT BRADY ACT – OCCUPATIONAL MEDICAL EVALUATIONS POLICY” FOR THE CITY OF MORRISTOWN.

WHEREAS, the Firefighters of the City of Morristown provide a vital public safety service to our community and the public at large; and

WHEREAS, firefighting brings with it many inherent hazards that can cause serious physical and emotional injuries, including death; and

WHEREAS, in 2019 the Legislature of the State of Tennessee recognized the risk associated with firefighting and enacted the “Barry Brady Act”, Tenn. Code Ann. § 7-51-201(d) effective July 1, 2019; and

WHEREAS, eligible firefighters who are diagnosed with Non-Hodgkin's Lymphoma cancer, colon cancer, skin cancer, or multiple myeloma cancer shall be entitled to a presumption that the cancers covered have been acquired as the result of employment as a firefighter, unless the contrary is shown by a physician board certified in oncology; and

WHEREAS, the governing body of the City of Morristown desires to comply with the recent change in state law as it pertains to TCA § 7-51-201(d).

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Morristown:

SECTION 1. The City Council hereby approves and adopts the “City of Morristown Fire Department Brady Act – Occupational Medical Evaluations Policy” attached hereto as Attachment A.

SECTION 2. This resolution shall be in full force and effect immediately upon passage.

PASSED ON THIS THE 21st DAY OF JULY 2020.

MAYOR

ATTEST:

CITY ADMINISTRATOR

City of Morristown

Incorporated 1855



City of Morristown Fire Department Brady Act – Occupational Medical Evaluations Policy

The City of Morristown's Firefighters provide a vital public safety service to our community and the public at large. Firefighting brings with it many inherent hazards that can cause serious physical and emotional injuries, including death. In 2019, the State of Tennessee recognized the risk associated with firefighting. Effective July 1, 2019, the Tennessee Legislature enacted the "Barry Brady Act" (hereinafter the "Act"), named for Captain Barry Brady, a retired Fire Captain in Tennessee who fought a courageous battle with colon cancer. Pursuant to the Act, eligible firefighters who are diagnosed with Non-Hodgkin's Lymphoma cancer, colon cancer, skin cancer, or multiple myeloma cancer ("cancers covered") shall be entitled to a presumption that the cancers covered have been acquired as the result of employment as a firefighter, unless the contrary is shown by a physician board certified in oncology. Secondary employment and/or lifestyle habits will be considered when determining whether a firefighter is eligible for the presumption that the cancers covered arose out of employment with the City of Morristown. Eligibility for the presumption under this Policy further requires the eligible firefighter employee to complete pre-employment and/or employment physical medical examination cancer screening and annual physical medical examination and cancer screening fitness for duty.

Policy:

It is the policy of the City of Morristown to ensure the health and safety of the City of Morristown Fire Department ("MFD") firefighters by providing pre-employment, employment and presumptive screening in compliance with this Policy and the Act and by making all reasonable efforts to reduce the risk of occupational injuries and illnesses.

Responsibility:

Applicants and Members must:

1. Indicate their desire to Opt-in/participate or Opt-out/waive participation in the Brady Act – Occupational Medical Evaluations.
2. Cooperate with, participate in, and comply with the medical evaluation process; and
3. Provide complete and accurate information to the MFD or other authorized medical care provider(s); and
4. Immediately report, including documentation and attesting on the appropriate City of Morristown form, any and all exposures to heat, smoke, and fumes, and carcinogenic, poisonous toxic, or chemical substances, indicating whether such exposure occurred while performing the duties of a City of Morristown firefighter or in a non-City of Morristown capacity, to their supervisor(s) and the Department Chief or designee.

5. Immediately report any medical condition to the MFD that could interfere with their ability to safely perform essential job tasks (e.g., illness or injury; use of prescription or non-prescription drugs; pregnancy, etc.).

The City of Morristown and/or Fire Department must:

1. Provide basic medical evaluations for incumbents (annually) and candidates (initial); and
2. Provide screening for occupational related illness as required by this Policy, the Act and applicable State law for incumbents and employees; and
3. Provide the authorized medical care provider(s) with a fire service overview, current job descriptions, and essential job tasks required for all fire department positions and ranks; and
4. Ensure the authorized medical care provider(s) understands the essential and marginal job tasks expected from firefighters; and
5. Assist the authorized medical care provider(s) in identifying the physical and mental requirements of a firefighter, the environmental conditions under which the firefighter must perform their duties, and the personal protective equipment the firefighter must wear during various types of emergency operations, in order to conduct appropriate medical evaluations of the firefighter; and
6. Ensure that the firefighter has access to appropriate medical treatment after an injury or illness resulting from the member's participation in MFD functions; and
7. Ensure firefighter privacy and confidentiality regarding medical conditions identified during the medical evaluation, except as required by law, including, but not limited to all methods of communicating or transferring firefighter medical information contained in these records, including written, oral, electronic, and any other means of communication.

The Authorized Medical Care Provider(s) shall:

1. Understand the physiological, psychological, and environmental demands placed on MFD firefighters; and
2. Evaluate candidates and members to identify the medical conditions that could affect their ability to safely respond to emergency operations, using the essential job task descriptions provided by MFD;
3. Identify and report the presence of any disqualifying medical condition(s) present in candidates;
4. Inform the Fire Department Chief or designee whether the candidate or firefighter employee is medically certified to safely perform the essential job tasks, under the requirements of medical data confidentiality guidelines, and any applicable reasonable accommodation recommended, which would allow the performance of the essential job tasks; and
5. Report the results of the medical evaluation to the candidate or firefighter employee, including any medical condition identified during the medical evaluation, and provide recommendations on whether that individual is medically certified to safely perform the essential job tasks, and any applicable reasonable accommodation recommended, which would allow the performance of the essential job tasks; and

6. Include collection and maintenance of a confidential medical and health information system for MFD members in a comprehensive occupational medical program, with medical record keeping that complies with the requirements of 29 CFR 1910.120, "Access to Employee Exposure and Medical Records," and other applicable regulations and laws.
7. Provide signed and dated screening/test records relating to this Policy and the Act to the City of Morristown Human Resource Department for retention.

Procedure:

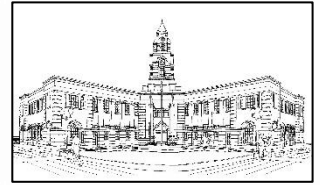
1. City of Morristown Fire Department Brady Act – Occupational Medical Evaluations Policy shall be disseminated to all employees and applicants.
2. Employees and candidates shall complete, sign and date either the Physical Medical Examination Cancer Screening/Waiver form or Pre-Employment Physical Medical Examination Cancer Screening/Waiver form designating their desire to opt-in or opt-out as required under the Act to be eligible for the causation presumption.
3. MFD employees and/or candidates will be scheduled for their initial medical evaluation by the City of Morristown Human Resource Department.
4. MFD firefighters will be scheduled for their annual medical evaluation.

Effective Date: _____

City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown City Council
FROM: Steve Neilson, Community Development Director
DATE: July 21, 2020
SUBJECT: Text Amend. TEXT-2410 – Domestic Violence Shelter

BACKGROUND:

Under the current Zoning Ordinance, a women shelter such as CEASE is not currently allowed. They don't meet the definition of "family" which allows no more than three unrelated individuals and they don't meet the definition of a "group home" which is intended only for individuals with physical or mental handicaps. Most would agree that these types of facilities are important to the community and should be located in a residential setting. Therefore, staff is proposing the following land use which would be allowed in all residential districts.

14-203 DEFINITIONS

DOMESTIC VIOLENCE SHELTER: shall mean a facility that provides temporary shelter, protection, and support for victims of domestic violence, intimate partner violence, sexual assault, drug abuse, and/or human trafficking. A domestic violence shelter also accommodates the minor children of such individuals. The facility may also offer a variety of services to help individuals and their children, including, but not limited to, counseling and legal guidance.

The Planning Commission by a vote of 8 to 0 recommended to forward on the proposed amendment to the City Council for approval.

RECOMMENDATION:

Staff recommends approval of the proposed text amendments.

ORDINANCE NO. _____

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

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

14-203 DEFINITIONS

DOMESTIC VIOLENCE SHELTER: shall mean a facility that provides temporary shelter, protection, and support for victims of domestic violence, intimate partner violence, sexual assault, drug abuse, and/or human trafficking. A domestic violence shelter also accommodates the minor children of such individuals. The facility may also offer a variety of services to help individuals and their children, including, but not limited to, counseling and legal guidance.

14-301. SINGLE FAMILY RESIDENTIAL DISTRICT (R1)

14-302. USES PERMITTED
Domestic Violence Shelters

14-401. RP-1 PLANNED RESIDENTIAL DEVELOPMENT DISTRICT

14-402. USES PERMITTED
Domestic Violence Shelters

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

14-4A02. USES PERMITTED
Domestic Violence Shelters

14-501. RD-2 MODERATE DENSITY RESIDENTIAL DISTRICT

14-502. USES PERMITTED
Domestic Violence Shelters

14-601. R-2 MEDIUM DENSITY RESIDENTIAL DISTRICT

14-602 USES PERMITTED
Domestic Violence Shelters

14-701. R-3 HIGH DENSITY RESIDENTIAL DISTRICT

14-702. USES PERMITTED
Domestic Violence Shelters

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

14-2503. USES PERMITTED
Domestic Violence Shelters

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

14-8B02. USES PERMITTED
Domestic Violence Shelters

14-801. OMP OFFICE, MEDICAL AND PROFESSIONAL DISTRICT

14-802. USES PERMITTED
Domestic Violence Shelters

14-1101. CB CENTRAL BUSINESS DISTRICT

14-1102. USES PERMITTED
Domestic Violence Shelters

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

Passed on first reading the _____ day of _____, 2020.

Mayor

ATTEST:

City Administrator

Passed on second and final reading the _____ day of _____, 2020.

Mayor

ATTEST:

City Administrator

FACILITY MANAGEMENT AGREEMENT

between

THE CITY OF MORRISTOWN

and

SPORTS FACILITIES MANAGEMENT, LLC

Dated: July 21, 2020

FACILITY MANAGEMENT AGREEMENT

THIS FACILITY MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this 21st day of July, 2020 (the "Effective Date"), by and between the City of Morristown, an incorporated Tennessee municipality, (the "Owner") and Sports Facilities Management, LLC, a Florida limited liability company (the "Manager").

RECITALS

WHEREAS, Owner owns the infrastructure, buildings, parking, lighting, sports playing surfaces, sports equipment, and all other hard assets associated with the athletic complex as the same exist now or may exist in the future including improvements related thereto specifically located at or near Durham Landing, Morristown, Tennessee, as the same exist now or may exist in the future, known as the "The Morristown Community Center" or any other name that may be identified in the future ("Facility");

WHEREAS, Manager has expertise in providing management services for athletic and recreation complex facilities throughout the United States;

WHEREAS, Owner and Manager desire for Sports Facilities Management, LLC to open, operate, and manage the Facility subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Manager agree as follows:

ARTICLE 1 DEFINITIONS

1.1. **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Affiliate: A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

Agreement: The "Agreement" shall mean this Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement), as amended, supplemented or restated from time to time.

Capital Expenditures: All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than Five Thousand Dollars (\$5,000) and the depreciable life of the applicable item is, according to generally accepted accounting principles, in excess of five (5) years.

Commencement Date: shall have the meaning given to such term in Section 4.1 below.

Commercial Rights: Naming rights, pouring rights, advertising, sponsorships, the branding of food and beverage products for resale and memorial gifts at or with respect to the Facilities.

Early Termination Fee: The term "Early Termination Fee" shall have the meaning ascribed to such term in Section 4.3(a) of this Agreement.

Effective Date: "Effective Date" shall have the meaning ascribed to such term in the preamble of this Agreement.

Emergency Repair: The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property.

Event of Force Majeure: An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

Existing Contracts: Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of the Facilities existing as of the Effective Date.

Facility: The "Facility" shall have the meaning ascribed to such term in the Recitals to this Agreement.

FF&E: Furniture, fixtures and equipment to be procured for use at the Facilities.

General Manager: The employee of Manager acting as the full-time on-site general manager of the Facilities.

Laws: Means all applicable laws, statutes, rules, regulations and ordinances.

Management-Level Employees: The General Manager, Marketing Manager, Operations Manager, Membership Manager, Finance Manager, and Sports Programming Manager.

Manager: The term "Manager" shall have the meaning ascribed to such term in the Recitals to this Agreement.

Operating Account: A separate interest-bearing account in the name of the Manager, or Manager's affiliated entity MCC SFM, LLC, at a licensed bank, to be designated by the Manager, where Revenue is deposited and from which Operating Expenses are paid.

Operating Budget: A line item budget for the Facility that includes a projection of Revenues and Operating Expenses, presented on a monthly and annual basis.

Operating Expenses: All expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Facilities, including but not limited to the following:

(i) employee payroll, bonuses and benefits (including payments to any national benefit system, relocation costs, termination costs (including severance costs and payments in lieu of termination), and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing,

group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Fixed Management Fee, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi) audit and accounting fees, (xxii) legal fees, (xxiii) all bond and insurance costs, including but not limited to personal property, general liability, professional liability and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (*e.g.* commissions relating to food, beverage and merchandise concessions services and commercial rights sales), (xxv) cost of complying with any Laws, (xxvi) costs incurred by Manager to settle or defend any claims asserted against Manager arising out of its operations at the Facilities on behalf of Owner; (xxvii) loss, costs, damage, liability and any other obligations arising under or incurred under Service Contracts and other agreements relating to Facility operations, and (xxviii) Taxes. The term "Operating Expenses" does not include debt service on the Facility, Capital Expenditures or any Incentive Fees (all of which shall be the responsibility of the Owner).

Operating Year: Each twelve (12) month period during the Term, commencing on July 1 and ending on June 30, provided that the first Operating Year shall be a shortened year commencing on the Commencement Date and ending on June 30th of that year and the last Operating Year shall be a shortened year, ending upon the expiration of this Agreement.

Operations Manual: The document has been developed by Manager, which shall contain terms regarding the management and operation of the Facility including detailed policies and procedures to be implemented in operating the Facility, as agreed upon by both the Owner and the Manager.

Owner: The term "Owner" shall have the meaning ascribed to such term in the Recitals to this Agreement.

Payroll Account: A separate account in the name of Manager at a licensed bank through which all Facility staff and other personnel employed by Manager (including related payroll taxes), or engaged by Manager as an independent contractor, are paid.

Pre-Opening: Time period prior to the Grand Opening and beginning of events, programs and activities operations, and during which the facility is being constructed and the business development, operational preparations, and organizational development is taking place.

Recruitment Fee: The term "Recruitment Fee" shall have the meaning ascribed to such term in Section 6.4 of this Agreement.

Regulatory Approvals: All applicable governmental or regulatory approvals, authorizations, consents, licenses or permits.

Revenue: All revenues generated by Manager's operation of the Facility, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Manager in trust for a third party and paid to such third party.

Revenue Generating Contracts: Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the Facility and entered into in the ordinary course of operating the Facility.

Service Contracts: Agreements for services to be provided in connection with the operation of the Facility, including without limitation agreements for consulting services, ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, snow removal and other services which are deemed by Manager to be either necessary or useful in operating the Facility.

Taxes: Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility.

Term: The term "Term" shall have the meaning ascribed to such term in Section 4.1 of this Agreement.

ARTICLE 2
SCOPE OF SERVICES

2.1 Engagement.

(a) Owner hereby engages Manager during the Term to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described herein and in Exhibits A and B attached hereto.

(b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement.

2.2 Limitations on Manager's Duties. Manager's obligations under this Agreement are contingent upon and subject to the Owner making available, in a timely fashion, the funds budgeted for and/or reasonably required by Manager to carry out such obligations during the Term. Manager shall not be considered to be in breach or default of this Agreement and shall have no liability to the Owner or any other party, in the event Manager does not perform any of its obligations hereunder due to failure by the Owner to timely provide such funds.

ARTICLE 3 COMPENSATION

3.1 **Management Fees.** In consideration of Manager's performance of its services hereunder, Owner shall pay Manager those payments as further set forth in Exhibit B attached hereto.

ARTICLE 4 TERM; TERMINATION

4.1 **Term.** The term of this Agreement (the "Term") shall begin on the Effective Date and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire on the fifth (5th) anniversary of the Opening Date of the Facility. The Parties agree that the Term of the Agreement shall renew for two additional five (5) year terms, each "Renewal Term" unless sooner terminated pursuant to the terms of the original Agreement or notice of termination and of the party's intention not to renew at least one hundred eighty (180) days prior to the end of that current Term or Renewal Term.

4.2 **Early Termination.** This Agreement may be terminated by Owner or Manager, with or without cause, at any time by providing the other party with written notice on or before the date such terminating party wishes to terminate this Agreement (the "Termination Date").

(a) For Owner's Convenience: Owner shall have the right to terminate this Agreement for any reason or no reason subject to section 4.3 below.

(b) For Manager's Convenience: Manager shall have the right to terminate this Agreement for any reason or no reason upon twelve (12) months' notice to Owner.

(c) For Cause by Owner: Owner shall have the right to terminate this Agreement for Cause at any time. Upon termination by Owner for cause, Manager shall promptly vacate the Facility and no Early Termination Fee or other compensation, damages or lost profits related to early termination shall be due or payable to Manager. Cause for termination shall include, but not be limited to, Manager's failure to cure the breach of any material provision in this Agreement within twenty (20) days after receipt of written notice to cure from Owner detailing that breach; except that in the event that a cure is not objectively possible within twenty (20) days after that notice, Owner shall not be entitled to terminate for cause where Manager shall commence to cure the noticed breach as fully as possible within that twenty (20) day period and thereafter diligently and continuously pursue that cure to a successful completion within sixty (60) days after that notice.

(d) For Cause by Manager: Manager shall have the right to terminate this Agreement for Cause at any time. Upon termination for cause by Manager shall be contingent upon Manager promptly vacating the Facility and taking nothing of value from Owner without owner's written permission. Manager expressly waives any possessory lien rights or right of set-off it might have against any of Owner's property or assets. Cause for termination shall include, but not be limited to, Owner's (i) repeated failure to make timely payment; (ii) Owner's failure to cure the breach of any material provision in this Agreement within twenty (20) days after receipt of written notice to cure from Manager detailing that breach; except that in the event that a cure is not objectively possible within twenty (20) days after that notice, Manager shall not be entitled to terminate for cause where Owner shall commence to cure the noticed breach as fully as possible

within that twenty (20) day period and thereafter diligently and continuously pursue that cure to a successful completion within sixty (60) days after that notice.

4.3 **Effect of Early Termination.**

(a) Upon termination by the Owner for any reason other than for "cause" due to Manager's breach of any material provision herein, without cure by Manager following written notice from Owner detailing such breach of this Agreement, Owner shall pay to Manager a termination fee (the "Early Termination Fee") on the Termination Date that is equal to (a) the greater of: (i) the trailing six (6) months' fees due to Manager hereunder or (ii) six (6) times the average monthly payment due to Manager during the Term; plus (b) any bonus or incentive payments that the Manager has earned through the Termination Date; plus (c) six (6) months' salary for all full-time employees of Manager that have been employed pursuant to the terms of this Agreement; plus (d) any severance payments and/or relocation expenses which are incurred by Manager related to the Manager's terminating or relocating full-time employees that have been assigned to the Facility. In the Event that Owner terminates this Agreement, Owner shall have the right to request that Manager vacate the property and cease all management activities related to the Facility, in which case Owner shall pay Manager the Termination Fee as set forth above.

(b) Upon termination or expiration of this Agreement for any reason, (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) the Owner shall promptly pay Manager all fees due Manager up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Operating Year), (iii) Manager shall make available to the Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facilities as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, and (iv) without any further action on part of Manager or Owner, the Owner shall, or shall cause the successor Facility manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, Revenue Generating Contracts, booking commitments and any other Facility agreements entered into by Manager in furtherance of its duties hereunder. Notwithstanding the foregoing, Manager is under no duty to provide certain proprietary confidential materials or intellectual property to the Owner, including but not limited to national benchmarking formulas, key performance indicators reports, employee manuals, employee training materials, employee performance evaluations, financial forecasting formulas, Manager's internal databases or contact lists, Manager's operations manuals, and/or other intellectual property developed by and maintained by the Manager and which it may use in its regular course of business to provide services to clients similar to Owner. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

ARTICLE 5 OWNERSHIP; USE OF THE FACILITY

5.1 **Ownership of Facility, Data, Equipment and Materials.** The Owner will at all times retain ownership of the Facilities, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Any data, equipment or materials furnished by Owner to Manager or acquired by Manager as an Operating Expense shall remain the property of Owner and shall be returned to Owner when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, Owner shall not have the right to use any third-party software licensed by Manager for general use by Manager at the Facility and other facilities managed

by Manager, the licensing fee for which is proportionately allocated and charged to the Facility as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof. Furthermore, Owner recognizes that Manager's copyrighted Operations Manual and other network-wide templates and materials to be developed and used by Manager hereunder are proprietary to Manager and shall belong to Manager at the end of the Term; Owner shall not use or maintain copies thereof upon the end of the Term. Nonetheless, any Operations Manual and other written materials to be developed and used by Manager specifically for use at Owner's facility and shall belong to Owner at the end of the Term;

5.2 **Right of Use by Manager.** The Owner hereby gives Manager the right and license to use the Facility for the Term, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facility. The Owner shall provide Manager with a sufficient amount of suitable office space in the Facility (exact office space to be mutually agreed by the parties) and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement. In addition, the Owner shall make available to Manager, at no cost, parking spaces adjacent to the Facility for all of Manager's full-time employees and for the Facility's event staff.

5.3 **Right of Use of Staff by Manager.** Manager shall have the right to utilize its employees as needed to support manager's organization as a whole, including but not limited to travel for training and temporary staffing coverage. Manager shall have the right to utilize the Facility to host events for its employees from time to time for the purpose of learning and development, at no cost to the operational budget other than that incurred by the staff who are regularly stationed at the Facility.

5.4 **Observance of Agreements.** Owner agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the Owner is bound in connection with its ownership of the Facility.

ARTICLE 6 PERSONNEL

6.1 **Generally.** All Facility staff and other personnel shall be engaged or hired by Manager in its sole discretion, except that Owner shall preapprove the employment of Management-Level Employees (as defined in Section 1.1 here), and shall be employees, agents or independent contractors of Manager, and not of the Owner. Manager shall select employees, in its sole discretion but subject to Owner's right to approve the Operating Budget. The Operating Budget shall define the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. Owner specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits in accordance with Manager's then current employee manual, which may be modified by Manager from time to time in its sole discretion. A copy of Manager's current employee manual and any Facility-specific employee manual supplement shall be provided to Owner.

6.2 **General Manager and Management-Level Employees.** Personnel engaged by Manager will include a full-time on-site General Manager and other Management-Level Employees. Hiring of the General Manager by Manager requires the prior approval of the Owner, which approval shall not be unreasonably withheld or delayed; provided, however, in the event of a vacancy in the General Manager position, Manager may, upon notice to the Owner, temporarily fill such position with an interim General Manager for up to one hundred eighty (180) days without the necessity of obtaining the Owner's approval. The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

6.3 **Work Environment.** Employees will be required to work to the standards outlined in the most current version of Manager's employee handbook. Owner shall not require employees of Manager to vary from those employment standards either directly, or indirectly through impacting decisions, including but not limited to not funding the correct staffing level, not providing safe work tools and a safe work environment, or an environment inconsistent with Manager's values.

6.4 **Post-Termination Employment.** In the event of termination, or in any case where Owner, and/or its affiliated agencies or entities, expresses an interest in hiring Manager's employee(s), Manager shall reserve the right to agree or deny such a request. In the event that Manager elects to permit Owner to hire Manager's employee(s), Owner shall provide the Manager with a one-time fee (the "Recruitment Fee") equal to four (4) months' gross salary and benefits. In any of these events described, the Manager's employee would not retain the Manager's intellectual material in any future employment.

ARTICLE 7 PROCEDURE FOR HANDLING INCOME

7.1 **Operating Account.** Except as otherwise agreed to by the parties in writing all Revenue derived from operation of the Facility shall be deposited by Manager into the Operating Account as soon as practicable upon receipt (but not less often than once each business day) and shall not exceed three business days. The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such account, subject to the limitation contained in this Agreement, without needing to obtain the co-signature of a Owner employee or representative. The Owner will have access and visibility to all accounts owned by the Facility.

ARTICLE 8 FUNDING

8.1 **Source of Funding.** Manager shall pay all items of expense for the operation, maintenance, supervision and management of the Facility from the funds in the Operating Account, which Manager may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Facility (as described in Article 7 above), or otherwise made available by the Owner. To ensure sufficient funds are available in the Operating Account, Owner will make a prepayment to the Manager equivalent to three-months operating costs on or before the Effective Date, the budgeted or otherwise approved expenses for the month beginning on the Effective Date. The Owner shall thereafter, on or before the fifteenth (15th) day of each succeeding month following the Effective Date, make payment as invoiced for the preceding month to the Manager. Manager shall have no liability to the Owner or any third party in the event Manager is unable to perform its obligations hereunder, or under any third-party contract entered into pursuant to the terms

hereof, due to the fact that sufficient funds are not made available to Manager to pay such expenses in a timely manner.

8.2 **Advancement of Funds.** Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the event that, notwithstanding the foregoing, Manager agrees to advance its own funds to pay Operating Expenses, Owner shall promptly reimburse Manager for the full amount of such advanced funds within thirty (30) days (See prepayment note under 8.1).

ARTICLE 9 FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES

9.1 **Existing Contracts.** The Owner shall provide to Manager, on or before the Effective Date, full and complete copies of all Existing Contracts. Manager shall administer and use reasonable commercial efforts to assure compliance with such Existing Contracts to the extent provided to Manager.

9.2 **Execution of Contracts.** Manager shall have the right to enter into Service Contracts, Revenue Generating Contracts and other contracts related to the operation of the Facility, as agent on behalf of the Owner. Any such material agreements shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties.

9.3 **Transactions with Affiliates.** In connection with its obligations hereunder relating to the purchase or procurement of services for the Facility (including without limitation food and beverage services, ticketing services and Commercial Rights sales), Manager may purchase or procure such services, or otherwise transact business with, an Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services. Manager shall, if requested by Owner, provide reasonable evidence establishing the competitive nature of such prices and services, including if appropriate, competitive bids from other persons seeking to render such services at the Facility.

ARTICLE 10 AGREEMENT MONITORING AND GENERAL MANAGER

10.1 **Contract Administrator.** Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Manager's contract administrator shall be its General Manager at the Facility, unless Manager notifies Owner of a substitute contract administrator in writing. Owner's contract administrator shall be its City Administrator or his/her designee unless Owner notifies Manager of a substitute contract administrator in writing within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or Owner participation or approval shall mean the participation or approval of such party's contract administrator.

ARTICLE 11 INSURANCE

11.1 **Types of Coverage; Certificates of Insurance.** Manager and Owner agree to obtain insurance coverage in the following manner and amount. Owner and Manager shall within 30 days after the Effective

Date furnish to the other party certificates of all of the insurance as well as certificates of renewal no later than ten (10) days prior to the expiration of each policy. Such insurance policies (as reflected by current certificates) held by Manager shall provide that the Additional Insureds are listed as additionally named insureds on the policies. Manager will provide reasonable notice to Owner upon receipt of any intention by Insurer to cancel, not renew or make any adverse change in coverage. All certificates, cancellation, nonrenewal or adverse change notices shall be mailed to the respective addresses listed in the definition of Additional Insured, or at such other address as an Additional Insured shall give Manager written notice. New Certificates of Insurance are to be provided to the Additional Insureds at least 15 days after coverage renewals. If requested by the Owner, Manager shall furnish complete copies of insurance policies, forms and endorsements.

11.2 **Owner's Policies.** Owner shall be responsible for obtaining and administering insurance in connection with the Facility as follows:

(a) **Property Insurance.** Owner shall also procure and maintain fire and extended coverage casualty insurance, and (if appropriate) flood insurance, regarding the Facility in amounts and with companies acceptable to Owner in its sole discretion.

(b) **Commercial General Liability.** Owner shall procure and maintain, at the Owner's sole expense, a Commercial General Liability policy with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$4,000,000. All such insurance shall be on an "occurrence" basis.

11.2 **Manager's Policies.** Manager shall be responsible for obtaining and administering insurance in connection with the Facility as follows:

(a) **General Liability.** Manager shall procure and maintain as a Facility Operating Expense a general liability policy (including contractual liability insurance, including an umbrella policy, and including hired, non-owned auto coverage, and abuse and molestation coverage) which insures Manager and which includes Owner as an additional named insured, with a general liability policy (including contractual liability insurance) with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$4,000,000. All such insurance shall be on an occurrence basis.

(b) **Professional Liability.** Manager shall procure and maintain, as a Facility Operating Expense, a professional liability policy,

(c) **Workers Compensation.** Manager shall procure and maintain as a Facility Operating Expense worker's compensation insurance required under applicable Tennessee state law.

ARTICLE 12 COVENANTS AND REPRESENTATIONS

12.1 **Owner's Covenants and Representations.** Owner makes the following covenants and representations to Manager, which covenants, and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) **Owner's Status.** Owner is an incorporated municipality duly organized, validly existing, and in good standing under the laws of the State of Tennessee with full power and authority to enter into this Agreement and execute all documents required hereunder.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by requisite action and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms and applicable laws.

(c) Effect of Agreement. To Owner's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Owner nor Owner's performance of any obligation hereunder: (i) will constitute a violation of any law, ruling, regulation, or order to which Owner is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (A) to which Owner is a party or is otherwise bound, or (B) to which the Facility or any part thereof is subject.

(d) Ownership Rights. Owner shall obtain and retain the property interests in the Facility necessary to enable Manager to perform its duties pursuant to this Agreement peaceably and quietly. Owner represents and warrants that Manager's performance of the services required by this Agreement shall not violate the property rights or interests of any other Person.

(e) Documentation. If necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to Manager, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Manager may reasonably request in connection with the operation of the Facility.

12.2 Manager's Covenants and Representations. Manager makes the following covenants and representations to Owner, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) Corporate Status. Manager is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Florida and authorized to transact business throughout the United States with full corporate power to enter into this Agreement and execute all documents required hereunder.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Manager has been duly authorized and approved by all requisite action of the board of directors of Manager, and this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms and applicable laws.

(c) Effect of Agreement. To Manager's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Manager nor Manager's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which Manager is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which Manager is a party or is otherwise bound.

12.3 Indemnification.

(a) Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless the Owner and its officials, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses") suffered by those parties, arising out of or in connection with any (i) grossly negligent act or omission,

or willful misconduct, on the part of Manager or any of its employees or agents in the performance of its obligations under this Agreement; or (ii) breach by Manager of any of its representations, covenants or agreements made herein.

(b) Indemnification by Owner. To the extent permitted by State of Tennessee statutes, Owner agrees to defend, indemnify and hold harmless the Manager and its managers, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses") suffered by those parties, arising out of or in connection with any (i) grossly negligent act or omission, or willful misconduct, on the part of Owner or any of its employees or agents in the performance of its obligations under this Agreement; or (ii) breach by Owner of any of its representations, covenants or agreements made herein.

(c) Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Section, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other party's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's sole expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than ten (10) days after any third-party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

(d) Survival. The obligations of the parties contained in this Section shall survive the termination or expiration of this Agreement.

ARTICLE 13 MISCELLANEOUS

13.1 **Relationship.** Manager and Owner shall **not** be construed as joint venturers or general partners of each other, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Manager understands and agrees that the relationship to Owner is that of independent contractor, and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Nothing herein shall deprive or otherwise affect the right of either party to own, invest in, manage or operate property, or to conduct business activities, which are competitive with the business of the Facility. Manager covenants and agrees that even though it may have a management responsibility for other similar properties, which from "time to time" may be competitive with the Facility, Manager shall always represent the Facility fairly and deal with Owner on an equitable basis. Manager further agrees that if it intends to conduct any directly competitive business in Hamblen County, Tennessee or a county adjacent to it, it shall give Owner prior written notice.

Manager has the right to display its brand and marks in the Facility and on the Facility's marketing materials in a manner that does not exceed 10% of the overall impression of the Facility's own brand.

Manager has the right to use and store the database and contact information of the customers of the Facility. Manager will provide from time to time images and other marketing material that it owns and holds the license to for use by the Facility. Owner agrees not to use those images and that material in any manner outside of the operation of the Facility while Manager is engaged to operate it. Manager has the right to use images and marks from the Facility for its own marketing and promotions material in perpetuity, without restriction.

13.2 **Representations.** Owner represents and warrants: (i) that Owner has full power and authority to enter this Agreement; (ii) that to the best of Owner's knowledge, the property on which the Facility is to be located is zoned for the intended use; (iii) that all permits for the operation of the Facility have or will be secured and are or will be current; (iv) that the Facility and its operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the like (including, but not limited to, those pertaining to hazardous or toxic substances); and (v) that no unsafe condition exists.

13.3 **Assignment.** This Agreement shall not be assigned by either party without the express written consent of the non-assigning party. Any such assignment made without proper consent shall be deemed void.

13.4 **Benefits and Obligations.** The covenants and agreements herein contained shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, successors, and assigns.

13.5 **Fees for Legal Advice.** Subject to the prior written approval of the Owner, which approval shall not be unreasonably withheld, Owner shall pay reasonable expenses incurred by Manager in obtaining legal advice regarding compliance with any law affecting the Facility or any activities related to it.

13.6 **Fees for Other Professional Services.** Subject to the prior written approval of the Owner, which approval shall not be unreasonably withheld, Owner shall pay reasonable expenses incurred by Manager in obtaining financial advice, tax and audit advice, code compliance and engineering device, regarding compliance with any law affecting the Facility or any activities related to it.

13.7 **Building Compliance.** Manager does not assume and is given no responsibility for compliance of the Facility or any equipment therein with the requirements of any building codes or with any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction, except to notify Owner promptly, or forward to Owner promptly, any complaints, warnings, notices, or summonses received by Manager relating to such matters. Owner represents that to the best of Owner's knowledge, the Facility and all such equipment contained therein comply with all such requirements, and Owner authorized Manager to disclose the ownership of the Facility to any such officials and agrees to indemnify and hold Manager, its representatives, servants, and employees, harmless of and from all loss, cost, expense, and liability whatsoever which may be imposed by reason of any present or future violation or alleged violation of such laws, ordinances, statutes, or regulations.

13.8 **Notices.** All notices provided for in this Agreement shall be in writing and served by registered or certified mail, return receipt requested, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

If to Owner:

City of Morristown
ATTN: City Administrator
Anthony W. Cox
100 West First North St.
Morristown, TN 37814
Email: tcox@mymorristown.com

With a copy to:

Lauren Carroll
Carroll, Anderson, Foust, LLC.
918 W. 1st North Street
Morristown, TN 37814
Email: lcarroll@caflp.law

If to Manager:

Sports Facilities Management, LLC
Attention: Jason Clement, Manager
600 Cleveland Street, Suite 910
Clearwater, FL 33755
Email: jclement@sportadvisory.com

with a copy to:

Bruce Rector
General Counsel
Sports Facilities Management, LLC
600 Cleveland Street, Suite 910
Clearwater, FL 33755
Email: brector@sportadvisory.com

13.9 **Interest on Unpaid Sums.** Any sums due Manager under any provision of this Agreement, and not paid by Owner within forty-five (45) days after such sums have become due, shall bear interest at the rate of 18 percent (1.5%) per month.

13.10 **Owner Responsible for Payments.** Upon termination of or withdrawal from this Agreement, Owner shall assume the obligations of any contract or outstanding bill executed by Manager under this Agreement for and on behalf of Owner and responsibility for payment of all unpaid bills, provided that such obligation has been approved by Owner as set forth in Section 6.1.

13.11 **Headlines.** All headings and subheadings employed within this Agreement and in the accompanying schedules and exhibits are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

13.12 **Force Majeure.** Any delays in the performance of any obligation of Manager under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Manager and any time periods required for performance shall be extended accordingly.

13.13 **Entire Agreement.** This Agreement, including any specified attachments and that certain *Design and Construction Management Advisory Services Agreement* of even date herewith (concerning the procurement and installation of Furniture, Fixtures and Equipment for the Facility), constitutes the entire agreement between Owner and Manager with respect to the management and operation of the Facility and supersedes and replaces any and all previous management agreements entered into or/and negotiated between Owner and Manager relating to the Facility covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Manager. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by Owner and Manager in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein.

13.14 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties may be exercised from "time to time" and as often as may be deemed expedient by those parties.

13.15 **Applicable Law.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Tennessee. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Tennessee in Hamblen County. or the United States District Court for Morristown, Tennessee. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

13.16 **Acknowledgement.** The parties hereto acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they have been given the opportunity to have this Agreement reviewed by their attorney prior to signing it, and that they understand the purposes and effect of this Agreement.

13.17 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such provision or provisions had not been included.

13.18 **Intellectual Property.** Owner acknowledges that Manager has certain intellectual property, trade secrets and proprietary business techniques ("Intellectual Property ") that it will on behalf of Owner to meet its obligations under this Agreement. Owner acknowledges that it obtains no ownership rights whatsoever in the Intellectual Property and, upon termination of this Agreement, Manager shall retain all rights to the Intellectual Property and remove such Intellectual Property from the Facility and its operations. For purposes of this Agreement, the term Intellectual Property shall include, without limitation, analytical tools and documented procedures for forecasting, performance tracking, operational and marketing systems that are

unique to Manager's approach, staff training programs, program curriculum and agendas, rights to certain discounts or programs that Manager has negotiated for Manager-operated facilities, and other intellectual property which Manager has previously introduced to the Facility and of which Manager is an author.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

Attest:

OWNER:

CITY OF MORRISTOWN
An incorporated Tennessee municipality

Print Name:

BY: _____

Its _____

Attest:

MANAGER:

SPORTS FACILITIES MANAGEMENT, LLC,
a Florida limited liability company

Print Name:

BY: _____

Its Manager

EXHIBIT A to Facility Management Agreement

MANAGEMENT SERVICES

During the Term, Manager will be responsible for all aspects of oversight for the staffing, marketing, maintenance, event management, sponsorship and advertising sales, and day-to-day operations of the Owner's Facility.

1. Staffing. Manager shall provide a full-time on-site General Manager and other employees as required to meet the operational needs of the Facility, within the budgeted percentage of labor.

2. Annual Business Plan. Manager will produce an Annual Business Plan two months prior to the beginning of any Operating Year in the Term, Manager shall update the Business Plan and submit the revised Business Plan to Owner for its review and approval. Owner shall give its comments and/or approval of the updated Business Plan within sixty (60) days after receiving the Business Plan from the Manager. In the event of disapproval of the Business Plan, the Manager shall use commercially reasonable efforts to operate the facility pursuant to the general terms of this Agreement and the prior Business Plan then in effect, until such time as the revisions to the Business Plan are agreed upon. In the event of disapproval of the Budgets, the Manager shall continue operating the facility pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Receipts; or (ii) other matters beyond the control of the Manager, until such time as Owner and the Manager agree upon the appropriate replacement Budgets. However, in the event Owner disapproves of a Business Plan, revised Business Plan/Budget hereunder, and Manager and Owner fail to reach an agreement on a new Business Plan, revised Business Plan or Budget within ninety (90) days of such disapproval, either party may terminate this agreement by providing the other party with written notice sixty (60) days prior to the date such party intends to terminate. Owner and the Manager agree to use good faith efforts to resolve any differences in opinion regarding the Business Plan and any portion thereof so that agreement on the Business Plan can be reached as soon as possible after the date Manager first submits the revised Business Plan for such year to the Owner.

3. Employment Matters. The Manager shall present the then current staffing, the incentive bonus plan for employees, and all salaries and payments to employees through the Payroll Account in the Annual Operations Budget. It is understood by all parties that reductions and additions to various positions may be made at Manager's discretion throughout the year due to business tempo, trends, opportunities, and budget requirements. If a change is recommended that will require expense above the budgeted labor percentage, the change will be submitted for Owner 's review and approval by Owner via reforecast and revised business plan or budget.

4. Independent Accounting Firm. On an annual basis, , Manager shall hire an independent certified public accounting firm to be paid for out of the Operating Budget of the Facility and to be selected by mutual agreement of Owner and Manager to audit the financial statements required under this Agreement.

5. Accounting Records and Reporting. During the Term, Manager shall maintain professional accounting records. Manager shall provide the financial statements in a format reasonably specified by Owner.

INTERNAL CONTROL. The Manager agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Facility, such controls to be consistent with professionally accepted accounting practices

BANK ACCOUNTS. The Manager shall establish, in the Facility's name, at a banking institution or institutions, an operating expense account (the "Operating Expense Account") and a payroll account (the "Payroll Account") in the Manager's or its affiliates' name, at a banking institution or institutions utilizing the federal tax identification number of Manager or its affiliated entity.

ACCOUNT FUNDING. Subject to the Manager's written notices to Owner as herein, Owner acknowledges that it is solely responsible for all Operating Expenses and capital expenditures required for or on behalf of the Facility provided that such Operating Expenses and capital improvements are made in accordance with the terms of this Agreement.

PRE-OPENING SERVICES. During Pre-Opening, Manager will provide the following services:

1. **Organizational Development:** Sourcing, hiring, and placement of a full-time leadership team with clear job responsibilities and training so that the facility personnel focuses on the highest priorities impacting the operation. These positions generally include the hiring of a General Manager, Marketing Director, and other staff according to the hire and placement dates outlined in the operating/financial plan.
2. **Operations Systems and Software Selection and Set-Up:** The set-up of accounting systems complete with checks and balances complying with audit requirements. Facility management software, specific HR administrative set-up specific to sport & event centers, proper insurance and risk management coverage, standard operating procedures, operating manuals, food & beverage SOP's for quality/storing/security/safety, and other operational protocol.
3. **Regional and National Marketing and Business Development Action Plan for Events:** Manager will provide a detailed business development action plan and will then execute on this plan. This includes deployment of proven digital, social media, direct sales, and other marketing systems. Manager will also innovate and develop new systems specific to the Facility. This effort will include regional and national press releases, tradeshow/conference presence, proper budgeting for bid fees (minimal when necessary), and hosting of visits in partnership with the Facility, and others.
4. **Local Marketing and Business Development Action Plan:** Manager will create a local marketing plan to include digital and social media, public relations, hard hat tours, key stakeholder meetings, and local recreation efforts.
5. **Local and Tournament and Events Program Development:** The creation, set-up, and implementation of local programming for residents. Creating the "ground rules" for scheduling so local community receive first-class service while balancing the state, regional, and national event needs. This requires communication between Manager, Owner and community stakeholders and upfront planning. The set-up for local programs include current programs offered in the community and the introduction of new offerings to include corporate outings, group events, and other child development offerings.
6. **Business Development and Events Booking:** Manager will lead business development and events booking efforts to secure events and agreements for use prior to the Grand Opening. This process shall begin no less than 1 year prior to the Grand Opening to secure events at a pace that can perform or outperform forecasts. Local programming and local registrations will also be managed during this process and will begin as the facility development enters the final 6 months of construction. Manager will design and recommend to Owner an appropriate facility user fee (membership) structure and pricing for Owner's consideration and approval.
7. **Grand Opening Events Planning:** The schedule of Grand Opening events requires advanced planning. Events are planned for local officials, key stakeholders, community partners, and the community at large.
8. **Staff Placement and Staff Development:** The placement of leadership staff begins during the development cycle. These positions include the General Manager, Marketing Director, Operations Director, and others. The schedule for these hires requires job descriptions, job announcements, review of hundreds of resumes, interviews, placement, training, and guidance from Manager's regional leadership team.

9. **Sponsorship Sales:** Prior to the Grand Opening, Manager will lead a sponsorship sales effort to engage community businesses in a variety of ways. These can include B2B arrangements for services or products in trade for promotion, revenue driven sponsorship sales, events, and other sponsorship programs. Manager's ACCESS Program may allow sponsors to contribute to play time for kids that need assistance.
10. **Design Support Services:** Manager will participate as an owner's consultant for Owner in collaborating with the architect, contractor, or design-build entities in providing operational perspective, expertise, and recommendations based on Manager's experience in developing and managing sport and event facilities. This will include regular standing design and coordination meetings; as well as, whatever communication through other means as necessary to advise the design-build team toward the delivery of a successful facility.
11. **Other Necessary initiatives:** A wide range of community events, meetings, communication, reporting, project management, and other activities dominate the development and Pre-Opening. Manager's on the ground team will provide expertise and experience throughout this cycle.
12. **Reports:** Weekly and monthly reports and meetings (as appropriate) on progress in each area specified hereinabove.

EXHIBIT B to Facility Management Agreement

MANAGER COMPENSATION

During the Term of this Agreement, Manager shall receive compensation from the Owner according to the following:

1. Base Management Fee;
2. Deferred Management Incentive Fee;
3. Sponsorship and Advertising Compensation;
4. Employee Compensation
5. Reimbursed Expenses; and
6. Consulting Services Fees (Described in Exhibit D)

1. **Base Management Fee.**

Pre-Opening Fee. During the time from the Effective Date of this Agreement to the Grand Opening (first day of business operations which the Facility is open to the public) of the Facility, Owner shall pay to Manager Three Hundred Thirty Thousand Dollars (\$330,000). Payment 1 in the amount of Sixty Thousand Dollars (\$60,000) shall be due upon the Effective Date and then Payments 2-19 in the amount of Fifteen Thousand Dollars (\$15,000) shall be each month, on the first day of each month, thereafter, until the balance of the Pre-Opening Fee is paid in full. If the Grand Opening occurs before March 1, 2022 the remaining payments of the Pre-Opening Fee shall accelerate and the entire remaining balance shall be due and payable to Manager.

Post-Opening Fee. Beginning at Grand Opening or on March 1, 2022; whichever shall occur first, Owner shall pay to Manager equal monthly installments of Fifteen Thousand Dollars (\$15,000) per month. Each installment will be due and payable on the first day of each successive month.

2. **Deferred Management Incentive Fees.** To encourage Manager to grow economic impact, room nights and revenues, Owner agrees to pay to Manager a Deferred Management Incentive Fee in addition to the Base Monthly Fee identified above as follows:

i. Owner will begin paying the Incentive Fee after the Facility achieves its first Five Hundred Thousand Dollars (\$500,000) in Gross Income in any given Operating Year. This performance fee is equal to the amount of two and one-half percent (2.5%) of Gross Income each month. Such calculations shall be made by Manager within 30 days of the ending of any operating month and paid to Manager within 30 days of such calculation being delivered to Owner.

ii. \$2.00 per each room night booked by a Facility guest for accommodations in a hotel or similar overnight lodging facility as reported through Owner's designated Facility Housing Bureau program. The Manager shall furnish Owner back-up documentation to support the amount of compensation that is due with respect to room nights booked.

Such incentive calculations shall be made by Manager within 30 days of the ending of any operating month and paid to Manager within 30 days of such calculation being delivered to Owner.

3. **Sponsorship and Advertising Compensation.** Due to the role that Manager will play in organizing the programs, negotiating agreements and pricing, and providing confidence to sponsors and advertisers, Manager will receive twenty percent (20%) of the gross revenue for sponsorship and advertising, including facility naming rights for all sponsorship and advertising sold throughout the life of the Manager's

service, but excluding any such revenues raised, generated or donated by individuals or families in the Morristown community that are received by Owner for the designated purpose of constructing or equipping the Facility.

Manager will also be paid twenty percent (20%) of the total cost savings for sponsored equipment, scoreboards, fencing, or other budgeted items that are donated to the project as a sponsorship effort by the vendor or supplier. This will apply only if the item has been budgeted for and where the Owner has approved such budgeted items and where negotiations with a vendor result in a direct cost savings in trade for a sponsorship or promotion of the vendor at the facility site.

Owner must approve all sponsorship and advertising agreements including those provided by suppliers and vendors that exceed a value of Ten Thousand Dollars (\$10,000) a year. In the event that Owner does not approve the Sponsorship or Advertising arrangement, Manager will not proceed with the Agreement and Manager will not receive a commission or compensation for the arrangement. Payments will be made to Manager within thirty (30) days of the time when a sponsor/advertiser makes payment.

4. **Payroll Compensation.** During the Term, Owner shall pay to Manager, the Employment Costs for all employees at the Facility (collectively, the “**Payroll Compensation**”). Manager will compensate all of its employees on a monthly basis and therefore each Payroll Compensation payment will become due and payable on the first (1st) day of each successive month. For purposes of this Agreement, the term “**Employment Costs**” shall mean the total salary and compensation for the Management Employees plus any fringe benefits including health insurance, etc., as well as any annual bonus to be paid.

5. **Reimbursed Expenses.** Manager shall be reimbursed with prior written approval with prior written approval by the Owner, if not previously approved by Owner in the Pre-Opening or Post-Opening Budget, for travel and other expenses directly related to the Management Services. All travel reimbursement will be based on receipts to be furnished by Manager to the Owner. Travel expenses may include but are not limited to airfare, rental cars, parking fees, lodging and meals. All fees and reimbursements shall be paid to Manager within thirty (30) calendar days of invoicing. Manager will make a good-faith effort to keep these travel expenses to a minimum.

6. **Consulting Services Fees and Expenses.** Manager, through its affiliate, shall receive the consulting fees and expense reimbursements as more fully described in the separate Consulting Services Agreement attached hereto as Exhibit D.

EXHIBIT C to Facility Management Agreement

PRO FORMA

See attached sheets.

EXHIBIT D to Facility Management Agreement

DESIGN AND CONSTRUCTION MANAGEMENT ADVISORY SERVICES AGREEMENT

CONSULTING SERVICES AGREEMENT

This **CONSULTING SERVICES AGREEMENT** (“Agreement”) is made as of _____, 2020 (the “Effective Date”), by and between the City of Morristown, 100 West First North Street, Morristown, Tennessee 37814 (the “Client”), and Sports Facilities Development, LLC, a Florida Limited Liability company, having its principal place of business at 600 Cleveland Street, Suite 900, Clearwater, Florida 33755 (“SFD”), for professional consulting services in connection with the planning, design, construction and procurement of equipment for the Morristown Community Center (“Facility” or “Project”).

1. It is agreed that Client hereby engages SFD for the professional consulting and procurement advisory services set forth in this Agreement, and SFD agrees to provide such services in accordance with the terms and conditions contained herein, in a competent, timely and professional manner, with respect to the planning, selection, and procurement of equipment, including the installation and set-up thereof, for the Project.

- a. Client and SFD agree to proceed on the basis of mutual trust, good faith and fair dealing, and shall endeavor to promote harmony and cooperation among all Project participants.
- b. SFD represents that it is an independent contractor and in performance of its Services it shall at all times act as an independent contractor.

2. Duty to Coordinate Services, Cooperate with Other Project Participants and Timely Perform Services:

SFD’s Procurement services are generally identified in **Exhibit A** hereto. Further, with respect to sport finishes, furniture, fixtures and equipment for the Project, SFD agrees that it is responsible for providing the coordination, review, advisory, procurement and consulting services to, and on behalf of Client.

- a. It is understood and agreed that SFD is an independent contractor to Client. SFD is not an agent or representative of Client and has no authority (express or implied) to contract for or bind to Client.
- b. SFD, as a part of its duties and responsibilities on the Project, shall exercise its best efforts to coordinate all of its duties and responsibilities with Client, other contractors and consultants, including but not limited to Client, and, so as to work in harmony and cooperation with all Project Participants.
- c. Client will publish and periodically update the Schedule for the design, construction and procurement for the Project. SFD will become and remain familiar with the requirements of the Schedule (including all updates and revisions thereto) and provide all of its services in a timely, competent and professional manner so as to cause no delay in the completion of the Project.
- d. Client, Owner’s Representative and SFD will jointly schedule and conduct regular Project team meetings in order to share information and coordinate the orderly and timely completion of the design, construction and procurement activities on the Project. SFD will attend and participate in such meetings as reasonably necessary to provide its services and will participate in any meetings for the Project if specifically requested to do so by Client, the Design-Builder or the Owner’s Representative.

- e. SFD will work with the Owner's Construction Manager to plan the procurement, shipping, delivery, storage, protection, and installation of the furniture, fixtures and equipment for the Project set forth in **Exhibit B** hereto.
- f. SFD will become and remain familiar with the design and construction plans and specifications for the Project as they are issued by the Design-Builder and shall confer with the Construction Manager, Design-Builder, its subcontractors, and consultants, as reasonably necessary, for SFD to carry out its duties as identified in **Exhibit B**.
- g. SFD shall become and remain familiar with Client's procurement rules and practices and shall timely provide competent advice and recommendations to Client to facilitate the orderly, timely and efficient procurement, delivery and installation of the furniture, fixtures and equipment that Client is responsible for ordering and providing for the Project.
- h. Upon request, SFD shall assist Client in developing, issuing, reviewing and accepting each procurement bid for furniture, fixtures and equipment.
- i. SFD shall manage the procurement, shipping, installation unloading and stocking of all FF&E, listed on **Exhibit B**.

3. Client Acknowledgements re SFD:

- a. Upon request, and to the extent that it controls or can reasonably obtain it, Client agrees to provide SFD with the information and materials for SFD to perform its services.
- b. The costs of procuring and installing the FF&E identified in **Exhibit B** shall be borne by Client.
- c. Client will exercise its best efforts to cause its other contractors and consultants to cooperate with SFD in the performance of its duties and responsibilities.
- d. Client agrees to seek independent accounting and legal services that are necessary for the operation of the Facility.
- e. Client acknowledges that SFD is a sports facility planning, management and consulting firm. Client understands that SFD is not licensed to sell securities.
- f. Client acknowledges that SFD is not a licensed accounting practice nor licensed to practice law.

4. Compensation:

As its total compensation for all of the services provided by SFD to Client or in connection with the Project, Client shall pay to SFD a services fee equal to Two Hundred Fifty Thousand Dollars (\$250,000) for the Furniture, Fixtures, and Equipment (FF&E) described in **Exhibit B** hereto. In addition, Client agrees to reimburse SFD for its reasonable out of pocket expenses incurred in the performance of the services described herein, including travel, expenses, hotel accommodations, ground transportation and associated fees (parking, tolls, etc.), and meals (which will be limited to \$55 per traveling consultant per day). The reimbursement of reasonable out of pocket expenses shall be subject to the procurement and reimbursement rules and practices of Client.

The Compensation shall be paid as follows:

a. Out of Pocket Expenses:

Reimbursement of actual out of pocket expenses, within thirty (30) days of the submission of an invoice with appropriate backup documentation, as required by Client's procurement rules.

b. Fee:

In addition to its actual out of pocket expenses, SFD shall also be entitled to a fee of Two Hundred Fifty Thousand Dollars (\$250,000) for managing the procurement of FF&E, listed on Exhibit B hereto. Should SFD, however, perform services under this Agreement after (24 months from the execution of this Agreement), August 2022, Client shall pay to SFD an additional monthly fee of Ten Thousand Dollars (\$10,000) until the Opening Date. The Fee shall be invoiced to Client as follows:

i. Seventy Thousand Dollars (\$70,000) upon execution of this Agreement

ii. One Hundred Eighty Thousand Dollars (\$180,000) in eighteen (18) equal monthly payments of Ten Thousand Dollars (\$10,000) on the first day of each month following the execution of this Agreement. If the Opening Date occurs before the 18th monthly payment is due, however, the entire remaining balance of the \$250,000 fee to Client shall be invoiced and immediately due to SFD.

7. Indemnification:

To the fullest extent permitted by law, the SFD shall defend, indemnify and hold Client's officers, directors, members, representatives, elected and appointed officials, agents and employees harmless from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, costs and expenses of litigation or arbitration, arising out of or resulting from the negligent performance of SFD's services and the breach of any provision of this Agreement.

To the fullest extent permitted by law, the Client shall defend, indemnify and hold SFD's officers, directors, members, representatives, agents and employees harmless from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, costs and expenses of litigation or arbitration, arising out of or resulting from the negligent performance of any of its obligations relating to the Project and the breach of any provision of this Agreement.

8. Insurance:

During the course of the Project, SFD shall obtain and maintain Worker's Compensation and Employer's Liability Insurance; comprehensive Commercial General Liability (CGL) insurance; and Automobile Liability Insurance at the limits of liability and deductible amounts provided in its Certificates of Liability Insurance set forth in Exhibit C.

9. Termination:

a. Upon written notice to SFD, Client may terminate its contractual relationship with SFD, solely for its convenience and without further legal or contractual obligation, at any time and for any reason by giving at least sixty (60) days' notice in writing to SFD. At any time, Client may also elect to issue a termination for convenience with respect to all or any part of the services that have not yet been performed.

Upon receipt of such notice, SFD shall immediately cease providing services under this Agreement. If Client exercises its right to terminate this Agreement for its convenience, SFD shall be paid for all services provided as of the date of the termination, together with any reimbursable expenses incurred until the date of termination.

b. In the event that either Party believes that the other Party has breached this Agreement, it shall give written notice of the claimed breach(es) and the other Party shall have thirty (30) days to cure the default. If the breach is not cured within the thirty (30) day period, then the Party giving notice of breach may terminate this Agreement. The non-breaching party may seek all remedies available to it for damages related to the breach, including attorneys' fees, costs and expenses.

10. Any dispute between the SFD and Client regarding any services, rights or responsibilities set forth in this Agreement or otherwise relating to or arising out of the Project, shall be subject to the Dispute Resolution Procedures set forth in **Exhibit C**.

11. **Notices:**

All Notices to the Parties shall be given to:

Client:

City of Morristown
100 West First North Street
Morristown, TN 37814
Attn: City Administrator
Telephone:
Email: _____

With copy to:

Lauren Carroll
Carroll, Anderson & Faust LLP
918 W. 1st North Street
Morristown, TN 37814

SFD:

Jason Clement, CEO
Sports Facilities Development, LLC
600 Cleveland St., Suite 910
Clearwater, FL 33755
Telephone: (727) 474-3845
Email: jclement@sportadvisory.com

With copy to:

Bruce Rector, General Counsel
Sports Facilities Development, LLC
600 Cleveland St., Suite 910
Clearwater, FL 33755
Email: brector@sportadvisory.com

12. Assignment:

SFD shall not assign its interest in this Agreement nor delegate any of its duties hereunder, without the prior written consent of Client. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. If SFD attempts to make such an assignment, the purported assignment shall be *void ab initio* and SFD shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by Client.

13. Governing Law:

This Agreement and all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Tennessee, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Tennessee.

14. Venue:

Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than the Eastern District of Tennessee or, if such court does not have subject matter jurisdiction, the courts of the State of Tennessee sitting nearest Hamblen County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the Eastern District of Tennessee or, if such court does not have subject matter jurisdiction, the courts of the State of Tennessee sitting nearest Hamblen County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

15. Severability:

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

16. No Waiver of Performance:

The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

17. Titles and Grouping:

The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement are solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of sections, or the use of headings, be construed to limit or alter the meaning of any provisions.

18. Joint Drafting:

The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

19. Exhibits:

The following Exhibits are attached to and form an integral part of this Consulting Agreement:

Exhibit A	General Description of SFD Services
Exhibit B	FF&E Procurement List
Exhibit C	Insurance Requirements

20. Entire Agreement:

This Agreement sets forth the full and complete understanding of the Parties with respect to the subject matter hereof, as of the date of this Agreement, and supersedes any and all contracts, agreements, and representations (oral or written) made or dated prior thereto. Subsequent to the date hereof, this Agreement may be supplemented and amended only by a written document signed by authorized representatives of each of the Parties.

The Effective Date of this Agreement is set forth above.

CLIENT: CITY OF MORRISTOWN:

BY: _____ TITLE: _____

SFD: SPORTS FACILITIES DEVELOPMENT, LLC:

BY: _____ TITLE: _____

Exhibit A to CONSULTING SERVICES AGREEMENT
FF&E PROCUREMENT & SPORT FINISH SCOPE OF WORK

Stage 1 | Project Kick-off Meeting

SFD will become familiar with the Project and Client's requirements; in particular with operational policies, site conditions and activities of other consultants. SFD will receive all relevant and necessary information and overall budget from Client and specialist consultants in order to prepare listings.

Stage 2 | Budgeting & Schedule Finalization

SFD will create an FF&E budget based upon the scope listed in Exhibit B based upon expected programming and pro forma. SFD will deliver detailed timelines based on operational and construction milestones.

Stage 3 | FF&E & Venue Design

SFD will create project specific specifications, necessary design schematics, and provide design support for FF&E listed in Exhibit B. SFD will provide feedback regarding design outside of FF&E as needed.

Stage 4| Tendering and Cost Adjudication

With client approval on the budgets, project timelines and FF&E specifications, SFD will publish and distribute RFP's and specifications and finalizes the tender procedure to appoint suitable suppliers for all commodities.

Stage 5| FF&E Recommendations

SFD will collect and provide reviews of proposals received along with an initial recommendation. SFD will perform necessary scope reviews with suppliers and perform final negotiations. SFD will organize supplier appointments, samples, and presentations as needed.

Stage 6| PO generation, Production, Freight Management and Delivery Scheduling

Upon selection of vendor by Client, SFD will provide the design and construction team with contact information, specification, and selection information. SFD will then coordinate PO, Production, and logistics on behalf of Client.

Stage 7| Receipt of Goods & Inventory Management

SFD will coordinate the shipping, clearing, receiving and delivering with the onsite leadership.

Stage 8| Installation & Hand-over

SFD will coordinate the installation sometimes through the supplier and within the General Contractor construction schedule.

Stage 9 | Final Accounts

Upon completion of installation, SFD will review all invoices from suppliers, identify with relevant orders, and recommend approval of settlement. SFD will coordinate preparing the Purchasing Manual for items identified in Exhibit B.

Exhibit B to CONSULTING SERVICES AGREEMENT

[To be determined after meeting with Owner's Construction Manager and Architect]

Exhibit C to CONSULTING SERVICES AGREEMENT

INSURANCE REQUIREMENTS

During course of the period of the performance of its services, the SFD shall obtain and maintain the following minimum insurance coverages:

1. Worker's Compensation and Employer's Liability Insurance at the greater of prevailing statutory Limits or:


 \$1,000,000 each Accident
 \$1,000,000 each Employee
 \$1,000,000 policy limit
2. Comprehensive or Commercial General Liability (CGL) Insurance on an "Occurrence" form, including Contractual Liability coverage for liability assumed under the Agreement and all other insured Contracts relative to the Project and Professional Liability Insurance; all coverages with a combined bodily injury and property damage liability of One Million (\$1,000,000.00) Dollars per occurrence, with at least a general aggregate limit of Two Million (\$2,000,000.00) Dollars.
3. Umbrella Liability: Limits of Liability - Four Million (\$4,000,000.00) Dollars.
4. Automobile Liability Insurance covering the use of all Owned, Non-Owned and Hired Automobiles with a combined bodily injury and property damage limit of One Million (\$1,000,000.00) Dollars.
5. All policies shall be issued by insurers approved by Client, which approval shall not be unreasonably withheld, delayed or conditioned.
6. Client shall be endorsed as an "Additional Insured" on all policies except for the professional liability policy.

EXHIBIT E to Facility Management Agreement

COMPLIANCE WITH IRS MANAGEMENT CONTRACT GUIDELINES

For purposes of demonstrating compliance with the Internal Revenue Service's Revenue Procedure 2017-13, Owner and Manager hereby acknowledge, agree and confirm the following:

- (a) *Control.* Owner shall control and have final approval of
 - (1) the annual budget for the Facility operation;
 - (2) all capital expenditures at the Facility;
 - (3) each disposition of property that is part of the Facility;
 - (4) rates charged for the Facility's operation; and
 - (5) the general nature and type of use of the Facility.
- (b) *Risk of Loss.* Owner shall bear the risk of loss upon damage or destruction of the Facility; provided, however, Manager shall operate the Facility in accordance with the standards set forth in this Agreement.
- (c) *No Inconsistent Tax Position.* Manager agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to Owner with respect to the Facility. Manager agrees that it will not claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment with respect to the Facility.
- (d) *No Net Profits.* Notwithstanding any provision in this Agreement to the contrary, none of Manager's compensation shall be calculated based upon a share of net profits relating to the operation of the Facility. Without limiting the following, Owner and Manager acknowledge that the reference to "total net income" was not and is not accurate and that such reference to "total net income" should be to "gross revenues."
- (e) *Further Amendment.* In the event Owner or Manager shall reasonably determine that it is necessary to amend this Agreement in order to maintain compliance with IRS Revenue Procedure 2017-13 or any amendment, supplement or successor rules or regulations thereto, Owner and Manager shall negotiate in good faith to amend this Agreement so as to maintain the original intent of the parties as closely as possible.

 GOVERNMENTAL GRANT CONTRACT (cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)					
Begin Date 7/1/2020		End Date 6/30/2021		Agency Tracking # 40100-14620	
Edison ID 65890					
Grantee Legal Entity Name City of Morristown					Edison Vendor ID 4108
Subrecipient or Contractor <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor		CFDA # N/A			
		Grantee's fiscal year end – June 30			
Service Caption (one line only) FY21 Airport Maintenance					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
2021	\$15,000.00				\$15,000.00
TOTAL:	\$15,000.00				\$15,000.00
Grantee Selection Process Summary					
<input checked="" type="checkbox"/> Competitive Selection <input type="checkbox"/> Non-competitive Selection		For every project, the airport owner, sponsor or educational program must submit a letter of request and an application to the Aeronautics Division. The Aeronautics Division staff reviews all project requests monthly. The review is based on the Division's established criteria and policies. The review results are presented to the Commissioner for approval. Grant award amounts will be based upon available funds and the amount requested, and such funding will be continued in order of application approval.			
		Describe the reasons for a non-competitive grantee selection process.			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				CPO USE - GG	
Speed Chart (optional)		Account Code (optional) 71302			

VENDOR ADDRESS: 1

LOCATION CODE: MAIN

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

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

Grantee Edison Vendor ID # 4108

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. The purpose of this grant shall be to provide financial assistance to a publicly-owned airport. Pursuant to the provisions of Tennessee Code Annotated 42-2-23, assistance shall be for eligible maintenance work items or improvements as described but not limited to as shown in **Attachment One**. The Grantee shall provide a five percent (5%) participation of actual costs.

B. TERM OF CONTRACT:

- B.1. This Grant Contract shall be effective on **July 1st, 2020** ("Effective Date") and extend for a period of **twelve (12) months** after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed **Fifteen Thousand Dollars and Zero Cents (\$15,000.00)** ("Maximum Liability"). The Grant Budget, attached and incorporated as **Attachment Two** is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Department of Transportation-Aeronautics Division
<https://tndot.blackcatgrants.com>

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice/Reference Number (assigned by the Grantee).
 - (2) Invoice Date.
 - (3) Invoice Period (to which the reimbursement request is applicable).
 - (4) Grant Contract Number (assigned by the State).
 - (5) Grantor: Department of Transportation-Aeronautics Division.
 - (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
 - (7) Grantee Name.
 - (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
 - (9) Grantee Remittance Address.
 - (10) Grantee Contact for Invoice Questions (name, phone, or fax).
 - (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.
- b. The Grantee understands and agrees to all of the following.
- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
 - (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
 - (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
 - (4) An invoice under this Grant Contract shall be presented to the State within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. The State will not deem such Grantee costs to be allowable and reimbursable by the State unless, at the sole discretion of the State, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it must be signed by a Grantee agent that would be authorized to sign this Grant Contract.
- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to one percent (1%) of the line-item amount, provided that any increase is off-set by an equal

reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.

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

agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.

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

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

D. STANDARD TERMS AND CONDITIONS:

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

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

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

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

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

section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.

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

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

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

The State:

Ryan Traversa
Transportation Program Supervisor
7335 Centennial Boulevard
Nashville, TN 37209
Telephone: 615-741-3208
Email: Ryan.Traversa@tn.gov

The Grantee:

Gary Chesney, City Mayor
City of Morristown
P.O. Box 1499
Morristown, TN 37816-1499
Email: Gchesney@mymorristown.com
Telephone # 423-581-0100

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

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

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.
- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
 - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy

Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.

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

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

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

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.
- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

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

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

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

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

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

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

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Annual and Final Reports. Grantee shall submit one of the following for Grant amounts greater than Two Thousand dollars (\$2,000.00) but less than Ten Thousand dollars (\$10,000.00): Grants with a term of only one (1) year – Grantee shall submit a final report within three (3) months of the Effective Date. Grants with a term more than one (1) year, the Grantee shall submit annual and final reports to the Grantor State Agency and the Department of Finance and Administration ("F&A"). Send electronic copies of annual and final reports to F&A at fa.audit@tn.gov. At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.
- D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law.
- If the Grantee is subject to an audit under this provision, then the Grantee shall complete **Attachment Three**.
- When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.
- A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.
- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.317—200.326 when procuring property and services under a federal award.
- The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.
- For purposes of this Grant Contract, the term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00).
- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant

Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.23. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Grantee or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.
- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.
- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. RESERVED
- D.27. State Interest in Equipment or Motor Vehicles. The Grantee shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant Contract,

subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant Contract to create a security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant Contract. A further intent of this Grant Contract is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grant Contracts between the State and the Grantee.

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

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

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

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

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

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

- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-408.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.34. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.35. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Grantee to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Grantee shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
- E.2. Reimbursements to Reflect Match/Share. Reimbursements to Grantee shall reflect the percentage of Grantee Match/Share detailed in the Grant Budget. Reimbursements are subject to the other provisions of this Grant Contract, including but not limited to, the maximum liability amount in Section C.1.

- E.3. Airport Operations. For all grants that total fifty thousand dollars (\$50,000.00) or more, as consideration for receiving this Grant from the State, the Grantee agrees to operate and maintain the Airport for a period of twenty (20) years from the effective date of this Grant Contract.
- E.4. No Retainage Allowed. The Grantee may not withhold retainage on progress payments from the prime contractor and the prime contractor may not withhold retainage from their subcontractors.
- E.5. Printing Authorization. The Grantee agrees that no printing/publication shall be printed pursuant to this Grant Agreement without the prior authorization of the State even if printing costs are included in the budget line items, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement. The Grantee and its employees may publish the results of the research in whole or in part as they deem appropriate without authorization by the State if it is at no cost to the Grantor State Agency.
- E.6. Competitive Procurements. Should this Grant Agreement provide for the reimbursement of the cost of goods, materials, supplies, equipment, or contracted services; such procurements shall be made on a competitive basis, where practicable. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement.

IN WITNESS WHEREOF,

CITY OF MORRISTOWN:

32-0767-21

GRANTEE SIGNATURE

DATE

GARY CHESNEY, CITY MAYOR

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

GRANTEE LEGAL COUNSEL'S SIGNATURE

DATE

DEPARTMENT OF TRANSPORTATION:

CLAY BRIGHT, COMMISSIONER

DATE

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

DATE

This grant is intended to assist airports with expenses related to the maintenance and upkeep of airport facilities and grounds that are not of sufficient size to request a stand-alone project.

The following are examples of eligible and ineligible items for use with your Airport Maintenance grant. This is not an all-inclusive list. If you have questions about the eligibility of an expense contact TDOT Aeronautics Division.

Eligible Uses:

1. Preventive maintenance, repair or replacement of maintenance buildings, equipment, navigational aids, lighting systems, pavements and other property or facilities necessary for the safe and efficient functioning of the airport
2. Purchase of mowing equipment
3. Maintenance services such as mowing, landscaping or other related work on airport property (i.e. services contracted by airport sponsor, county/city grounds service – journal vouchered for the time worked on airport maintenance only)
4. Unicom and other radio equipment
5. Airport signage, including airfield signage, entrance signs, road signs, and directory signs
6. Fire extinguishers including inspection fees
7. Installation and subscription to an aviation flight planning satellite weather system (i.e. D.T.N., W.S.I. or Pan Am Weather Systems)
8. Testing or inspection of underground fuel storage tanks, and associated fees (as necessary to comply with federal and/or state regulations)
9. Sales tax on eligible items
10. QTPod Fuel Services for upgrade to self-service stations from the 3000 series to 4000 series.

Ineligible Uses:

1. Food or drink
2. Fuel for any purpose
3. Uniforms or Uniform Services
4. Cleaning supplies, cleaning service including waste removal
5. Items that would only be used/worn by one individual. (i.e. boots, clothing, gloves, etc.)
6. Utility or telephone bills (including cellular / "land line")
7. Maintenance of facilities or equipment not owned or located on the airport property
8. Purchase or maintenance of aircraft, automobiles, pickup trucks, tugs or any passenger vehicle including club cars (golf carts).
9. Services performed by a Fixed Based Operator (FBO), by anyone employed or contracted by the FBO, or employees of the airport sponsor, for any type of airport operational duties or functions that would normally be required of their job.
10. Insurance of any type
11. Computers, computer software, computer peripherals, or Internet Service (unless otherwise noted above)
12. Office supplies, including toner and copy paper
13. Furniture (including cabinetry of any type)
14. Television/Cable
15. Office Equipment (unless otherwise noted above)
16. Repairs of office equipment
17. Registration, travel or expenses for conferences or seminars
18. Purchase (or repair) of appliances
19. Firearms/Weapons
20. Local matching funds for Projects

TDOT Aeronautics will determine the eligibility for reimbursement for all items on a case by case basis regardless of the item's inclusion in the lists above.

ATTACHMENT TWO

PAGE ONE

GRANT BUDGET				
City of Morristown: FY21 Airport Maintenance				AERM-21-150-00
The Grant Budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable Period: BEGIN: 7/1/2020		END: 6/30/2021		
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award ²	\$15,000.00	\$789.47	\$15,789.47
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11. 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	GRAND TOTAL	\$15,000.00	\$789.47	\$15,789.47

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

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

ATTACHMENT TWO

PAGE TWO

GRANT BUDGET LINE-ITEM DETAIL:

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
FY21 Airport Maintenance	\$15,000.00
TOTAL	\$15,000.00

TAD Project # 32-555-0767-21

Project Breakdown: \$15,000.00 95% State
TX# \$ 789.47 5% Local Participation
Project Total: \$15,789.47

Reimbursable Amount: \$15,000.00

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

ATTACHMENT THREE

PAGE ONE

Parent Child Information

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

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

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

Grantee's Edison Vendor ID number: 4108

Is City of Morristown a parent? Yes ☐ No ☒

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

Is City of Morristown a child? Yes ☐ No ☒

If yes, complete the fields below.

Parent entity's name: City of Morristown

Parent entity's tax identification number: 62-6000369

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

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

Parent entity's contact information

Name of primary contact person: Joey Barnard

Address: 100 West First North Street

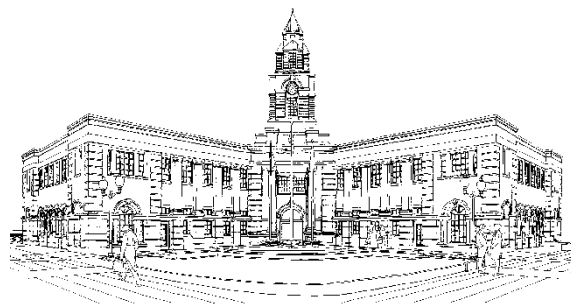
Phone number: 423-585-4614

Email address: jbarnard@mymorristown.com

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

City of Morristown

Incorporated 1855



Memorandum

To: City Council

From: Joey Barnard, Assistant City Administrator

Date: July 15, 2020

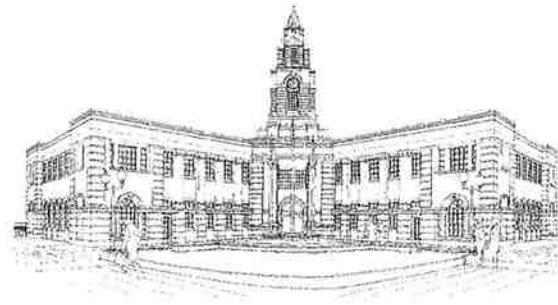
RE: Notice of Intent to apply for TDOT Multimodal Grant

The City of Morristown is requesting approval to submit a Notice of Intent to apply for the TDOT 2020-2021 Multimodal Access Grant. This grant is to fund phase 5 of the Turkey Creek Greenway System. This grant is 95% state funded (\$950,000), with a local match of 5 % (\$50,000). The grant funds requested can be used for sidewalks, greenway trails, and public transportation purposes.

The 5th phase of this grant is to continue to extend the greenway system from its current terminus to the north. It is the goal to ultimately take this trail system to Cherokee Lake. Your consideration in this request is appreciated.

Morristown Police Department

ROGER OVERHOLT
Chief of Police



MEMORANDUM

TO: Mayor Gary Chesney
City Council Members

FR:  Roger Overholt, Chief of Police

DATE: July 15, 2020

RE: Request Surplus of Service Weapon-Lt. Billy Gulley

I am requesting to surplus Lt. Billy Gulley's service weapon, a Glock .357 Model 32 serial number BAXZ897, and that it be transferred to Lt. Gulley. He retired effective June 26, 2020 after nearly 25 years of service.

It has been customary for the city to present a retiring officer's service weapon to him or her in honor of their years of service to the department.

Memo

TO: Mayor Gary Chesney
City Council

FROM: Clark Taylor

DATE: July 15, 2020

RE: Request for Fire Department Promotion

I am requesting Council's appointment, from qualified candidates, to fill a vacancy at the following rank:

- Deputy Fire Marshal

This appointment is necessary due to a recent promotion of the Deputy Fire Marshal to the Fire Marshal's position.

This position will come from the current Civil Service Fire Marshal's Roster (see attached).

I would like this to be effective August 3, 2020.

I am prepared to make a recommendation to this position.

Thank you

CIVIL SERVICE BOARD

P. O. BOX 1499 * MORRISTOWN, TN 37816

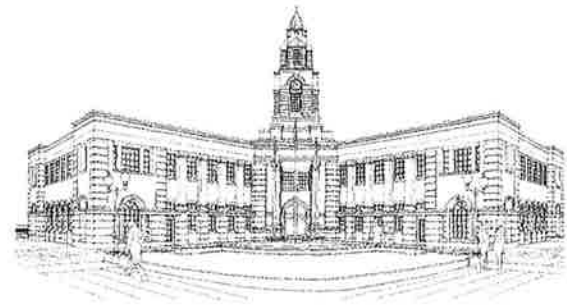
FIRE DEPARTMENT ROSTER - FIRE MARSHAL

UPDATED ON MARCH 10, 2020 TO REFLECT **TESTING, HIRING** AND/OR CORRECTIONS

	<i>NAME</i>	<i>EXPIRES</i>
1	David Hall	1/31/2022
2	Billy Hale	1/31/2022
3	Tim Carpenter	1/31/2022

Morristown Police Department

ROGER OVERHOLT
Chief of Police



MEMORANDUM

To: Mayor Gary Chesney
City Council

From: Chief Roger D. Overholt

Date: July 14, 2020

Re: Employee Disciplinary Action

I am requesting confirmation of the disciplinary action of a police officer. I am making this request based upon the recommendation of a department pursuit review committee and my review of the information. The officer would receive 16 hours suspension. If you would like additional details concerning this action, please contact me at 423-312-0312.

Please see the attached communication and committee recommendation.

Thank you.