

MURFREESBORO CITY COUNCIL
AGENDA

March 24, 2016

7:00 p.m.

City Council Chambers

PRAYER

MAYOR SHANE MCFARLAND

PLEDGE OF ALLEGIANCE

CEREMONIAL ITEMS

Consent Agenda

1. A. Consider recommendations of the City Recorder/Finance Director: Annual Audit Contract.
- B. Consider recommendations of the Community Development Director: 2016-2017 Emergency Solutions Grant Application.
- C. Consider recommendations of the Fire Rescue Chief: Bids for Headquarters Renovations.
- D. Consider recommendations of Planning Commission:
 - a. Mandatory Referral at Mercury Plaza Shopping Center.
 - b. Mandatory Referral north of Maymont Drive.

Minutes

2. A. March 3, 2016 - Regular Meeting.
- B. March 10, 2016 - Regular Meeting.

Third Readings

3. Consider for passage on third and final reading ORDINANCE 16-OZ-04 to amend an area in the Cedar Retreat PRD located along Florence Road.
4. Consider for passage on third and final reading ORDINANCE 16-OZ-07 to rezone an area at 3281 Siegel Road (Academy at Siegel) to Planned Commercial Development (PCD) District.

Second Readings

5. Consider for passage on second reading ORDINANCE 15-OZ-56 to zone an area at 3726 Manson Pike as Planned Residential Development (PRD) District (Springfield Apartments) and Gateway Design Overlay (GDO-1) District. (Revised Program Book Attached)

First Readings

6. Consider for passage on first reading ORDINANCE 16-OZ-05 to rezone an area along Manson Pike (Maddington Parke) to Planned Residential Development (PRD) District. (Revised Program Book Attached)

New Business

7. Consider recommendations of City Manager:
 - A. Proposed Lease Agreement with Franklin Synergy Bank.
 - B. Contract with Bell Constructors for renovation of Police Headquarter.
8. Consider recommendations of the Assistant City Manager:
 - A. Competitive Sealed Proposals for Solid Waste Consultant.
 - B. Memorandum of Understanding (MOU) with Rutherford County on sharing of costs for a Solid Waste Consultant.
9. Consider for adoption RESOLUTION 16-R-07 regarding amendment and restatement of the governmental money purchase ("401") plan for City of Murfreesboro employees hired on or after July 1, 2010.

Beer Permits

Board & Commission Appointments

Payment of Statements

Other Business from Staff or City Council

Adjourn



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CONSENT AGENDA

March 21, 2016

Honorable Mayor and Members of the City Council:

RE: Annual Audit Contract

As an item for the March 24, 2016 consent agenda it is recommended that City Council accept the contract proposal of Jobe, Hastings and Associates to perform the annual audit for the City of Murfreesboro for the fiscal year ended June 30, 2016.

Background

Purpose: The annual audit report is a requirement of the State of Tennessee.

Scope of Work: The work includes all funds of the City of Murfreesboro with the exception of the Evergreen Cemetery, Murfreesboro Electric, Murfreesboro Electric Pension Fund, Murfreesboro Water & Sewer Fund, Murfreesboro Stormwater Fund, and all funds of the Murfreesboro City Schools.

Selection Process: Jobe, Hastings and Associates is a local CPA firm with expertise in government auditing. They will assign experienced audit managers to perform and supervise the work that is done in our offices. It is important to note that with their skilled assistance in the past, the City of Murfreesboro has received the GFOA Certificate of Excellence in reporting for the past seventeen years.

Fiscal Impact

The fee is estimated to be \$173,400, which is the same fee charged for the past five fiscal years.

Recommendation

It is my recommendation that Council approves the proposal and allows me, as the City Recorder, to sign the State's electronic contract. The State no longer accepts paper contracts for audit work.

Attachments

1. Contract

Melissa B. Wright, CPA
City Recorder/Finance Director

Finance and Tax Administration

111 West Vine Street * P. O. Box 1139 * Murfreesboro, Tennessee 37133-1139 * Phone 615 893 5210 * Fax 615 848 3247
TDD 615 849 2689 www.murfreesborotn.gov



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CONSENT AGENDA

March 21, 2016

Honorable Mayor and Members of the City Council:

As an item for the Consent Agenda, it is recommended that the City Council approve the following from the Community Development Department:

2016-2017 Emergency Solutions Grant Application

Background

The Emergency Solution Grant, established under the HEARTH Act, is used to assist eligible 502(c)3 nonprofits providing services to the homeless and those in danger of becoming homeless. Because Murfreesboro does not receive direct ESG funding from the U.S. Department of Housing and Urban Development, our funding comes from the state allocation and is funneled through the Tennessee Housing Development Agency.

Fiscal Impact

THDA has notified the Community Development Department that under its Small Cities Set Aside formula for the Emergency Solutions Grant, Murfreesboro has been allocated \$159,366.08 for the contract year beginning July 1, 2016, and ending June 30, 2017. This is a decrease of \$53,558 from our current grant. Although this money has been allocated to the City, we are still required to submit an application. Activities eligible for reimbursement under the grant include shelter operations, street outreach, prevention and rapid re-housing. There is also a contract with Murfreesboro Housing Authority to assist with the operation of the Homeless Management Information System (HMIS).

Recommendation

Staff recommends authorizing the Community Development Department to submit to THDA an Emergency Solutions Grant application for the contract year July 1, 2016, to June 30, 2017.

Sincerely,

John Callow
Community Development Director

Community Development



... creating a better quality of life

March 24, 2016

CONSENT AGENDA

Honorable Mayor and Members of City Council:

RE: Bid Approval for Headquarters Renovations

As an item for the consent agenda, it is recommended that City Council approve the lowest total bid which includes Add Alternate No. 1 for the Headquarters Fire Station renovations submitted by Taheri Construction, LLC.

Background

MFRD budgeted funds for the renovations of the Headquarters men’s locker/shower room and restroom in FY16. Headquarters was built in 1964. MFRD added a women’s locker/shower room and restroom to Headquarters in FY12. The men’s locker/shower room and restroom also needed renovating due to the age and design. The men’s locker/shower room and restroom will match the women’s.

A meeting between the Purchasing, Facilities Management, Building Codes and Fire Departments was held in December to discuss the renovations. It was determined that architectural services were needed due to the scope of the renovations. The City of Murfreesboro entered into an agreement with Johnson + Bailey Architects, P.C. to provide architectural and structural services for this project. The City of Murfreesboro will pay Johnson + Bailey Architects, P.C. approximately \$11,364.

Bid Process

The competitive purchasing process was followed for this item and an Invitation to Bid was released to the public on February 7, 2016. A pre-bid conference was held on February 16, 2016 at MFRD Headquarters. Six general contractors obtained bid documents from Johnson + Bailey Architects, P.C. Bidders were directed to submit a base bid for the men’s locker/shower room and an Add Alternate No. 1 for the men’s restroom. The city reserved the right to make a contract award on either the base price or the base price plus the Add Alternate. Sealed bids were opened on March 1, 2016. The City received the following bids:

BIDDER	BASE BID	ADD ALT NO. 1	TOTAL
Taheri Construction, LLC	\$64,204	\$32,758	\$96,962
Rice Construction	\$82,207	\$28,332	\$110,539
Holt Construction Group, LLC	\$84,950	\$29,000	\$113,950
Baron Construction	\$92,950	\$46,270	\$139,220
Southland Constructors	NO BID	NO BID	

Johnson + Bailey Architects, P.C. received and reviewed bid documents and have recommended that the City of Murfreesboro accept the low Base Bid and Add Alternate No. 1 from Taheri Construction, LLC for a total construction cost of \$96,962.

Fiscal Impact

MFRD allocated \$47,000 in FY16 budget for the renovations of Headquarters men's locker/shower room and restroom. \$38,000 was also allocated to replace the roof at Fire Station 5. Estimated cost for the remodel including the architect's fee was \$111,364. MFRD and Facilities Maintenance Superintendent Ron Dennis decided to repair the roof at Fire Station 5 and use the remaining funds for the roof towards the Headquarters remodel. MFRD transferred the remaining funds needed from salary savings.

Recommendation

It is recommended that City Council approve the lowest bid total including Add Alternate No. 1 for the renovations of Headquarters men's locker/shower room and restroom submitted by Taheri Construction, LLC.

Attachment

City and Taheri Construction, LLC Contract

Sincerely,

Mark Foulks
Fire Rescue Chief

C: Melissa Wright, City Recorder



AIA[®]

Document A101[™] – 2007

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

AGREEMENT made as of the Second (2nd) day of March in the year Two Thousand Sixteen (2016)
(In words, indicate day, month and year.)

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

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

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

Taheri Construction, LLC
3015 Coral Bell Lane
Franklin, Tennessee 37067

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

Murfreesboro Fire & Rescue Department
2016 Headquarters Renovations
Murfreesboro, Tennessee
J+B No. 1522

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

Johnson + Bailey Architects P.C.
100 East Vine Street
City Center, Suite 700
Murfreesboro, Tennessee 37130

The Owner and Contractor agree as follows.

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

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

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

Init.

TABLE OF ARTICLES

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

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

Date of Commencement shall be established in a written Notice to Proceed with construction issued by the Architect on behalf of the Owner.

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

None

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Twenty Eight (28) calendar days from the date of commencement.

Init.

(Table deleted)

(Paragraphs deleted) The Contractor and the Contractor's Surety shall be liable for and shall pay the Owner the sum of Two Hundred Dollars (\$200.00), as fixed and agreed upon liquidated damages for each calendar day of delay in excess of the Contract Completion Date, established herein, until the work is substantially complete as defined in AIA Document A201, Subparagraph 9.8.1.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Ninety Six Thousand, Nine Hundred Sixty Two Dollars (\$96,962.00), subject to additions and deductions as provided in the Contract Documents.

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

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

Add Alternate No. 1 – Work indicated on the drawings as Add Alternate No. 1.

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
N/A	N/A	N/A

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

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

Item	Price
N/A	N/A

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Thirtieth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Twenty Five (25) days after the Architect receives the Application for Payment.

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

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

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

init.

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

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

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

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

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

None

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

§ 5.2 FINAL PAYMENT

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

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

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

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

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

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

Init.

§ 6.2 BINDING DISPUTE RESOLUTION

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

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

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

Three % Per Annum

§ 8.3 The Owner’s representative:
(Name, address and other information)

Deputy Chief Roger Toombs
Murfreesboro Fire & Rescue Department
220 Northwest Broad Street
Murfreesboro, Tennessee 37130

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

Dary Taheri, CEO
Taheri Construction, LLC
3015 Coral Bell Lane
Franklin, Tennessee 37067

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

§ 8.6 Other provisions:

init.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Specification Section 00800	SUPPLEMENT TO GENERAL CONDITIONS	February 5, 2016	Fourteen (14)

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
Per attached Index, Pages 1 and 2, dated February 5, 2016.

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
Per attached Specification Section 00850, DRAWING INDEX, Page 1, dated February 5, 2016.

(Table deleted)

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
One (1)	February 11, 2016	One (1)
Two (2)	February 23, 2016	Two (2)

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

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

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Section 00020	February 5, 2016 INVITATION TO BIDDERS	1
Section 00100	February 5, 2016 INSTRUCTIONS TO BIDDERS	6
Section 00101	February 5, 2016 SUPPLEMENTARY INSTRUCTIONS TO BIDDERS	2
Section 00300	February 5, 2016 PROPOSAL	5

ARTICLE 10 INSURANCE AND BONDS

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

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

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Insurance	Per Specification Section 00900-SUPPLEMENT TO GENERAL CONDITIONS
Performance Bond	100% of Contract Sum
Labor and Material Payment Bond	100% of Contract Sum

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

CITY OF MURFREESBORO
111 West Vine Street
Murfreesboro, Tennessee 37129

TAHERI CONSTRUCTION, LLC
3015 Coral Bell Lane
Franklin, Tennessee 37067

OWNER *(Signature)*

Shane McFarland, Mayor

Date: _____

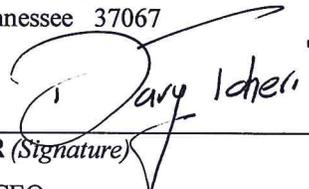
(Printed name and title)

CONTRACTOR *(Signature)*

Dary Taheri, CEO

Date: _____

(Printed name and title)



March 9 / 2016

APPROVED AS TO FORM:



OWNER *(Signature)*

David Ives, City Attorney

City of Murfreesboro

Date: _____

(Printed name and title)

3/14/16

Additions and Deletions Report for

AIA[®] Document A101[™] – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:10:46 on 03/02/2016.

PAGE 1

AGREEMENT made as of the Second (2nd) day of March in the year Two Thousand Sixteen (2016)

...

City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

...

Taheri Construction, LLC
3015 Coral Bell Lane
Franklin, Tennessee 37067

...

Murfreesboro Fire & Rescue Department
2016 Headquarters Renovations
Murfreesboro, Tennessee
J+B No. 1522

...

Johnson + Bailey Architects P.C.
100 East Vine Street
City Center, Suite 700
Murfreesboro, Tennessee 37130

PAGE 2

Date of Commencement shall be established in a written Notice to Proceed with construction issued by the Architect on behalf of the Owner.

...

None

...

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

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.) Twenty Eight (28) calendar days from the date of commencement.

Portion of Work

Substantial Completion Date

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

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

The Contractor and the Contractor's Surety shall be liable for and shall pay the Owner the sum of Two Hundred Dollars (\$200.00), as fixed and agreed upon liquidated damages for each calendar day of delay in excess of the Contract Completion Date, established herein, until the work is substantially complete as defined in AIA Document A201, Subparagraph 9.8.1.

PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Ninety Six Thousand, Nine Hundred Sixty Two Dollars (\$ 96,962.00), subject to additions and deductions as provided in the Contract Documents.

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Add Alternate No. 1 – Work indicated on the drawings as Add Alternate No. 1.

...

N/A

N/A

N/A

...

N/A

N/A

...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Thirtieth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Twenty Five (25) days after the Architect receives the Application for Payment.

PAGE 4

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5 %);

...

None

PAGE 5

Litigation in a court of competent jurisdiction

...

Three % Per Annum

...

Deputy Chief Roger Toombs
Murfreesboro Fire & Rescue Department
220 Northwest Broad Street
Murfreesboro, Tennessee 37130

...

Dary Taheri, CEO
Taheri Construction, LLC
3015 Coral Bell Lane
Franklin, Tennessee 37067

PAGE 6

<u>Specification Section</u> <u>00800</u>	<u>SUPPLEMENT TO</u> <u>GENERAL</u> <u>CONDITIONS</u>	<u>February 5, 2016</u>	<u>Fourteen (14)</u>
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Per attached Index, Pages 1 and 2, dated February 5, 2016.

Section	Title	Date	Pages
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...

Per attached Specification Section 00850, DRAWING INDEX, Page 1, dated February 5, 2016.

Number	Title	Date
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...

<u>One (1)</u>	<u>February 11, 2016</u>	<u>One (1)</u>
<u>Two (2)</u>	<u>February 23, 2016</u>	<u>Two (2)</u>

...

<u>Section 00020</u>	<u>February 5, 2016 INVITATION TO BIDDERS</u>	<u>1</u>
<u>Section 00100</u>	<u>February 5, 2016 INSTRUCTIONS TO BIDDERS</u>	<u>6</u>
<u>Section 00101</u>	<u>February 5, 2016 SUPPLEMENTARY INSTRUCTIONS TO BIDDERS</u>	<u>2</u>
<u>Section 00300</u>	<u>February 5, 2016 PROPOSAL</u>	<u>5</u>

PAGE 7

Insurance

Performance Bond

Labor and Material Payment Bond

Per Specification Section 00900-SUPPLEMENT TO
GENERAL CONDITIONS

100% of Contract Sum

100% of Contract Sum

...

CITY OF MURFREESBORO
111 West Vine Street
Murfreesboro, Tennessee 37129

TAHERI CONSTRUCTION, LLC
3015 Coral Bell Lane
Franklin, Tennessee 37067

OWNER (Signature)

Shane McFarland, Mayor

Date:

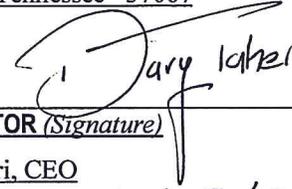
(Printed name and title)

CONTRACTOR (Signature)

Dary Taheri, CEO

Date:

(Printed name and title)



March 9 / 2016

APPROVED AS TO FORM:

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

OWNER (Signature)

David Ives, City Attorney

City of Murfreesboro

Date:

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Richard Lyle Lynch, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:10:46 on 03/02/2016 under Order No. 8193487275_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

R. Lyle Lynch

(Signed)

Architect

(Title)

3.3.16

(Dated)

MURFREESBORO FIRE & RESCUE DEPARTMENT
2016 HEADQUARTERS RENOVATIONS
MURFREESBORO, TENNESSEE
J+B NO. 1522

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- END OF SECTION -

March/01/2016

sealed Bidⁿ

For

Murfreesboro Fire & Rescue Department
2016 Headquarters Renovations

Bid Location & Time: 111 West Vine St. Murfreesboro March/1/2016 @ 2:00PM.
City Council Chamber

Owner: City of Murfreesboro 111 West Vine St. Murfreesboro, TN
Architect: Johnson + Bailey Architects P.C.

Contractor: Taheri Construction, LLC License # 63295 Exp. 01/31/2018 License Limit: \$1,200,000.00 BC

Classification: BC

Sub-Contractors:	License No.	Classification:	Expiration Date:	Limit
<u>Plumbing: TNG Contractors, LLC</u>	65587	CMC-A	03/31/2016	Unlimited
<u>HVAC: Air Temp Inc.</u>	66578	CMC	01/31/2017	\$ 200,000.00
<u>Electrical: TNG Contractors, LLC</u>	65587	CE	03/31/2016	Unlimited

received
3/16/16 1:58 p.m.

SECTION 00300 PROPOSAL

MURFREESBORO FIRE & RESCUE DEPARTMENT
2016 HEADQUARTERS RENOVATIONS
MURFREESBORO, TENNESSEE
J+B NO. 1522

DATE SUBMITTED: March / 01 / 2016 CONTRACTOR: Tohari Construction, LLC

TO: City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

Gentlemen:

The undersigned, as Bidder, hereby declares that the only person, or persons interested in this Proposal as principal, or principals, is or are named herein and that this Proposal is in all respects fair and in good faith without collusion or fraud.

The Bidder further declares that he has examined the site of the Work and informed himself fully in regard to all conditions thereon and has examined the Drawings, Specifications, and Contractual Documents for the Work and has satisfied himself relative to the Work to be performed.

Time being of the essence, the Bidder proposes and agrees to commence work with an adequate force and equipment on a date to be specified in a written Order of the Architect, and to complete all work within Twenty Eight (28) calendar days within Notice to Proceed.

It is understood that the Notice to Proceed with construction will not be issued until the following documents have been delivered to the Owner through the Architect for review and execution:

- Contractor executed Standard Form of Agreement Between Owner and Contractor, AIA Document, A101, 2007 Edition.
- Performance Bond, Material and Labor Payment Bond.
- Insurance Certificate
- List of Subcontractors
- Schedule of Values
- Builders Risk Insurance (purchased for Owner by Contractor)

Whereas the Owner will suffer loss of use if the project is not completed within Twenty Eight (28) calendar days within Notice to Proceed, the Contractor and his Surety shall be liable for and shall pay to the Owner the sum of Two Hundred Dollars (\$200.00) as fixed and agreed liquidated damages for each calendar day of delay (in excess of the Contract Completion Date established herein) until the work is substantially complete as defined in AIA Document A201, Subparagraph 9.8.1. Architect shall issue a Certificate of Substantial Completion (AIA Document G704) to verify date work is substantially complete for each portion of the project.

The Bidder further agrees that he will not withdraw this Proposal within a period of forty-five (45) consecutive calendar days from and including the date of this Proposal and that, if this Proposal is accepted, he will execute a Contract within said forty-five (45) day period and within five (5) consecutive calendar days after date of written notice of such acceptance. In case of failure on the Bidder's part to perform as agreed above, the monies payable on the Bid Bond accompanying this Proposal shall be paid into the funds of the Owner as liquidated damages for such failure; otherwise, the Bid Bond shall be returned to the Bidder.

The Bidder further proposes and agrees to contract with the Owner on the A.I.A. Standard Form of Agreement between Owner and Contractor for a Lump Sum to furnish for the following sum all necessary materials, equipment, tools, apparatus, means of transportation and labor necessary to complete the construction of the

Project in complete accordance with the shown, noted, described, and reasonable intended requirements of Drawings, Specifications, and Contract Documents with the definite understanding that no money will be allowed for extra work except as set forth in the Contractual Documents.

The Bidder further agrees that he and each subcontractor employing no less than five (5) employees will execute and submit to the Owner the attached DRUG FREE WORKPLACE AFFIDAVIT. No Contractor or Subcontractor may perform work on this project unless this form is fully executed and submitted prior to the start of the project. The General Contractor shall submit a fully executed, notarized copy of this form with this bid.

BASE BID → Sixty four thousand two hundred and four DOLLARS
(\$ 64,204.00)

ALTERNATES

ADD ALTERNATE NO. 1

Add → Thirty two thousand seven hundred ^{fifty eight} Dollars (\$ 32,758.00)

Work indicated on the drawings as Add Alternate No.1, Refer to Section 01100 - ALTERNATES.

EXECUTION OF AGREEMENT:

The undersigned agrees that if written notice of acceptance of this proposal is mailed, telegraphed, or delivered to him within forty-five (45) days after opening of proposals, he will promptly execute an Agreement with the Owner in accordance with the Bid Documents.

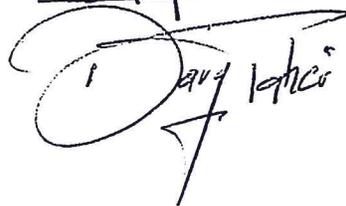
I have received Addenda Number(s): 1, 2,

COMPANY: Taheri Construction, LLC

DATE: 3/01/2016

BY: Dary Taheri

TITLE: V. President



FORM FOR
CERTIFICATE OF COMPLIANCE
WITH
TENNESSEE LICENSING LAW

This is to certify that the undersigned has fully complied with all requirements of Chapter 135, Public Acts of 1945, and Chapter 164, Public Acts of 1947, of the General Assembly of the State of Tennessee, known as the General Contractors Licensing Law. Certificate No. 00063295 was issued to the undersigned on 01/31/2016, by the State Board of Licensing General Contractors. My license limit is \$1,500,000.00 and my bid does not exceed this. My license classification and limit are as follows:

BC Classification
\$1,500,000.00 Limit

Taheri Construction, LLC
BIDDER
BY Dary Taheri
V. President
TITLE

The Contractor's license number and date of expiration must appear on the envelope containing the bid; otherwise, the bid will not be considered.

DRUG-FREE WORKPLACE PROGRAM CERTIFICATION

STATE OF TENNESSEE
COUNTY OF Williamson

**CONTRACTOR'S AFFIDAVIT ON COMPLIANCE
WITH DRUG-FREE WORKPLACE ACT AND CERTIFICATE**

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

1. it has received a Certificate of Compliance with the applicable proportions of the Drug-Free Workplace Act from the Department of Labor and Workforce Development and has attached a copy of such certificate to this Affidavit; or,
2. it operates a drug and alcohol testing program at least as stringent as the City of Murfreesboro's drug and alcohol testing program as contained in Sections 3005 and 3006 of the City of Murfreesboro Employee Handbook and shall, upon request, provide documentation of such program to the City.

Taheri Construction, LLC
Name of Bidder

Dary Taheri V. President
Printed Name and Title of Principal Officer

[Signature]
Signature by Principal Officer

Sworn to and subscribed before me a Notary Public for the above state and county, on this 23 day of February, 2016

Sharon L. Jones
Notary Public



My Commission Expires 05-11-2019

Pursuant to T.C.A. § 50-9-113, a Bidder must have a Drug-Free Workplace Program that complies with Tennessee Code Annotated, Title 50, Chapter 9 in effect at the time of submission of its bid, at least to the extent required of governmental entities.

The City of Murfreesboro has a Drug-Free Workplace Program certified by the Tennessee Department of Labor and Workforce Development pursuant to Title 50, Chapter 9. The City of Murfreesboro Drug-Free Workplace Program is set forth in City of Murfreesboro Employee Handbook Sections 3005 and 3006 (copies available without charge upon request). City of Murfreesboro Employee Handbook Sections 3005 and 3006 provide for the random testing, reasonable suspicion testing, pre-employment testing, promotion or transfer testing, post-accidental testing, return-to-duty testing, and follow-up testing of all employees classified as safety sensitive or as CDL employees for alcohol and/or drugs. Additionally, Murfreesboro Employee Handbook Section 3005 provides for reasonable suspicion testing, return-to-duty testing, and follow-up testing for non-safety sensitive employees for drugs and alcohol. Such testing is conducted using the same standards as in the United State Department of Transportation Regulations established for the drug and alcohol testing of CDL operators.

A bidder for construction services is required to submit an Affidavit, as part of its bid, that attests that such bidder operates a Drug-Free Workplace Program or other drug or alcohol testing program with requirements at least as stringent as that of the program operated by the City of Murfreesboro.

Bidder may satisfy this requirement by attaching a copy of a Certificate of Compliance with the applicable provisions of the Drug-Free Workplace Act from the Department of Labor and Workforce Development to the City to the required Affidavit.

Pursuant to T.C.A. §50-9-114(d), unless suit is filed in Chancery Court, bidders shall have seven (7) calendar days to contest a contract entered into by contractors subject to the provisions of this section. Bidders who do not contest such contracts within seven (7) days by filing suit in Chancery Court waive any right to challenge such contract for violating the provisions of T.C.A. §50-9-113 and T.C.A. §50-9-114. Such suits shall be brought in the Chancery Court in Rutherford County.

- END OF SECTION -



Bond Number BD143483

BID BOND

KNOW ALL BY THESE PRESENTS, that we, TAHERI CONSTRUCTION LLC of 3015 CORAL BELL LN FRANKLIN, TN 37067-8659 (hereinafter called the Principal), as Principal, and Auto-Owners (Mutual) Insurance Company (hereinafter called the Surety), as Surety, are held and firmly bound unto CITY OF MURFREESBORO 111 W VINE ST, MURFREESBORO TN 37130-3573 (hereinafter called the Oblige), in the penal sum of Five Percent of bid Dollars (5% of Attached bid) for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that WHEREAS, the Principal has submitted or is about to submit a proposal to the Oblige on a contract for MURFREESBORO FIRE & RESCUE DEPARTMENT 2016 HEADQUARTERS RENOVATIONS

NOW, THEREFORE, if the said Contract be timely awarded to the Principal and the Principal shall, within such time as may be specified, enter into the Contract in writing, and give bond, if bond is required, with surety acceptable to the Oblige for the faithful performance of the said Contract, then this obligation shall be void; otherwise to remain in full force and effect.

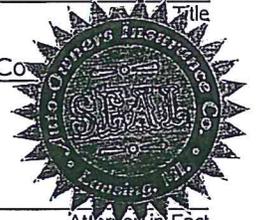
Signed and sealed this 22ND day of FEBRUARY, 2016.

Sharon L. Jones
Witness

[Signature]
Principal
TAHERI CONSTRUCTION LLC
[Signature] V.P. President
Title
Auto-Owners (Mutual) Insurance Co

Amanda Lamp
Witness

Paul D. Oppenlander
Paul D. Oppenlander
Attorney-in-Fact



DATE AND ATTACH TO ORIGINAL BOND
AUTO-OWNERS (MUTUAL) INSURANCE COMPANY

LANSING, MICHIGAN
POWER OF ATTORNEY

NO. BD143483

KNOW ALL MEN BY THESE PRESENTS: That the AUTO-OWNERS (MUTUAL) INSURANCE COMPANY AT LANSING, MICHIGAN, a Michigan Corporation, having its principal office at Lansing, County of Eaton, State of Michigan, adopted the following Resolution by the directors of the Company on January 27, 1971, to wit:

"RESOLVED, That the President or any Vice President or Secretary or Assistant Secretary of the Company shall have the power and authority to appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof. Signatures of officers and seal of Company imprinted on such powers of attorney by facsimile shall have same force and effect as if manually affixed. Said officers may at any time remove and revoke the authority of any such appointee."

Does hereby constitute and appoint Paul D. Oppenlander

its true and lawful attorney(s)-in-fact, to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and the execution of such instrument(s) shall be as binding upon the AUTO-OWNERS (MUTUAL) INSURANCE COMPANY AT LANSING, MICHIGAN as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

IN WITNESS WHEREOF, the AUTO-OWNERS (MUTUAL) INSURANCE COMPANY AT LANSING, MICHIGAN, has caused this to be signed by its authorized officer this 2nd day of January, 2014.

Kenneth R. Schroeder

Senior Vice President

STATE OF MICHIGAN } ss.
COUNTY OF EATON }

On this 2nd day of January, 2014, before me personally came Kenneth R. Schroeder, to me known, who being duly sworn, did depose and say that they are Kenneth R. Schroeder, Senior Vice President of AUTO-OWNERS (MUTUAL) INSURANCE COMPANY, the corporation described in and which executed the above instrument, that they know the seal of said corporation, that the seal affixed to said instrument is such Corporate Seal, and that they received said instrument on behalf of the corporation by authority of their office pursuant to a Resolution of the Board of Directors of said corporation.



My commission expires January 1st, 2020

Amanda Lamp

Notary Public

STATE OF MICHIGAN } ss.
COUNTY OF EATON }

I, the undersigned Senior Vice President, Secretary and General Counsel of AUTO-OWNERS (MUTUAL) INSURANCE COMPANY, do hereby certify that the authority to issue a power of attorney as outlined in the above board of directors resolution remains in full force and effect as written and has not been revoked and the resolution as set forth are now in force.

Signed and sealed at Lansing, Michigan. Dated this 22nd day of February, 2016



William F. Woodbury, Senior Vice President, Secretary and General Counsel



Bond Number BD143483

ACKNOWLEDGEMENT BY SURETY

STATE OF MICHIGAN

County of Eaton

On this 22ND day of FEBRUARY, 2016, before me personally appeared Paul D. Oppenlander, known to me to be the Attorney-in-Fact of Auto-Owners (Mutual) Insurance Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



A handwritten signature in cursive script that reads "Amanda Lamp".

Amanda Lamp

Notary Public in the State of Michigan
County of Eaton

AMANDA LAMP
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires Jan. 1, 2020

License Search and Verification

After you submit the search form, your results will appear below the form in this window (the form will remain for your reuse)...if you cannot see the results below, please scroll further down the search form.

<< [Click Here To Go Back To The Search Page](#)

License Details

License Status	Active - Fully Licensed
License #	63295
License ID	63295
Expiration Date	Jan 31 2018
Original Date	Feb 3 2010
Profession Code	1801
Profession Name	Contractor
First Name	\
Middle Name	\
Last Name	TAHERI CONSTRUCTION, LLC
City	FRANKLIN
State	TN
Zip Code	37067
Rank	Contractor
License Activity Description	Active - Fully Licensed

Classification and Limit

CLASS	BC
MONETARY LIMIT	\$1,500,000.00



Bond Number 66219215

PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS, that we, TAHERI CONSTRUCTION LLC of 3015 CORAL BELL LN FRANKLIN, TN 37067-8659 (hereinafter called the Principal), as Principal, and Auto-Owners (Mutual) Insurance Company a corporation organized and existing under the laws of the State of Michigan and duly authorized to transact business in the State of TENNESSEE, (hereinafter called the Surety), are held and firmly bound unto CITY OF MURFREESBORO, 111 W VINE ST, MURFREESBORO TN 37130-3573 (hereinafter called the Obligee), in the full and just sum of ninety six thousand nine hundred sixty two and xx/100 dollars (\$96,962.00) lawful money of the United States of America, to be paid to the said Obligee to which payment well and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that WHEREAS, the Principal has entered into a contract with the said Obligee, dated the 1st day of March, 2016 for MURFREESBOR FIRE RESCUE DEPT BUILDING RENOVATIONS which contract is herein referred to and made a part of as fully and to the same extent as if the same were entirely written herein and

WHEREAS, it was one of the conditions of the award of the said Obligee, pursuant to which said contract was entered into, that these presents should be executed.

AND THE SAID SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

NOW, THEREFORE, if the above Principal shall in all respects comply with the terms and conditions of said contract, and their obligation thereunder, including the specifications therein referred to and made a part thereof, and such alteration as may be made in such specifications, as herein or therein provided for, then this obligation to be void, or otherwise to be and remain in full force, effect and virtue.

Signed and sealed this 8TH day of MARCH, 2016.

Sharon Jones
Witness

[Signature]
Principal
TAHERI CONSTRUCTION LLC
C.O.

Auto-Owners (Mutual) Insurance Co



Amanda Lamp
Witness

Paul D. Oppenlander
Paul D. Oppenlander
Attorney-in-Fact



Bond Number 66219215

PAYMENT OR LABOR AND MATERIAL BOND

KNOW ALL BY THESE PRESENTS, that we, TAHERI CONSTRUCTION LLC of 3015 CORAL BELL LN FRANKLIN, TN 37067-8659 (hereinafter called the Principal), as Principal, and Auto-Owners (Mutual) Insurance Company a corporation organized and existing under the laws of the State of Michigan and duly authorized to transact business in the State of TENNESSEE, (hereinafter called the Surety), are held and firmly bound unto CITY OF MURFREESBORO, 111 W VINE ST, MURFREESBORO TN 37130-3573 (hereinafter called the Obligee), in the full and just sum of ninety six thousand nine hundred sixty two and xx/100 dollars (\$96,962.00) lawful money of the United States of America, to be paid to the said Obligee to which payment well and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that WHEREAS, the Principal has entered into a contract with the said Obligee, dated the 1st day of March, 2016 for MURFREESBORO FIRE RESCUE DEPT BUILDING RENOVATIONS which contract is herein referred to and made a part of as fully and to the same extent as if the same were entirely written herein and

WHEREAS, it was one of the conditions of the award of the said Obligee, pursuant to which said contract was entered into, that these presents should be executed.

AND THE SAID SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

NOW, THEREFORE, if the above Principal shall in all accordance with applicable Statutes, promptly have made payment to all persons supplying labor and material in the prosecution of the work provided for in said contract that may hereinafter be made, notice of which modifications to Surety being waived, then this obligation to be void; otherwise to remain in full force and effect.

Signed and sealed this 8TH day of MARCH, 2016.

Sharon Jones
Witness

[Signature]
Principal
TAHERI CONSTRUCTION LLC
C.E.O.

Auto-Owners (Mutual) Insurance Co.

Amanda Lamp
Witness

Paul D. Oppenlander
Paul D. Oppenlander



Attorney-in-Fact



Bond Number 66219215

MAINTENANCE BOND

KNOW ALL BY THESE PRESENTS, that we, TAHERI CONSTRUCTION LLC of 3015 CORAL BELL LN FRANKLIN, TN 37067-8659 (hereinafter called the Principal), as Principal, and Auto-Owners (Mutual) Insurance Company a corporation organized and existing under the laws of the State of Michigan and duly authorized to transact business in the State of TENNESSEE, (hereinafter called the Surety), are held and firmly bound unto CITY OF MURFREESBORO, 111 W VINE ST, MURFREESBORO TN 37130-3573 (hereinafter called the Obligee), in the full and just sum of ninety six thousand nine hundred sixty two and xx/100 dollars (\$96,962.00) lawful money of the United States of America, to be paid to the said Obligee to which payment well and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that WHEREAS, the Principal has entered into a contract with the said Obligee, dated the 1st day of March, 2016 for MURFREESBOR FIRE RESCUE DEPT BUILDING RENOVATIONS which contract is herein referred to and made a part of as fully and to the same extent as if the same were entirely written herein and

WHEREAS, said contract has been completed, and was approved on the 1st day of March, 2016.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall guarantee that the work will be free of any defective materials or workmanship which become apparent during the period of twelve months following completion of the contract, then this obligation shall be void, otherwise to remain in full force and effect, provided, however, any additional warranty or guarantee, whether expressed or implied, is extended by the Principal or Manufacturer only, and the Surety assumes no liability for such a guarantee.

Signed and sealed this 8TH day of MARCH, 2016.

Sharon Jones
Witness

Dary Satka
Principal
TAHERI CONSTRUCTION LLC
C.E.O.

Auto-Owners (Mutual) Insurance Co



Amanda Lamp
Witness

Paul D. Oppenlander
Paul D. Oppenlander
Attorney-in-Fact



Bond Number 66219215

ACKNOWLEDGEMENT BY SURETY

STATE OF MICHIGAN

County of Eaton

On this 8TH day of MARCH, 2016, before me personally appeared Paul D. Oppenlander, known to me to be the Attorney-in-Fact of Auto-Owners (Mutual) Insurance Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Amanda Lamp

Notary Public in the State of Michigan
County of Eaton

AMANDA LAMP
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires Jan. 1, 2020

DATE AND ATTACH TO ORIGINAL BOND
AUTO-OWNERS (MUTUAL) INSURANCE COMPANY
LANSING, MICHIGAN
POWER OF ATTORNEY

NO. 66219215

KNOW ALL MEN BY THESE PRESENTS: That the AUTO-OWNERS (MUTUAL) INSURANCE COMPANY AT LANSING, MICHIGAN, a Michigan Corporation, having its principal office at Lansing, County of Eaton, State of Michigan, adopted the following Resolution by the directors of the Company on January 27, 1971, to wit:

"RESOLVED, That the President or any Vice President or Secretary or Assistant Secretary of the Company shall have the power and authority to appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof. Signatures of officers and seal of Company imprinted on such powers of attorney by facsimile shall have same force and effect as if manually affixed. Said officers may at any time remove and revoke the authority of any such appointee."

Does hereby constitute and appoint Paul D. Oppenlander

its true and lawful attorney(s)-in-fact, to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and the execution of such instrument(s) shall be as binding upon the AUTO-OWNERS (MUTUAL) INSURANCE COMPANY AT LANSING, MICHIGAN as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

IN WITNESS WHEREOF, the AUTO-OWNERS (MUTUAL) INSURANCE COMPANY AT LANSING, MICHIGAN, has caused this to be signed by its authorized officer this 2nd day of January, 2014.

Kenneth R. Schroeder Senior Vice President

STATE OF MICHIGAN }
COUNTY OF EATON } ss.

On this 2nd day of January, 2014, before me personally came Kenneth R. Schroeder, to me known, who being duly sworn, did depose and say that they are Kenneth R. Schroeder, Senior Vice President of AUTO-OWNERS (MUTUAL) INSURANCE COMPANY, the corporation described in and which executed the above instrument, that they know the seal of said corporation, that the seal affixed to said instrument is such Corporate Seal, and that they received said instrument on behalf of the corporation by authority of their office pursuant to a Resolution of the Board of Directors of said corporation.



My commission expires January 1st, 2020

Amanda Lamp

Notary Public

STATE OF MICHIGAN }
COUNTY OF EATON } ss.

I, the undersigned Senior Vice President, Secretary and General Counsel of AUTO-OWNERS (MUTUAL) INSURANCE COMPANY, do hereby certify that the authority to issue a power of attorney as outlined in the above board of directors resolution remains in full force and effect as written and has not been revoked and the resolution as set forth are now in force.

Signed and sealed at Lansing, Michigan. Dated this 8th day of March, 2016



William F. Woodbury, Senior Vice President, Secretary and General Counsel



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

03/11/2016

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY IRVIN-DYAL & BROWN INSURANCE 3326 ASPEN GROVE DR STE 100 FRANKLIN, TN 37067-2838		PHONE (A/C, No, Ext): +1 615 791 5555	COMPANY American Zurich Insurance Company	
FAX (A/C, No): +1 615 791 1338	E-MAIL ADDRESS: sherry@irvininsurance.com			
CODE: 11791167	SUB CODE:			
AGENCY CUSTOMER ID #: INSURED Taheri Construction LLCV 3015 Coral Bell Lane Franklin, TN 37067		LOAN NUMBER	POLICY NUMBER BR08985923	
		EFFECTIVE DATE 03/09/2016	EXPIRATION DATE 09/09/2016	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

PROPERTY INFORMATION

LOCATION/DESCRIPTION 202 East Vine St. Murfreesboro, TN 37130
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Builders Risk Coverage Form		\$1,000
Renovations and Improvements	\$97,000	
All Covered Property at all Locations	\$97,000	

REMARKS (Including Special Conditions)

--

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS City of Murfreesboro TN 111 W. Vine St. Murfreesboro, TN 37130	<input type="checkbox"/> MORTGAGEE	<input checked="" type="checkbox"/> ADDITIONAL INSURED
	<input type="checkbox"/> LOSS PAYEE	
	LOAN #	
AUTHORIZED REPRESENTATIVE Sharon Jones		Digitally signed by Sharon Jones DN: cn=Sharon Jones, o=Irvin Dyal and Brown Insurance, ou=1, email=sherry@irvininsurance.com, c=US Date: 2016.03.11 12:19:37 -0800



... creating a better quality of life.

Consent Agenda

March 18, 2016

Honorable Mayor and Members of City Council

Re: Planning Commission Recommendations

- A. Mandatory Referral at Mercury Plaza Shopping Center**
- B. Mandatory Referral north of Maymont Drive**

Item A: Mandatory Referral [2016-703] for the abandonment of a utility easement at the Mercury Plaza shopping center, Kroger applicant.

Background

The City Council is being asked to consider abandoning an existing utility easement at the Mercury Plaza shopping center. This easement houses a Murfreesboro Electric Department (MED) electric line and transformer. The Planning Commission approved plans for the redevelopment of a portion of this center with a Kroger grocery store in September 2015. With the proposed redevelopment, the existing utility easement will not be needed by MED. The requested mandatory referral seeks to abandon this utility easement. MED has indicated that it consents to the abandonment of the easement.

Recommendation

The Murfreesboro Planning Commission recommends that the City Council approve this mandatory referral request in order to authorize the Mayor to sign the appropriate legal instruments to quitclaim the City's interest in the easement.

Concurrences

The Murfreesboro Planning Commission considered this mandatory referral request at its March 16th meeting and recommends approval.

Fiscal Impact

Staff is not aware of any fiscal impact that will result from this request.

Attachments

1. Staff Comments
2. Exhibits

- . **Item B:** Mandatory Referral [2016-702] for the abandonment of a 50' public utility easement located north of Maymont Drive, St. Rose of Lima Catholic Church applicants.

Background

The City Council is being asked to consider abandoning an existing public utility easement located north of Maymont Drive, on Lot 2 of the Jean Beasley subdivision. This easement is also a private access easement that is not within the City's authority to abandon. Staff has studied the property and has been made aware that any utilities located within this area will need to maintain an easement.

Recommendation

The Murfreesboro Planning Commission recommends that the City Council approve this mandatory referral request to authorize the Mayor to sign the appropriate legal instruments to quitclaim the City's interest in the easement. The approval of this request by the Planning Commission was made subject to the applicant providing City Staff with all the necessary documentation required to prepare and record the instrument. This includes legal descriptions and an illustration of the property. A survey will also need to be provided to field locate any utilities that presently exist so that an easement can be maintained.

Concurrences

The Murfreesboro Planning Commission considered this mandatory referral request at its March 16th meeting and recommends approval subject to the above-referenced conditions.

Fiscal Impact

Staff is not aware of any fiscal impact that will result from this request.

Attachments

1. Staff Comments
2. Exhibits

Respectfully Submitted,

Matthew T. Blomeley
Principal Planner

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
MARCH 16, 2016**

4.r. Mandatory Referral [2016-703] for the abandonment of a utility easement at the Mercury Plaza shopping center, Kroger applicant.

The Planning Commission is being asked to consider abandoning an existing utility easement at the Mercury Plaza shopping center. This easement houses a Murfreesboro Electric Department (MED) electric line and transformer. The Planning Commission approved plans for the redevelopment of a portion of this center with a Kroger grocery store in September 2015. With the proposed redevelopment, the existing utility easement will not be needed by MED. The requested mandatory referral seeks to abandon this utility easement. MED has indicated that it consents to the abandonment of the easement. If approved by the Planning Commission, Staff will forward the Planning Commission's recommendation to the City Council for its consideration.





March 8, 2016

Mr. Matthew Blomeley
Principal Planner
City of Murfreesboro
111 West Vine Street, 2nd Floor
Murfreesboro, Tennessee 37133

**RE: Kroger Store # U-621
Mercury Plaza – Mercury Boulevard and Middle Tennessee Boulevard
Murfreesboro, Rutherford County, Tennessee
Tax Map #102D, Group M, Parcel 35
Mandatory Referral for Permanent Utility Easement Abandonment (Electrical)**

Dear Matthew:

The proposed grocery store will require the abandonment of an existing City-Owned permanent utility easement at the front of the store, which was used for electrical work. Abandonment of the 10' wide (variable width at the transformer) permanent utility easement will be necessary. The existing permanent utility easement is recorded in R.B. 619, PG. 3440 (#18). The easement abandonment area is depicted on the attached Exhibit E-1.

As we discussed, please place this item on the agenda for the March 16, 2016 Planning Commission Meeting. Upon approval by Planning Commission, please place this item on the agenda for the next possible City Council meeting.

Please let me know if you have any questions or need any additional information.

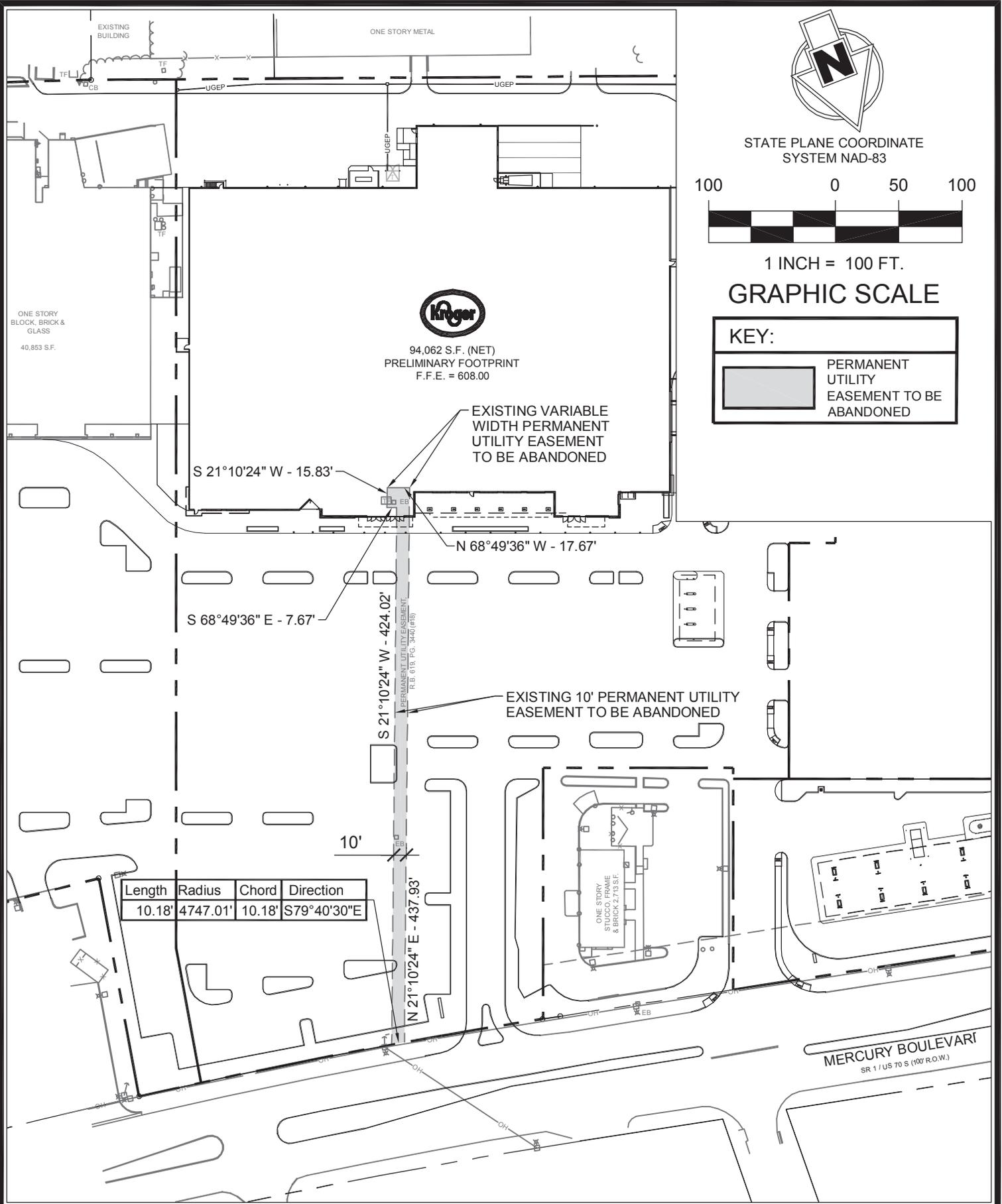
Sincerely,

A handwritten signature in blue ink, appearing to read "Jon Claxton", is written over a horizontal line.

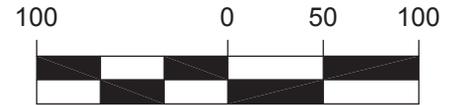
Jon Claxton, PE
Perry Engineering, LLC

Enclosure(s)

cc: Mr. Chris Miller, Kroger



STATE PLANE COORDINATE SYSTEM NAD-83



1 INCH = 100 FT.

GRAPHIC SCALE

KEY:

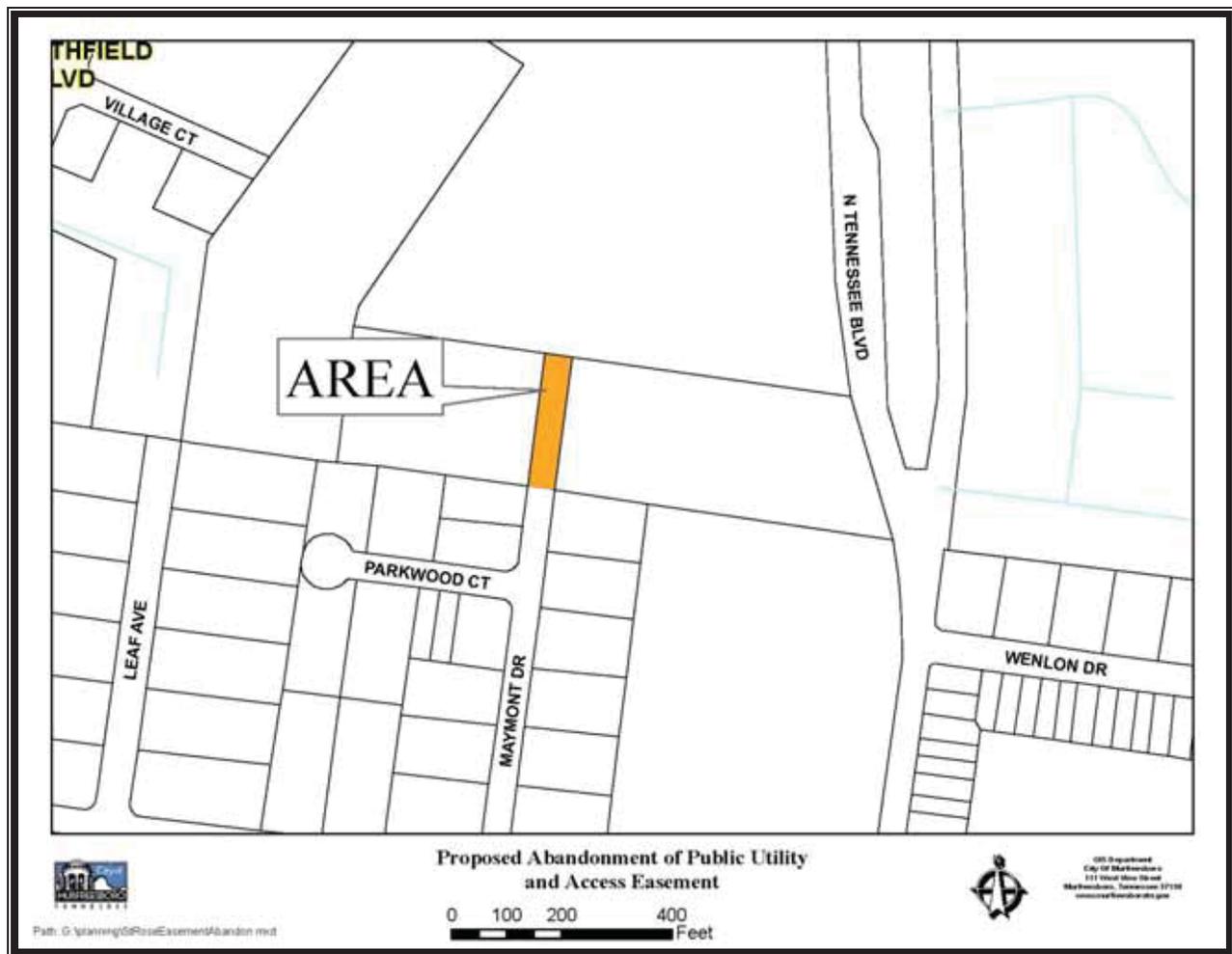
 PERMANENT UTILITY EASEMENT TO BE ABANDONED



**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
MARCH 16, 2016**

4.s. Mandatory Referral [2016-702] for the abandonment of a 50' public utility & access easement located north of Maymont Drive, St. Rose of Lima Catholic Church applicants.

The Planning Commission is being asked to consider abandoning an existing public utility easement located north of Maymont Drive, on Lot 2 of the Jean Beasley subdivision. This easement also is a private access easement that is not within the City's authority to abandon. Staff has studied the property and has been made aware that any utilities located within this area will need to maintain an easement. The approval of this request is subject to the applicant providing all the necessary documentation required to prepare and record the instrument to City Staff. This includes legal descriptions and an illustration of the property. A survey will also need to be provided to field locate any utilities that presently exist so that an easement can be maintained. If approved by the Planning Commission, Staff will forward the Planning Commission's recommendation to the City Council for its consideration.



PETER V. HALL, P.C.

A Professional Corporation
Attorney-at-Law

8 Lincoln Square
1535 West Northfield Blvd.
Murfreesboro, TN 37129

Phone: (615) 895-8880
Fax: (615) 895-7226

February 11, 2016

Mr. Gary Whitaker
Planning Director
City of Murfreesboro
111 W. Vine Street
Murfreesboro, TN 37130

SENT VIA ELECTRONIC MAIL AND U.S. MAIL

Re: Proposed abandonment of public utility and access easement

Dear Mr. Whitaker:

On behalf of St. Rose of Lima Catholic Church ("Church"), this letter is being submitted as a request for a proposed abandonment of a fifty foot public utility and access easement as such appears on the plat entitled "Subdivision Plat For Jean Beasley" recorded at Plat Book 15, Page 69 at the Register's Office of Rutherford County, Tennessee. A copy of that plat is attached to this letter. A notation appears in the lower lefthand corner of the plat which provides that the easement is to be dedicated as a fifty foot public right-of-way by the owner of Lot 2 to the City of Murfreesboro upon the sale or development of Lot 2 or to the N.O. Beasley property to the north. Water, sanitary, sewer and street improvements would also be extended per City standards with the dedication.

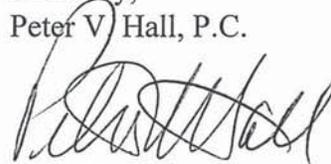
The Church is presently the owner of Lot 1 shown on the enclosed plat. The Church is presently under contract to purchase Lot 2 as well as the N.O. Beasley property to the north and the N.O. Beasley property to the west, all of which comprises approximately 29 acres. I have also enclosed a copy of a GIS map which I have marked to show the property under contract. The closing of the sale is scheduled to occur during the last week of March, 2016.

Upon completion of the purchase by the Church, the Church does not wish for the public utility and access easement to be dedicated as a public right-of-way since the Church will be the owner of the entire property to the east, west and north of the present easement. Pending completion of the closing, the Church hereby requests that the City of Murfreesboro provide a written agreement that upon completion of purchase of the property by the Church, and further upon written notification to the City by the Church, the public utility and access easement will be abandoned by the City.

2/11/2016
Mr. Gary Whitaker
Pg. 2

Please advise what steps can be taken by the City and/or the Church to accomplish this objective. Thank you for your consideration. If you have any questions or wish to discuss this further, please do not hesitate to contact me.

Sincerely,
Peter V Hall, P.C.



Peter V. Hall

PVH/lr
Enclosures
cc: Davis Ives, Assistant City Attorney (vial email only)
St. Rose of Lima Catholic Church (via email only)
Gino Marchetti, Diocesan Attorney (via email only)
Renee Miller (via email only)



LOCATION MAP

N.T.S.

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish the minimum building restriction lines, and dedicate all streets, alleys, walks, parks and other open spaces to public or private use as noted.

Date 10-20-92

Deed Bl. 422, 125

Pg: 569, 477

Urbain B. Taylor
OWNER

CERTIFICATE OF ACCURACY

I hereby certify that the plan shown and described hereon is true and correct survey to the accuracy required by the Tennessee Planning Commission and that the monuments have been placed as shown hereon, to the specifications of the County Road Commissioner or the City Engineer.

Date 2-10-92
W. Henry Huddleston III
REGISTERED ENGINEER OR SURVEYOR

CERTIFICATION OF THE APPROVAL OF STREETS AND UTILITIES

I hereby certify that all streets, utilities, power pole locations and other improvements have been installed in an acceptable manner and according to city (county) specifications in the subdivision entitled:

Subdivision Plat For JEAN BEASLEY
I certify that a security bond in the amount of \$10,000 has been posted with the City Engineer to ensure compliance with the provisions of the Tennessee Planning Commission and that it has been approved for recording in the office of the County Register.

Date 2-12-92
W. W. W.
CITY ENGINEER

Date 2-11-92
Thomas C. Cook
CHAIRMAN, PLANNING COMMISSION

Date 2-11-92
Jim Stally
SOUTH CENTRAL BELL

CERTIFICATE OF APPROVAL FOR RECORDING

I hereby certify that the subdivision plan shown hereon has been found to comply with the Subdivision Regulations of the State of Tennessee, with the exception of such variances, if any, as are noted to the notice of the Planning Commission and that it has been approved for recording in the office of the County Register.

Date 2-12-92
Joseph E. Kitchens
CHAIRMAN, PLANNING COMMISSION

Date 2-12-92
Joseph E. Kitchens
SECRETARY

POSTAL SERVICE CERTIFICATE

I certify that the property shown hereon will be served by the *North Meadows* Post Office.

Date 2-4-92
W. W. W.
SIGNATURE OF AUTHORIZED OFFICIAL

CERTIFICATION OF THE APPROVAL OF WATER AND SEWERAGE SYSTEMS

I hereby certify that the water supply and sewage disposal utility systems installed, or proposed for installation in the subdivision plan shown hereon, comply with the requirements of the Tennessee State Health Department, and the Tennessee Water and Sewer Department, and are hereby approved as shown:

Subdivision Plat For JEAN BEASLEY
Date Feb 11 1992
Joseph E. Kitchens
Chair and Sewer Department Official

RECORDING FEE 10.00
STATE TAX -
REGISTER'S FEE -
TOTAL PAID 10.00
RECEIPT NO. 40302

BART YEARGAN, REGISTER
RUTHERFORD COUNTY, TENNESSEE
Received February 13, 1992
Time 8:00 A.M.
Notebook 40 Page 512
PLAT BOOK 15 PAGE 69
Deputy *Martha C. Wright*



o Iron Pin Set unless otherwise noted
IPF o Iron Pin Found
FC o Fence Corner
2 Lots-5, 77 Ac.

N.O. Beasley
302/143

Logan
Boogs
263/179

St. Rose of Lima
Catholic Church

21
North Meadows
Subdivision

Maymont Estates
Section C

NOTE: The Public Utility & Access Easement is to be dedicated as a fifty (50)-foot public right-of-way by the owner of Lot 2 to the City of Murfreesboro upon the sale or development of Lot 2 or the N.O. Beasley property to the north. Water, sanitary sewer, and street improvements are to be extended per City standards with this dedication.

Developer: Jean Beasley
1025 A E. Northfield Blvd
Mboro, TN, 37129
Tax Map: B1
Parcels: 113 & 113.01
Flood Map: 47D168-0004 B
Zone: C

Plat Book: 15, Page: 69



W. HENRY HUDDLESTON III
CIVIL ENGINEER
2115 N.W. BROAD ST.
MURFREESBORO, TENN. 37130

SUBDIVISION PLAT FOR
JEAN BEASLEY

13th. Civil District - Rutherford Co. - Tennessee

DATE February, 1992 SCALE 1" = 100' SHEET 1 OF 1

March 3, 2016

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in regular session at its regular meeting place in the Council Chambers at City Hall at 7:00 p.m. on Thursday, March 3, 2016, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young

Council Members Madelyn Scales Harris and Rick LaLance were absent and excused from this meeting.

The following representatives of the City were also present:

Robert J. Lyons, City Manager
James Crumley, Assistant City Manager
Melissa Wright, City Recorder/
Finance Director/City Treasurer
David Ives, City Attorney
Craig Tindall, Special Counsel
Matthew Blomeley, Principal Planner
Margaret Ann Green, Principal Planner
Gary Whitaker, Planning Director
Darren Gore, Water & Sewer Director
Georgia A. Meshotto, Administrative Aide II

Council Member Ron Washington commenced the meeting with a moment of silent prayer followed by the Pledge of Allegiance.

Vice-Mayor Young made a motion to approve the minutes as written and presented for the regular meeting held on February 25, 2016. Mr. Shacklett seconded the motion and all members of the Council present voted "Aye".

An ordinance, entitled "ORDINANCE 16-OZ-01 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 2.2 acres along Gresham Lane from Single-Family Residential Fifteen (RS-15) District to Residential Multi-Family Sixteen (RM-16) District; Alcorn Properties, applicant [2015-429]," which passed first reading on February 11, 2016 and second reading on February 25, 2016, was read to the Council and offered for passage on third and final reading upon motion made by Vice-Mayor Young, seconded by Mr. Washington. Upon roll call said ordinance was passed on third and final reading by the following vote:

Aye: Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

Said ordinance so passed on third and final reading is as follows:

(Insert ORDINANCE 16-OZ-01 here.)

An ordinance, entitled "ORDINANCE 16-OZ-02 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 1.68 acres along Dill Lane from Single-Family Residential Fifteen (RS-15) District to Residential Multi-Family Twelve (RM-12) District; Randy Friedsam, applicant [2015-432]," which passed first reading on February 11, 2016 and second reading on February 25, 2016, was read to the Council and offered for passage on third and final reading upon motion made by Mr. Smotherman, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on third and final reading by the following vote:

Aye: Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

Said ordinance so passed on third and final reading is as follows:

(Insert ORDINANCE 16-OZ-02 here.)

An ordinance, entitled "ORDINANCE 16-OZ-03 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 8.56 acres along Franklin Road from Single-Family Residential Fifteen (RS-15) District to Commercial Fringe (CF) District; Anthony Togrye, applicant [2015-433]," which passed first reading on February 11, 2016 and second reading on February 25, 2016, was read to the Council and offered for passage on third and final reading upon motion made by Vice-Mayor Young, seconded by Mr. Shacklett. Upon roll call said ordinance was passed on third and final reading by the following vote:

Aye: Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

Said ordinance so passed on third and final reading is as follows:

(Insert ORDINANCE 16-OZ-03 here.)

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing and consider for approval a Certificate of Compliance for a Retail Liquor Store for Sanjaykumar A. Patel at M'boro City Limits Liquors & Wine, 5353 NW Broad Street.

The City Recorder said this is an existing location but a new owner which requires a public hearing. The applicant has met the City's requirements and, upon approval of the Certificate of Compliance, he can make application with the State of Tennessee ABC.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the applicant's request for a Certificate of Compliance for a Retail Liquor Store do so at this time. There was no one present who wished to speak for or against the Certificate of Compliance and, after ample time had been given, Mayor McFarland declared the public hearing closed.

Vice-Mayor Young made a motion to approve a Certificate of Compliance for Sanjaykumar A. Patel at Murfreesboro City Limits Liquors & Wine, 5353 NW Broad Street. Mr. Washington seconded the motion and all members of the Council present voted "Aye".

The City Recorder presented for approval a renewal of Certificate of Compliance for Prajesh N. Patel and Gautam Patel at CNG Wine & Spirits, 2750 S. Rutherford Boulevard. This application is for an existing location, and the applicants have met all of the requirements.

Vice-Mayor Young made a motion to approve a Certificate of Compliance for Prajesh N. Patel and Gautam Patel at CNG Wine & Spirits, 2750 S. Rutherford Boulevard. Mr. Washington seconded the motion and all members of the Council present voted "Aye".

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 16-R-PH-04 adopted by the City Council on February 11, 2016, to consider amending approximately 25.6 acres in the Planned Residential Development (PRD) District located along Florence Road in the Cedar Retreat PRD; Donald Henley Construction, applicant [2016-405]. Notice of said public hearing was published in the February 15, 2016 issue of a local newspaper as follows:

(Insert notice here.)

Ms. Matthew Blomeley, Principal Planner, said subject property is located along the west side of Florence Road and just north of I-24. The property was approved in 2006 as the Cedar Retreat PRD (Planned Residential Development); however, it never materialized and has remained vacant for approximately ten years. The majority of uses in the area are single-family residential in nature with some commercial uses closer to I-24. The existing PRD plan consists of a total density of 123 dwelling units of which 77 are single-family detached and 46 are single-family attached. The detached units to the rear of property would be a minimum of 1,400 square feet on lots 40-60 feet wide and the attached units would be a minimum of 1,200 square feet. The applicant has recently purchased the property and does not want to develop it under the current PRD plan but is proposing to decrease the density from 123 to 57 dwelling units with all lots being single-family detached with a minimum lot size of 12,000 square feet and a minimum house size increasing to

1,900 square feet. The proposed building materials would consist of brick, stone and cement board siding with vinyl allowed only in the trim, soffit, dormers and gables. The applicant is proposing 35' setbacks for all garages which would allow adequate room onsite for four vehicles to park outside of the garage for every lot. The Planning Commission conducted a public hearing and unanimously voted to recommend approval of this zoning request. Mr. Rob Molchan with SEC, Inc. gave a brief presentation on the proposed development. There were no questions from the Council at this time.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed amendment to 25.6 acres in the Planned Residential Development (PRD) District located along Florence Road in the Cedar Retreat PRD do so at this time. There was no one present who wished to speak for or against the proposed amendment and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 16-OZ-04 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 25.6 acres in the Planned Residential Development (PRD) District located along Florence Road in the Cedar Retreat PRD as indicated on the attached map; Donald Henley Construction, applicant [2016-405]," was read to the Council and offered for passage on first reading upon motion made by Vice-Mayor Young, seconded by Mr. Washington. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 16-R-PH-05 adopted by the City Council on February 11, 2016, to consider rezoning approximately 11 acres along Manson Pike from Single-Family Residential Fifteen (RS-15) District to Planned Residential Development (PRD) District (Maddington Parke), David Alcorn, applicant [2016-401]. Notice of said public hearing was published in the February 15, 2016 issue of a local newspaper as follows:

(Insert notice here.)

Mr. Matthew Blomeley, Principal Planner, said this property is located along the south side of Manson Pike, just west of the intersection of Brinkley Road and Manson Pike and just to the west of John Lee Lane where the Oakton Subdivision is located. There are several

residential streets and subdivisions just to the east and south of subject property including the Oakton, Princeton Oaks and Blackman Meadows Subdivisions which are all zoned Residential Single-Family Twelve (RS-12) District with minimum lot sizes of 12,000 square feet. Along the north side of Manson Pike are several residential tracts in the County as well as the Blackman United Methodist Church and the Blackman Community Center. To the west of subject property is another church owned by Blackman United Methodist Church but is leased by a different church. Adjacent to SR 840 is property recently annexed and zoned Highway Commercial (CH) and Commercial Fringe (CF) Districts. Subject property was annexed by the City in early 2015 without a companion zoning request which resulted in an interim zoning classification of Single-Family Residential Fifteen (RS-15) District. The applicant has purchased the property and has requested rezoning it to Planned Residential Development (PRD) District for a townhome development called Maddington Parke. The development would be a two-story townhome style of construction consisting of 88 dwelling units per acre, sold under a horizontal property regime; all streets private; units ranging from 1,500 to 2,100 square feet; and 84 guest parking spaces in addition to the driveway spaces that would be provided in front of each unit. The development would exceed the City's minimum parking requirements for multi-family residential uses. The plan has been revised to address concerns at Planning Commission regarding the use of a compactor along the western property line adjacent to the church property instead of individual carts for each unit; building elevations upgraded with a mix of vinyl, brick, stone and hardy board instead of all vinyl; and orientation of buildings rotated so that fronts of buildings face Manson Pike. The property is in the area that was contemplated in the General Development Plan for the Blackman Community which was approved around the year of 2000. It recommends that subject property develop as "Office/Distribution" which is defined as "office and distribution flex space in a well-planned setting" with permitted uses of "office showroom, distribution facilities, and ancillary retail". As a caveat, however, the plan stated that the designation of this property as "Office/Distribution" largely hinged on accessibility to the Veterans Parkway interchange. The future land use map showed a planned arterial road running from Veterans Parkway to Manson Pike parallel to SR 840. This arterial road was never constructed and, with the development of the single-family subdivisions in this area, such a road improvement seems very unlikely. Without this roadway, it may be argued that the "Office/Distribution" recommendation is no longer applicable. With respect to the proposed PRD at hand, it might also be argued that such a multi-family use would be an appropriate transition from the single-family residential zoning to the east to the commercial zoning to the west that was approved recently. Mr. Rob Molchon with SEC, Inc. gave a power point

presentation on the details of the Maddington Parke development and answered questions from the Council regarding private patios and setbacks.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed rezoning of approximately 11 acres along Manson Pike from Single-Family Residential Fifteen (RS-15) District to Planned Residential Development (PRD) District (Maddington Parke) do so at this time.

Ms. Virginia Griffith, 1620 John Lee Lane, presented a petition on behalf of the residents of Oakton, Princeton Oaks and Blackman Meadows Subdivisions that stated their concerns with the negative impact of the proposed Maddington Parke plans on their community and requested that the following amendments be approved:

1. Setback from property line for rear and sides of units be increased from 20' to 30'.
2. Both traditional fencing and live fencing (i.e. Leyland Cypress or Pine) should be placed along the entire perimeter of Maddington Parke development.
3. Existing tree line be kept entirely intact.
4. Street facing/boundary facing aesthetic be brick or stone for both stories.
5. Additional turn-arounds and/or cul-de-sacs be added to ensure school bus pickup/drop-off does not occur on Manson Pike.
6. Open commons area exists in Phase 4 and 18 remaining units be pushed to the front of Maddington Parke in Phase I.

On behalf of the residents present, she requested that the developer consider and Council approve these amendments.

Ms. Melissa Stevens, 1743 John Lee Lane, resident of Oakton Subdivision, business owner and member of the Rutherford Chamber of Commerce, addressed the over development of their area and the need to take a step back and be thoughtful of the planning of our community.

There were no others present who wished to speak for or against the proposed rezoning along Manson Pike and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 16-0Z-05 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 11 acres along Manson Pike from Single-Family Residential (RS-15) District to Planned Residential Development (PRD) District (Maddington Parke); David Alcorn, applicant [2016-401]," was read to the Council and offered for passage on first reading.

Mr. Molchon addressed requests of the residents and offered some concessions agreed to by the applicant, Mr. Alcorn, in response to suggestions made by the neighbors of Oakton Subdivision:

1. Move setbacks from 20' to 30'.
2. Increase Class C Buffer to Class D Buffer within the 30'.
3. Intent to keep existing tree line except where connectivity for water and sewer or other utilities is necessary.

4. Use snap board/hardy board on second story facing residential property.
5. Routing and bus stops are scheduled by the School Board and not within developer's control. The development is already designed with a loop to provide a complete circular motion for school buses.
6. Relocation of units and pond cannot be done from an engineering and hydrologic standpoint. Stormwater Management and State Regulations require that all water that lands on this property has to be contained within the development for a certain period of time at its lowest point before it can be discharged into culverts under the roadways so that rates of flow are not increased on the adjacent neighbors on the north side of Manson Pike.

Vice-Mayor Young requested that first reading be deferred to give the applicant and developer an opportunity to meet with the neighbors and put in writing the concessions that have been agreed upon by the applicant. Mr. Molchon and Mr. Alcorn concurred with the request.

Vice-Mayor Young made a motion to defer ORDINANCE 16-OZ-05 on first reading. Mr. Smotherman seconded the motion and all members of the Council present voted "Aye".

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 16-R-PH-07 adopted by the City Council on February 11, 2016, to consider rezoning approximately 2.3 acres at 3281 Siegel Road from Single-Family Residential Fifteen (RS-15) District to Planned Commercial Development (PCD) District (Academy at Siegel); Cornerstone Development, applicant [2016-402]. Notice of said public hearing was published in the February 15, 2016 issue of a local newspaper as follows:

(Insert notice here.)

Ms. Margaret Ann Green, Principal Planner, said subject property is located west of Siegel Road and is part of a larger parcel. Surrounding properties are zoned Residential Single-Family Fifteen (RS-15) District. Directly to the north of subject property is a single family home and just north of that property is a church which is located at the intersection of West Thompson Lane and Siegel Road. Across Siegel Road is the Siegel School Complex. The properties to the south are the remainder of the property that is being sold. The property is undeveloped, and the request for Planned Commercial Development (PCD) District is to construct a daycare center called Academy at Siegel. The applicants have constructed two other daycares in the community both of which are located in the Gateway. A list of uses under this classification were provided for review. The Planning Commission approved this recommendation with two changes: 1) Remove Mental Health Facility from list of Allowable Uses; and 2) Extend 6' solid opaque PVC fence along entire northern property line. The Planning Commission had some concerns with the detention area shown in the plans; however, after studying it, it was decided it will not be a wet pond. The extension of the fence will be a bonus because the neighbor to the north has a pool, and the fence will help shield visibility of the pool from children's view. The Planning Commission voted to approve this request with the two changes noted and one member abstaining. Mr. Matt

Taylor, SEC, Inc., gave a presentation on the specifics of the program book. He recognized the presence of Mr. Bart Kline, Architect; Mr. Harry Minge, Cornerstone Development; and Mr. John Harney, representing The Parks Group in Murfreesboro. There were no questions from the Council at this time.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed rezoning of approximately 2.3 acres at 3281 Siegel Road from Single-Family Residential Fifteen (RS-15) District to Planned Commercial Development (PCD) District (Academy at Siegel) do so at this time. There was no one present who wished to speak for or against the proposed rezoning and, after ample time had been given, Mayor McFarland declared the public hearing closed.

Ms. Green addressed the Mayor's concerns with a commercial use in an area where there are no commercial uses. She stated that staff was more concerned with a bulk zone rather than institutional uses such as schools, churches, and daycares. The limited list of uses would be a safeguard as to what would be a good fit for the specific surroundings. Mayor McFarland requested that the list of uses be amended to exclude Public Building, Farm Labor and Management Services, Barber or Beauty Shop, Book or Card Shop, Catering Establishment, Health Club, Reducing & Weight Control Service and Post Office or Postal Facility. Mr. Taylor concurred with the request and indicated the program book would be revised to reflect these changes by second reading.

An ordinance, entitled "ORDINANCE 16-OZ-07 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 2.3 acres at 3281 Siegel Road from Single-Family Residential (RS-15) District to Planned Commercial Development (PCD) District (Academy at Siegel); Cornerstone Development, applicant [2016-402]," was read to the Council and offered for passage on first reading upon motion made by Mr. Smotherman, seconded by Vice-Mayor Young. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

The following letter of recommendations from the Planning Commission was presented to the Council:

(Insert letter dated February 24, 2016 here with regards to scheduling public hearings to consider an Annexation Plan of Services and Annexation Petition [2015-509] along W. Thompson Lane and zoning/rezoning [2015-431] PRD along W. Thompson Lane (General's Landing).

The following RESOLUTION 16-R-PH-09 was read to the Council and offered for adoption upon motion made by Vice-Mayor Young, seconded by Mr. Washington. Upon roll call said resolution was adopted by the following vote:

Aye: Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert RESOLUTION 16-R-PH-09 here to schedule a public hearing for May 5, 2016 to consider 1) adoption of a Plan of Services for and annexation of 16.5 acres and 2) zoning of approximately 16.5 acres along West Thompson Lane, which have been proposed to be annexed to the City of Murfreesboro, Tennessee, to Planned Residential Development (PRD) District and rezoning of approximately 16.5 acres along West Thompson Lane from Single-Family Residential Fifteen (RS-15) District to Planned Residential Development (PRD) District [2015-509 & 2015-431].

The following letter of recommendations from the Water & Sewer Board was presented to the Council:

(Insert letter dated March 3, 2016 here regarding revisions to Policies, Procedures and General Design Guidelines: Section 1.3 - Sewer Availability to Outside City Customers and State of Tennessee Law regarding Annexation.)

The Water and Sewer Director reviewed the revisions to the Policies, Procedures and General Design Guidelines under Section 1.3 and answered questions from the Council.

Mr. Shacklett made a motion to accept the recommendation of the Water & Sewer Board to approve the revisions identified in Section 1.3 of the Murfreesboro Water & Sewer Department's Policies, Procedures, and General Design Guidelines. Mr. Washington seconded the motion and all members of the Council present voted "Aye".

Upon recommendation of Mayor McFarland, Mr. Washington made a motion to reappoint Ms. Gail Zlotky (02/28/2018), Mr. Steve Waldron (02/28/2018), Mr. Clay Cook (02/28/2019) and Mr. John Polk (02/28/2019) for another three-year term to the Airport Commission and reappoint Mr. Chuck Clark (07/01/2019), Mr. Billy Miller (07/01/2019), Mr. Laws McCullough (07/01/2019) and Mr. Myers Parson (07/01/2019) for another three-year term to the Evergreen Cemetery Commission. Vice-Mayor Young seconded the motion and all members of the Council present voted "Aye".

The City Recorder/Finance Director presented a Special Event Beer Permit for Children's Museum Corporation d/b/a Discovery Center at 1491 & 1501 Avellino Circle on June 3, 2016. A Beer Permit Application was presented for Samurai's Cuisine (ownership change) located at 451 N. Thompson Lane, Suite G. This application is pending completion of all required building and codes inspections.

Vice-Mayor Young made a motion to approve a Special Event Beer Permit for Children's Museum Corporation d/b/a Discovery Center and approve a Beer Permit for

Samurai's Cuisine upon successful completion of all building and codes inspections. Mr. Shacklett seconded the motion and all members of the Council present voted "Aye".

The City Recorder/Finance Director indicated there were no statements to be considered at this time.

Under other business, Mayor McFarland presented for approval a request from Alpha Delta Pi Sorority to hang a banner across East Main Street from March 11-21, 2016 to promote the triathlon fundraiser at MTSU Campus for Ronald McDonald House Charities and MTSU Scholarships.

Mr. Smotherman made a motion to approve the banner request from Delta Pi Sorority. Vice-Mayor Young seconded the motion and all members of the Council present voted "Aye".

Mr. Shacklett addressed the need to schedule a retreat to discuss some of the long range issues coming up in the next few months and asked the City Manager to come up with a time, place and agenda. Council concurred with the request.

There being no further business, Mayor McFarland adjourned this meeting at 8:26 p.m.

SHANE MCFARLAND - MAYOR

ATTEST:

MELISSA B. WRIGHT - CITY RECORDER

March 10, 2016

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in regular session at its regular meeting place in the Council Chambers at City Hall at 7:00 p.m. on Thursday, March 10, 2016, with Mayor Shane McFarland present and presiding and with the following Council Members present and in attendance, to wit:

Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young

Council Member Madelyn Scales Harris was absent and excused from this meeting.

The following representatives of the City were also present:

Robert J. Lyons, City Manager
James Crumley, Assistant City Manager
Jennifer Moody, Assistant City Manager
Melissa Wright, City Recorder/
Finance Director/City Treasurer
David Ives, City Attorney
Glen Godwin, Director of Human Resources
Craig Tindall, Special Counsel
Gary Whitaker, Planning Director
Margaret Ann Green, Principal Planner
Robert Lewis, Planner
Chad Gehrke, Airport Manager
Georgia A. Meshotto, Administrative Aide II

Vice-Mayor Young commenced the meeting with a moment of silent prayer followed by the Pledge of Allegiance.

Mr. Glen Godwin, Human Resources Director, recognized Jason Reed, Driver for the Murfreesboro Solid Waste Department, as the STARS Award recipient for his on-duty response to a 15-year old girl walking to school and two Pit Bulls running at large towards her. He stopped the truck, blew the horn to distract the dogs and then escorted the girl back to her mother. The grateful mother called in to the department to express appreciation for his actions that prevented her daughter from what could have been a severe mauling by the dogs. Mayor McFarland presented the STARS Award plaque recognizing Jason's heroic act and introduced his wife and son. Mr. Joey Smith, Solid Waste Director, expressed his appreciation to Jason for his outstanding performance.

The Consent Agenda was presented to the Council for approval:

- 1) Letter of recommendations from the Parks & Recreation Director: Homeschool in the Wilderness Program fee increase and request for sibling discount.
- 2) Letter of recommendations from the Airport Commission: Approval of Work Authorization with ATKINS for Engineering & Project Administrative Services associated with the Approach Lighting and Clearing Project for Runway 18.
- 3) Letter from the City Recorder/Finance Director: Acknowledgement of receipt of City Manager's approved Budget Amendments for Fiscal Year 2016.
- 4) Letter from the City Engineer: West Lytle Street Appraisal Contract.
- 5) Letter of recommendations from the Assistant City Manager: Planning Department Renovations.

(Insert letters from the Parks & Recreation Director, Airport Commission, City Recorder/Finance Director, City Engineer and Assistant City Manager here.)

Mr. Smotherman made a motion to approve the Consent Agenda in its entirety. Vice-Mayor Young seconded the motion and all members of the Council present voted "Aye".

Mr. Smotherman made a motion to approve the minutes as written and presented for the special meeting held on March 3, 2016. Vice-Mayor Young seconded the motion and all members of the Council present voted "Aye".

An ordinance, entitled "ORDINANCE 16-OZ-04 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 25.6 acres in the Planned Residential Development (PRD) District located along Florence Road in the Cedar Retreat PRD as indicated on the attached map; Donald Henley Construction, applicant [2016-405]," which passed first reading on March 3, 2016, was read to the Council and offered for passage on second reading upon motion made by Vice-Mayor Young, seconded by Mr. Washington. Upon roll call said ordinance was passed on second reading by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

An ordinance, entitled "ORDINANCE 16-OZ-07 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 2.3 acres at 3281 Siegel Road from Single-Family Residential (RS-15) District to Planned Commercial Development (PCD) District (Academy at Siegel); Cornerstone Development, applicant [2016-402]," was read to the Council and offered for passage on second reading.

Mayor McFarland noted that a revised Program Book had been provided to reflect the requested changes made at the March 3, 2016 Council meeting.

Mr. LaLance made a motion to pass said ordinance on second reading. Vice-Mayor Young seconded the motion. Upon roll call said ordinance was passed on second reading by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

The City Recorder/Finance Director presented an application for renewal of Certificate of Compliance for a Retail Liquor Store from Ankit D. Patel at Victory Village Liquor & Wines, 4167 Franklin Road, Suite 5-A. The applicant has met the City's requirements.

Vice-Mayor Young made a motion to approve a Certificate of Compliance for Ankit D. Patel at Victory Village Liquor & Wines. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

The City Recorder/Finance Director presented an application for a Certificate of Compliance for Wine in Retail Stores from Troy K. Layne at Kroger #532, 2449 Old Fort Parkway; Kroger #543, 2946 S. Church Street; Kroger #529, 1776 W. Northfield Boulevard; Kroger #539, 2325 Memorial Boulevard; Kroger #564, 2050 Lascassas Pike; and Kroger #521, 1622 Middle Tennessee Boulevard. They have met all of the City's requirements and approval is recommended so that they can move forward with submitting their request to the State.

Vice-Mayor Young made a motion to approve a Certificate of Compliance for Troy K. Layne at Kroger Stores #532, #543, #529, #539, #564, and #521. Mr. Shacklett seconded the motion and all members of the Council present voted "Aye".

Mayor McFarland announced that the next item on the agenda is to conduct a public hearing, pursuant to RESOLUTION 15-R-PH-56.1 adopted by the City Council on February 11, 2016, to consider zoning approximately 17.3 acres located at 3726 Manson Pike as Planned Residential Development (PRD) District (Springfield Apartments) and Gateway Design Overlay One (GDO-1) District; Hunter/McDowell Development, applicant [2016-403]. Notice of said public hearing was published in the February 22, 2016 issue of a local newspaper as follows:

(Insert notice here.)

Ms. Margaret Ann Green, Principal Planner, presented the applicant's zoning request for property located along the northern side of Manson Pike. This parcel totals approximately 18 acres; however, that portion of the property that runs along the interstate was left out of the annexation which reduced the study area for annexation and zoning to approximately 17.3 acres. In 2015, annexation for subject property was approved; however, it was contingent upon any zoning change becoming effective which makes the annexation resolution not yet effective to-date. City Council considered the matter of zoning at the same time as annexation but there were several concerns with the application, and it was deferred indefinitely. The applicants have responded to those concerns with an application for Planned Residential Development (PRD) District. A specific Program Book was provided outlining the proposed development. Subject property is adjacent to a County single-family

subdivision on the eastern side zoned Medium Residential (RM); undeveloped property on the western side owned by MTSU zoned RM; along the northern property line is I-24 right-of-way and the interstate itself which borders subject property; to the south is Manson Pike and across Manson Pike is property zoned Residential Multi-Family Sixteen (RM-16) and Local Commercial (CL) Districts as well as Integra Creek Apartments, Phase 2, which is under construction and located along the southern property line as well; and properties to the south and east are in the City Limits and within the Gateway Design Overlay District. Planning Commission recommends approving the Planned Residential Development (PRD) zoning and include it in the Gateway Design Overlay One (GDO-1) District. The applicant, Hunter/McDowell, has a contract to purchase the property with intentions to develop with multi-family apartments consisting of a maximum of 270 dwelling units with a density just over 15 dwelling units per acre. The RM-16 classification allows 16 dwelling units per acre by right and additional dwelling units can be gained with density bonuses; however, the applicant does not plan to go beyond the 15 dwelling units per acre. The development is proposed to be a mix of two and three story buildings consisting of one, two and three bedroom units with brick and fiberboard siding. The two-story units are apartments called "townhomes" that will be situated along the eastern property line and the three-story buildings will be located into the site. The applicants have requested three exceptions to the Zoning Ordinance which is typical in a planned development. First, they would like a reduction in the amount of required off-street parking spaces. The Zoning ordinance would require 570 regular off-street parking spaces, and they are proposing 520 spaces. Secondly, the Zoning Ordinance does not allow parking spaces through another parking space in multi-family residential district. The applicant is providing parking spaces in front of the garage doors and refers to these type spaces as "tandem" parking spaces which would count as 75% or 51 of those "tandem" spaces towards the minimum required parking. Thirdly, the applicant is requesting that Building 4 be located 28' from the southern property line which is a 2' variance. Subject property is also adjacent to a cemetery that is on a separate lot of record and has frontage along Manson Pike with a separate entrance. It is not part of this property. Hallmark Drive currently dead ends into subject property, and the City has asked the applicant to install a crash gate at this point for emergency responders and would not be an access for residents coming and going on a daily basis. The gate would be operated on a "yelp" mode which would be something that the service deliveries could access if needed. Ms. Green noted that subject property is part of the General Development Plans for the Blackman Community which recommends that this parcel develop as "Planned Mixed Use Area Centering on Technology-Based Uses (i.e. Educational, Office, Research Park and

Limited Commercial Uses) and anchored by redevelopment of MTSU Agricultural Campus site". The proposed multi-family use is not consistent with the plan; however, the Planning Commission viewed multi-family as a good transition from the existing single family residents and the future development of the MTSU property which is coming in the future. A neighborhood meeting was held by the applicants. The Planning Commission held a public hearing after which they recommended approval of this rezoning request. Ms. Green recognized Mr. Clyde Rountree, Huddleston-Steele Engineering, Inc., who gave a presentation on the proposed development. Also present were Mr. Charles Haskett, developer with Bonavic Development; Mr. Bill Hunter, part of development team; and Mr. Jerry Gammon, Geotech Services and Analysis Group. As part of the presentation, Mr. Rountree pointed out that the existing home would remain single family and be a focal point of the project where the terminus of the access would be the home. A vegetative buffer has been addressed between the clubhouse, pool area and the graveyard as part of the process. Buildings 11-14 along the eastern property line of Brookwood Subdivision have decreased in size in order to make less impact on the adjacent neighbors, and the gap between the buildings has widened to make more penetrations through the site from the adjacent neighbors. Trees around the historic home will be preserved as well as the buffer kept intact that separates the Brookwood neighborhood from this development. He addressed the cave toward the northern portion of the property where there is an active water flow. The neighbors brought in a specialist to discuss the geology of the cave, and the developers have brought in their own geotech service person to do some analysis based on the cave as well. The developer has adjusted the site plan to accommodate any structural concerns with the cave. None of the foundations are located on top of the cave, and the closest building is almost 100 feet away from the cave entrance. The developer also did some exploratory digs to make sure there are solid foundations under the place where buildings are projected to be constructed. Mr. Rountree stated the developer has been very sensitive to addressing the concerns of the residents with preservation of the historic home, protecting the cave, buffer between property lines and a privacy fence to provide a physical divide to keep people from walking through their property. The architecture is consistent with the GDO-1 guidelines, and the clubhouse has been redesigned to be more in character with the historic home. There were no questions from the Council at this time.

Mayor McFarland then declared the public hearing open and invited those present who wished to speak for or against the proposed zoning of approximately 17.3 acres located at 3726 Manson Pike as Planned Residential Development (PRD) District (Springfield Apartments) and Gateway Design Overlay One (GDO-1) District do so at this time.

Mr. Leslie Smith, 3949 Hallmark Drive (Brookwood Subdivision), was opposed to the development. He addressed concerns with safety; traffic; a large number of units in a small compacted area; delivery access on Hallmark Drive being used for something other than emergency vehicles; and preservation of the historic home. He expressed concern with the number of apartments coming to the area over the next five years along Manson Pike and Blackman Road and the effect it will have on the Blackman community. He would like to see more of an owner-occupied approach.

Ms. Tammie Cleek, 3957 Hallmark Drive (Brookwood Subdivision), opposed this development being next to her subdivision and addressed sparse density of existing tree lines; prefer landscape buffer of 12' and 8' trees to be along the full length of east property line adjacent to Brookwood Subdivision; increase fence height from 6' to 8' as well as entry gate being 8'; building density still too heavy on residential side; prefer owner-occupied townhomes or single homes; and concerned with the unknowns of Military Spring Cave and passageways, water, more sinkholes, and flooding as a result of construction and the future effect on neighborhoods like Brookwood Subdivision and the Blackman Community. Ms. Cleek provided pictures of existing tree lines on subject property as well as fence heights in other developments.

There were no others present who wished to speak for or against the proposed zoning of 3726 Manson Pike to PRD and, after ample time had been given, Mayor McFarland declared the public hearing closed.

An ordinance, entitled "ORDINANCE 15-OZ-56 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 17.3 acres at 3726 Manson Pike as Planned Residential Development (PRD) District (Springfield Apartments) and Gateway Design Overlay (GDO-1) District; Hunter/McDowell Development, applicants [2016-403]," was read to the Council and offered for passage on first reading.

Ms. Green addressed questions heard during the public hearing regarding the historic home which the developers have committed to preserving; Manson Pike rebuilt by the City to handle future development and traffic; developer committing to a 12' wide landscape buffer with 8' tall trees that meet Type C standards as well as a 6' privacy fence which is standard; buffer extends along entire length of property line; and clarification that service vehicles meant fire trucks. Mr. Rountree concurred with making the concession to change the 6' fence and gate to 8'. The cave cannot be closed off but there is enough green space behind the property that can be used as an amenity, and they would make every effort to assure the cave is protected and the citizens are safe.

Vice-Mayor Young made a motion to pass said ordinance on first reading. Mr. Washington seconded the motion. Upon roll call said ordinance was passed on first reading by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

The following letter of recommendations from the Airport Commission was presented to the Council:

(Insert letter dated March 3, 2016 here with regards to a Professional Services Agreement with Michael Baker to provide inventory and programming for a new General Aviation Terminal at Murfreesboro Municipal Airport.)

The Airport Manager discussed the need for a General Aviation Terminal building to meet the modern needs of travelers coming in and out of our community through the airport as well as have a location for companies to come into Murfreesboro and conduct their business with local people at this facility. He answered questions from the Council and requested approval of the Professional Services Agreement.

Mr. LaLance made a motion to accept the recommendation of the Airport Commission to approve a Professional Services Agreement with Michael Baker. Mr. Smotherman seconded the motion and all members of the Council present voted "Aye".

The following letter of recommendations from the Planning Commission was presented to the Council:

(Insert letter dated March 3, 2016 here with regards to scheduling public hearings to consider zoning (RM-16) at 1710 E. Northfield Blvd; rezoning along Conference Center Blvd & Avenue Way (PRD); rezoning in Liberty Cove Subdivision (RS-10) & (RS-15); Annexation Plan of Services & annexation petition along Blackman Rd & Florence Rd; zoning along Blackman Rd & Florence Rd (PRD); Annexation Plan of Services & annexation petition west of Manchester Pike; zoning west of Manchester Pike (L-I); Annexation Plan of Services & annexation petition along New Salem Hwy; and zoning along New Salem Hwy (CF) & (RM-16.)

The following RESOLUTION 16-R-PH-10 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert RESOLUTION 16-R-PH-10 here scheduling a public hearing for April 21, 2016 to consider rezoning approximately 1 acre located at 1710 E. Northfield Blvd from Single-Family Residential Fifteen (RS-15) District to Residential Multi-Family Sixteen (RM-16) District [2016-409]; Murfreesboro Leased Housing Associates 1, applicant.)

The following RESOLUTION 16-R-PH-11 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert RESOLUTION 16-R-PH-11 here scheduling a public hearing for April 21, 2016 to consider rezoning approximately 5.5 acres located along Conference Center Boulevard and Avenue Way from Planned Commercial Development (PCD) District and Highway Commercial (CH) District to Planned Residential Development (PRD) District (Vasari Lofts) [2016-411]; TDK Construction, applicant.)

The following RESOLUTION 16-R-PH-12 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert RESOLUTION 16-R-PH-12 here scheduling a public hearing for April 21, 2016 to consider rezoning approximately 14 acres located within the Liberty Cove Subdivision from Single-Family Residential Fifteen (RS-15) District to Single-Family Residential Ten (RS-10) District (approximately 7 acres) and Single-Family Residential Ten (RS-10) District to Single-Family Residential Fifteen (RS-15) District (approximately 7 acres) [2016-410]; Howard Wall and Jim O'Brien, applicants.)

The following RESOLUTION 16-R-PH-13 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert RESOLUTION 16-R-PH-13 here scheduling a public hearing for April 21, 2016 to consider 1) adoption of a Plan of Services for and annexation of 285.4 acres and 2) zoning of approximately 242 acres along Blackman Road and Florence Road as Planned Residential Development (PRD) District (Shelton Springs) [2016-504 & 2016-406]; Shelton Family & Saraswat Family Trust, applicants.)

The following RESOLUTION 16-R-PH-14 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert RESOLUTION 16-R-PH-14 here scheduling a public hearing for April 21, 2016 to consider 1) adoption of a Plan of Services for and annexation of 31.9 acres and 2) zoning of approximately 31.9 acres located west of Manchester Pike as Light Industrial (L-I) District [2016-505 & 2016-408]; Swanson Development, applicant.)

The following RESOLUTION 16-R-PH-15 was read to the Council and offered for adoption upon motion made by Mr. LaLance, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert RESOLUTION 16-R-PH-15 here scheduling a public hearing for April 21, 2016 to consider 1) adoption of a Plan of Services for and annexation of 30.6 acres and 2) zoning of approximately 25.4 acres located along New Salem Highway as Commercial Fringe (CF) District (approximately 7 acres) and Residential Multi-Family Sixteen (RM-16) District (approximately 7 acres) [2016-501 & 2016-407]; World Outreach Church & Jackson Family General Partnership, applicants.)

The following letter of recommendations from the Assistant City Manager was presented to the Council:

(Insert letter dated March 7, 2016 here with regards to employment of Bass, Berry and Sims as Bond Counsel and adopt RESOLUTIONS 16-R-05 and 16-R-06 here.)

Mr. Washington made a motion to accept the recommendation of the Assistant City Manager to employ Bass, Berry and Sims as Bond Counsel. Vice-Mayor Young seconded the motion and all members of the Council present voted "Aye".

The Assistant City Manager recognized Mr. John Warner with Cumberland Securities out of Knoxville, Tennessee who will serve as the Financial Advisor in the issuance of the City's debt. He reviewed the process of the two resolutions and answered questions from the Council.

The following RESOLUTION NO. 16-R-05 was read to the Council and offered for adoption upon motion made by Mr. Washington, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert INITIAL RESOLUTION NO. 16-R-05 HERE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS BY THE CITY OF MURFREESBORO, TENNESSEE, OF NOT TO EXCEED SEVENTY-NINE MILLION DOLLARS (\$79,000,000) TO PROVIDE FUNDING FOR CERTAIN PUBLIC WORKS PROJECTS, AND TO FUND THE INCIDENTAL AND NECESSARY EXPENSES RELATED THERETO.)

The following RESOLUTION NO. 16-R-06 was read to the Council and offered for adoption upon motion made by Mr. Washington, seconded by Vice-Mayor Young. Upon roll call said resolution was adopted by the following vote:

Aye: Rick LaLance
Bill Shacklett
Eddie Smotherman
Ron Washington
Doug Young
Shane McFarland

Nay: None

(Insert DETAILED RESOLUTION NO. 16-R-06 HERE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF MURFREESBORO, TENNESSEE IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$79,000,000, IN ONE OR MORE SERIES; MAKING PROVISION FOR THE ISSUANCE, SALE AND PAYMENT OF SAID BONDS, ESTABLISHING THE TERMS THEREOF AND THE DISPOSITION OF PROCEEDS THEREFROM; AND PROVIDING FOR THE LEVY OF TAXES FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.)

The City Recorder presented a Special Event Beer Permit Application for The Earth Experience: The Middle Tennessee Museum of Natural History, 816 Old Salem Road (Event on 4/23/2016). All requirements have been met. Beer Permit Applications for Aplus #217, 4106 Franklin Road (name change); Aplus #223, 3208 S. Church Street (name change); MJ's Pool Hall, 1253 NW Broad Street (ownership/name change); and LaEsquina Market, 1156 E. Main Street (ownership/name change) were presented for approval pending successful completion of all required building and codes inspections.

Vice-Mayor Young made a motion to approve a Special Event Permit for The Earth Experience: The Middle Tennessee Museum of Natural History and Beer Permits, pending successful completion of all building and codes requirements, for Aplus #217, Aplus #223, MJ's Pool Hall and LaEsquina Market. Mr. LaLance seconded the motion and all members of the Council present voted "Aye".

Mayor McFarland recognized Ethan and John Summar with St. Mark's Boy Scout Troop 398 who were present to complete requirements for Citizenship in the Community Merit Badge towards becoming Eagle Scouts.

Mayor McFarland indicated there were no Board or Commission appointments to be made at this time.

The City Recorder indicated there were no payment of statements to consider at this time.

There being no other business to consider, Mayor McFarland adjourned this meeting at 8:25 p.m.

SHANE MCFARLAND - MAYOR

ATTEST:

MELISSA B. WRIGHT - CITY RECORDER

ORDINANCE 16-OZ-04 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 25.6 acres in the Planned Residential Development (PRD) District located along Florence Road in the Cedar Retreat PRD as indicated on the attached map; Donald Henley Construction, applicant [2016-405].

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to modify the conditions of the Planned Residential Development (PRD) District, as indicated on the attached map, for the purpose of reducing the total dwelling units from 123 to 57, to eliminate single-family attached dwelling units, to increase the minimum lot size to 12,000 sq. ft., to eliminate alleys, to increase the minimum house size to 1,900 sq. ft., to establish front set-backs of 25 ft. and front-entry garage setbacks of 35 ft., and to provide for sidewalks and common open space.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and any additional conditions and stipulations set forth in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission be and it is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

3rd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

David A. Ives
City Attorney

SEAL

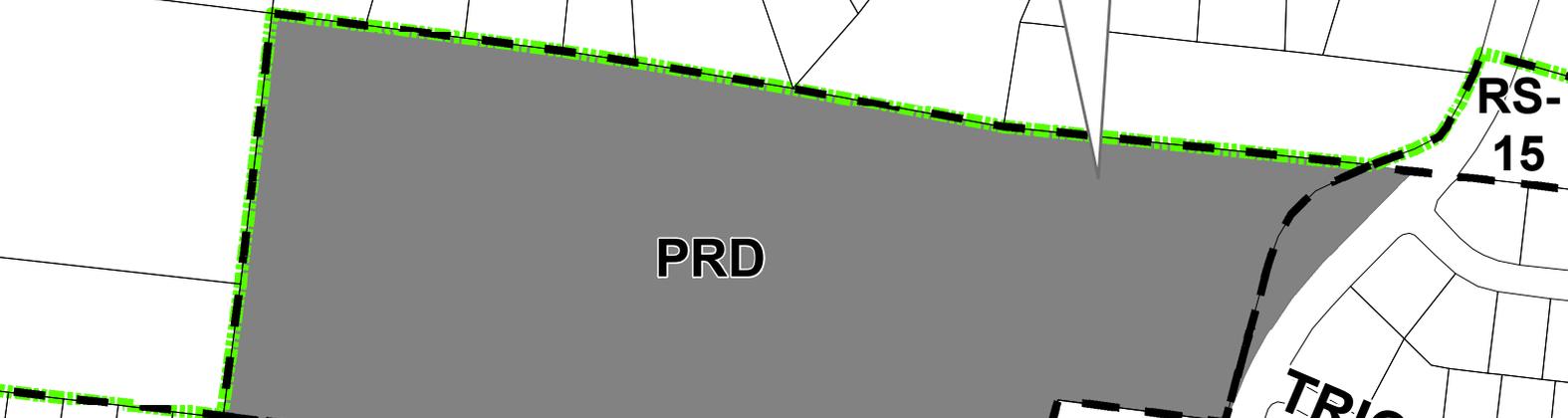


GRASSLAND DR

PRD
Amended

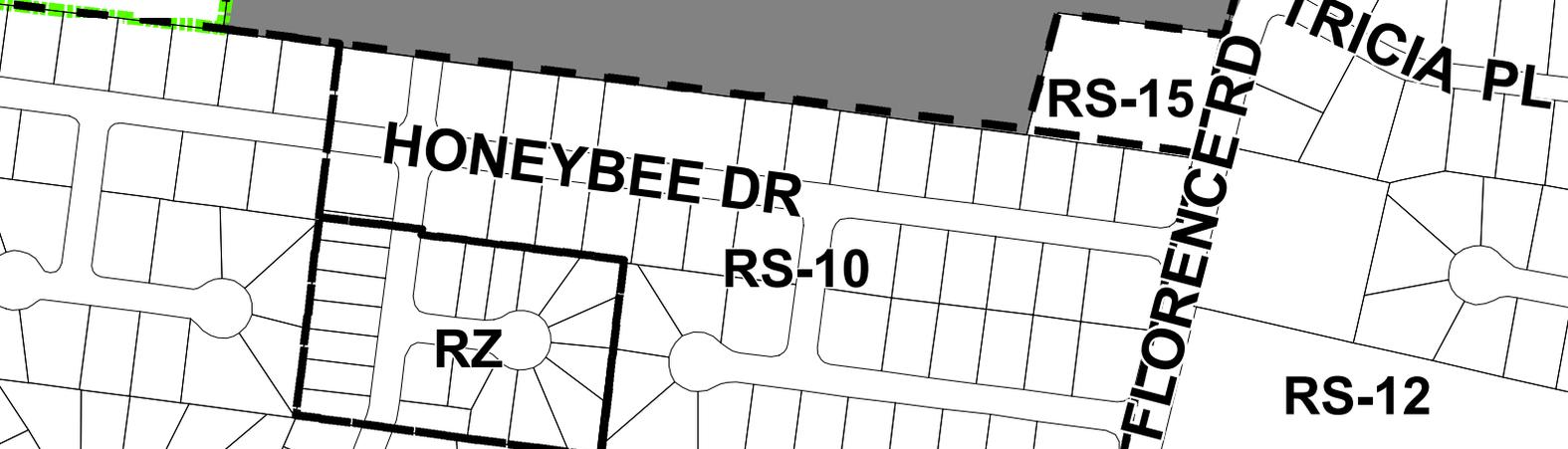
BANKS ST

KEYSTONE CT



PRD

RS-15



HONEYBEE DR

RS-15

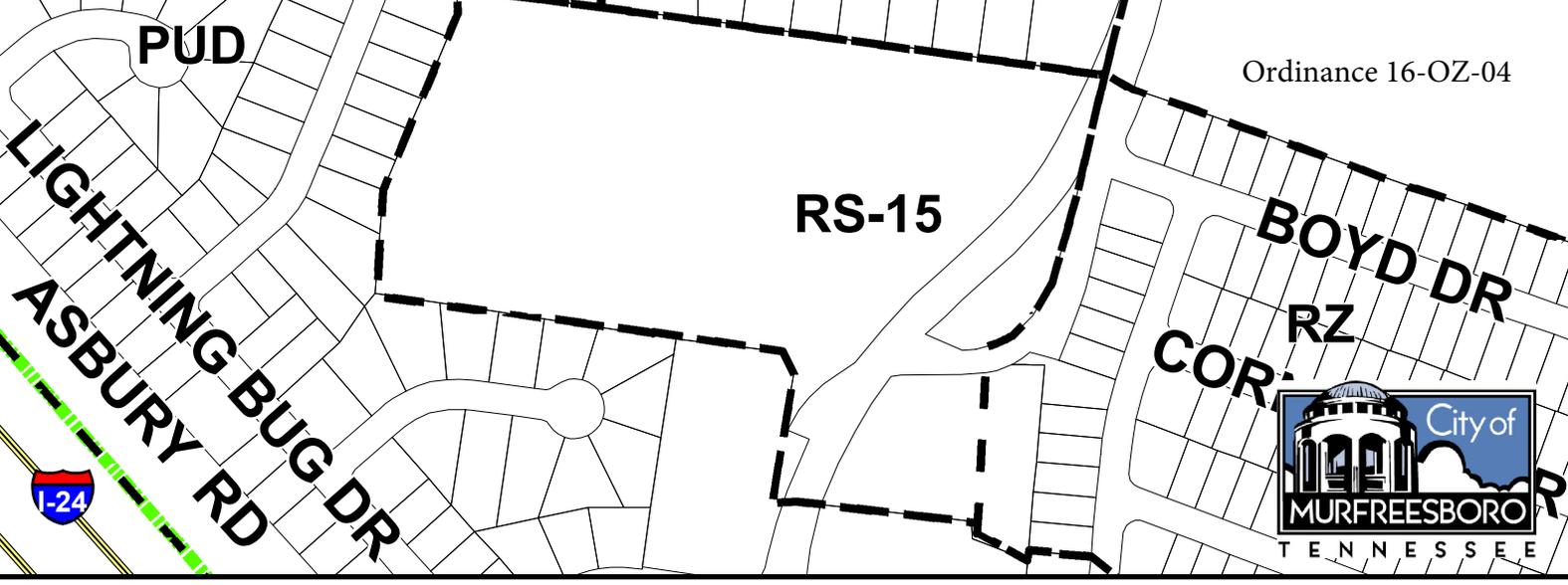
TRICIA PL

RS-10

RZ

FLORENCE RD

RS-12



PUD

RS-15

BOYD DR

LIGHTNING BUG DR
ASBURY RD

COR. RZ

Ordinance 16-OZ-04



ORDINANCE 16-OZ-07 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 2.3 acres at 3281 Siegel Road from Single-Family Residential (RS-15) District to Planned Commercial Development (PCD) District (Academy at Siegel); Cornerstone Development, applicant [2016-402].

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. That, the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to rezone the territory indicated on the attached map.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map be zoned and approved as Planned Commercial Development (PCD) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and any additional conditions and stipulations referenced in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission be and it is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

3rd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

David A. Ives
City Attorney

SEAL

PRD



W-THOMPSON-LN

Area
Rezoned from
RS-15 to PCD

RS-15

PARK HILL RD

SIEGEL RD



Ordinance 16-OZ-07



ORDINANCE 15-OZ-56 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 17.3 acres at 3726 Manson Pike as Planned Residential Development (PRD) District (Springfield Apartments) and Gateway Design Overlay (GDO-1) District; Hunter/McDowell Development, applicants. [2016-403]

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to zone the territory indicated on the attached map.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map be zoned and approved as Planned Residential Development (PRD) District and Gateway Design Overlay (GDO-1) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and the conditions and stipulations referenced in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission be and it is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

3rd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

David A. Ives
City Attorney

SEAL



Ordinance 15-OZ-56

EXT 53A TO I-24 E

OVERALL CREEK

10' Strip

PRD



Area Zoned PRD and GDO-1

Murfreesboro City Limits

HALLMARK DR

MANSON PIKE

BROOKWOOD LN

RS-15

ANDREA BROOKE CT

RM-16

CL

OVERALL CREEK

CH

RM-16



BONAVIC
DEVELOPMENT

REVISED PER CITY COUNCIL CONDITIONS OF APPROVAL
ON MARCH 10, 2016

SPRINGFIELD LUXURY APARTMENTS
PLANNED RESIDENTIAL DISTRICT
MURFREESBORO, TENNESSEE

SHEET INDEX



3. DEVELOPMENT TEAM
4. PROJECT SUMMARY
5. SITE LOCATION AND AERIAL MAP
6. UTILITIES
7. ADJACENT ZONING
8. MAJOR THOROUGHFARE PLAN
9. EXISTING CONDITIONS
11. SITE PLAN
12. SITE PLAN-EXISTING TOPOGRAPHY
13. OPEN SPACE CALCULATIONS
14. PLANNED DEVELOPMENT CRITERIA
15. PARKING CALCULATIONS
16. TANDEM PARKING ENLARGEMENT
17. SECTIONS-ADJACENT CONTEXT
19. SITE DATA/SITE UNITS
20. ARCHITECTURE-ELEVATIONS AND FOOTPRINTS
28. FENCE AND GATE EXHIBIT
29. SIGNAGE
30. LUXURY OUTDOOR AMENITIES
31. CLUBHOUSE CHARACTER
32. LOCAL PLANT PALETTE
33. LANDSCAPE COMPLIANCE PLAN
34. TREE PRESERVATION PLAN
35. PLANNED DEVELOPMENT CRITERIA

SUBMITTED TO PLANNING COMMISSION

DECEMBER 31ST, 2015

REVISION SUBMITTED JANUARY 19, 2016

SECOND REVISION SUBMITTED JANUARY 29, 2016

SUBMITTED FOR CITY COUNCIL PUBLIC HEARING ON MARCH 10, 2016
REVISED PER CITY COUNCIL CONDITIONS OF APPROVAL ON MARCH 10, 2016

DEVELOPMENT TEAM

ENGINEERING



2115 N.W. BROAD STREET, MURFREESBORO, TN 37129
TELEPHONE: 615-893-4084 FAX: 615-893-0080

Huddleston-Steele Engineering, Inc.
Attention: Clyde Rountree, RLA
2115 N.W. Broad Street
Murfreesboro, TN 37129

ARCHITECTS



Bernard L. Weinstein & Associates, Architects
95 White Bridge Road, Suite #200
Nashville, TN 37205

OWNERS

Louis and Elizabeth Jennings
PO Box 1017
Cookeville, TN 38503

DEVELOPER



Bonavic Development
Charles Haskett
6045 Southern Industrial Drive, Suite 200
Birmingham, AL 35232

PLANNING/LANDSCAPE ARCHITECTURE



Dix.Hite + Partners
Landscape Architects, Planners
200 Century Park South, Suite 114
Birmingham, Alabama 35226

PROJECT SUMMARY



This property is being developed by Charles Haskett of Bonavic Development on behalf of the applicants Mr. Bill Hunter and Mr. Michael McDowell. Mr. Hunter has decades of experience in residential, office, and commercial development in the middle Tennessee region. In Rutherford County he has developed over 200 custom homes, several multi-family communities such as Hunters Court, Georgetown Condos, Rivermont Apartments, Riverchase Condos, Charleston Apartments, and most recently in a partnership with Mr. McDowell developed Copperfield, a 288 unit luxury apartment community in Smyrna, TN. Mr. Haskett assisted Mr. Hunter and Mr. McDowell in the development of Copperfield and has over a decade in the multi-family construction and development industry and has worked on several multi-family communities across the Southeastern United States representing over 3,000 rental units. All members of the development team share the common goal of creating an engaged community and providing the highest quality homes.

While challenging, this site presents a unique opportunity to create a community that blends the old with the new in harmony, full of character, and provides an unmatched community experience for its residents. The existing house is being preserved in its current form and will undergo an extensive renovation to the front porch and ceiling, receive a new roof, and a long list of other relatively minor items so that it can continue to be a home for the property manager and their family. Along with the home, approximately 2 acres of mature hardwood trees are being saved to preserve the beautiful setting as it is today and has been for decades.

The entire site plan, building architecture, and amenity programming are being developed in such a way to be harmonious and complimentary to the existing

home. The main entrance drive is lined with an abundance of trees on either side of the aisle and is on axis with the home to provide picturesque views from Manson Pike. The buildings themselves are unique in that even the three story buildings are planned and designed in such a way to break the buildings into sections resembling luxury townhomes with varying exterior materials, colors, and roof lines.

With ten different floor plans, this development will meet the needs of many of Murfreesboro's residents. Four 1 Bedroom options, three 2 bedroom options, and three 3 bedroom options offer both open and more traditional floor plans and will feature top of the market finishes including granite counters, high efficiency stainless appliances, and designer flooring. The property will also feature your traditional flat style units as well as 2 story townhome style units with direct entry garages. Attached garages and detached garage buildings are also available.

At the rear of the site a strip of approximately 100' will be left undeveloped creating a scenic natural preserve and buffer. The area around Military Spring will carefully be cleaned up to provide a private scenic hiking trail for residents (not a public park).

SITE LOCATION AND AERIAL MAP

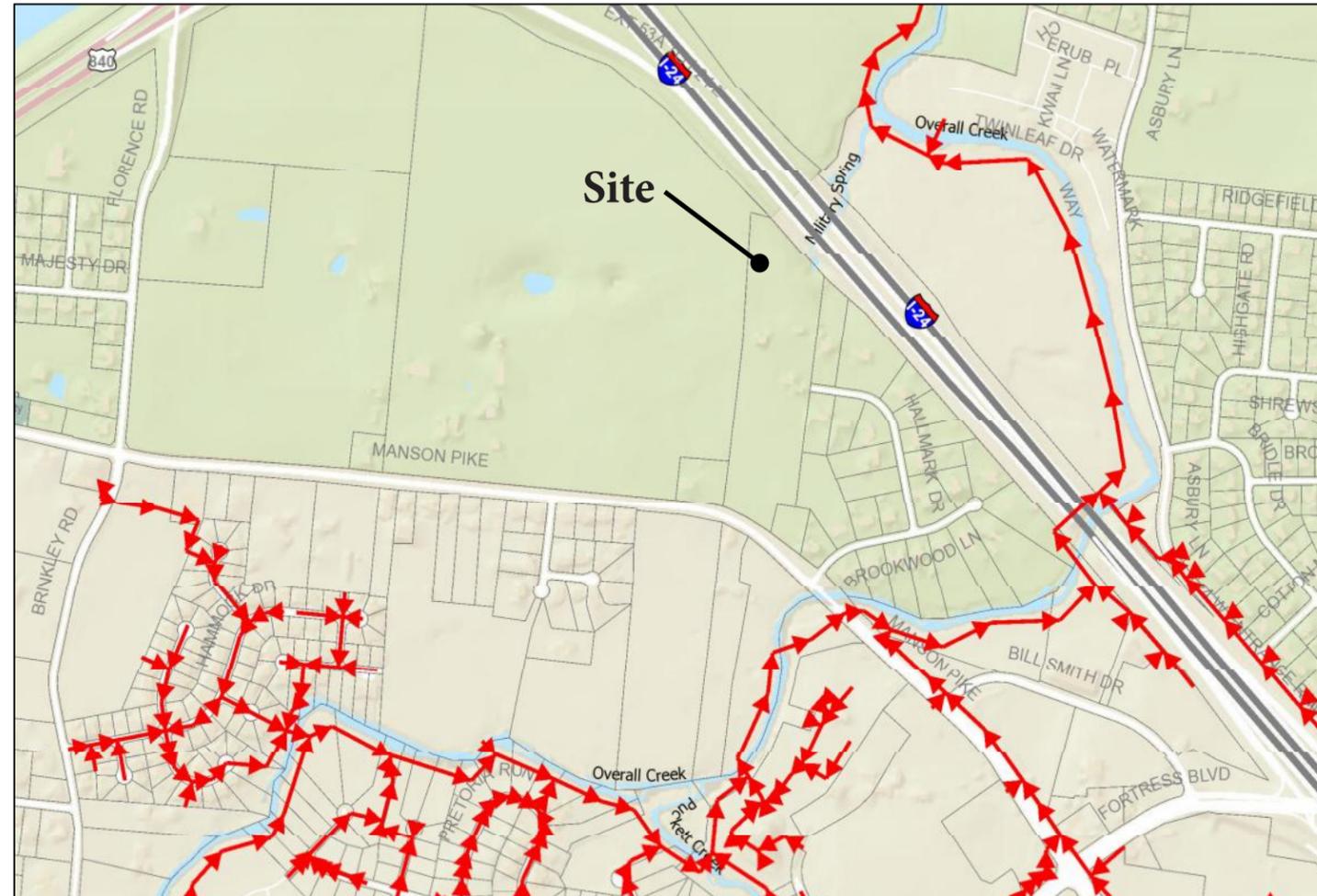


Site Location Map



Aerial Location Map

UTILITIES



Existing Utilities

Legend

Red = Sanitary Sewer

Blue = Water

Local Utility Providers

City of Murfreesboro

The property has access to the public the right –of-way along Manson Pike however, due to projected road expansion additional right-of-way may be necessary.

MWSD

Sanitary Sewer will be supplied by Murfreesboro Water and Sewer

Murfreesboro Electric

Electricity will be supplied by Murfreesboro Electric.

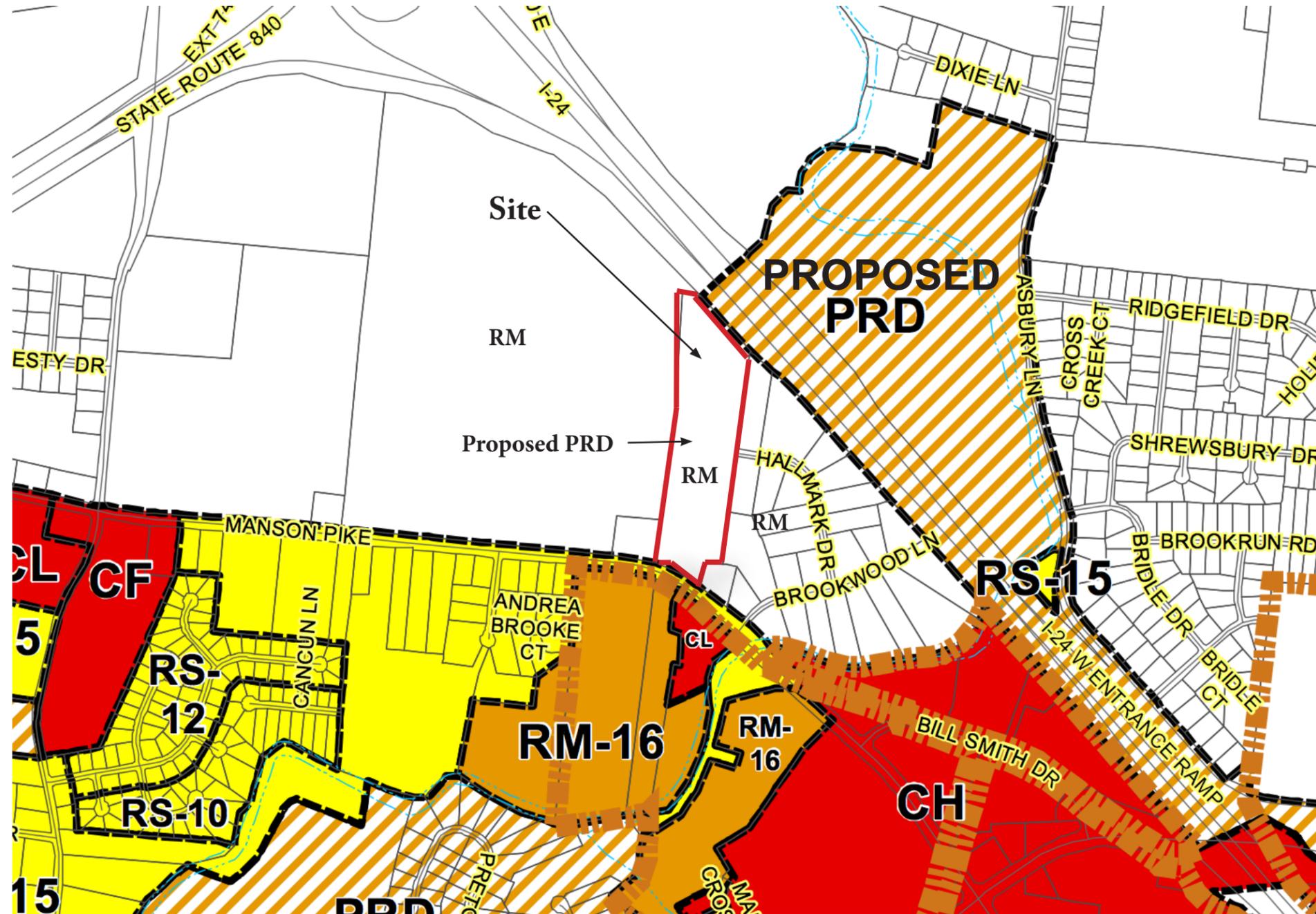
CUD

Water will be supplied by Consolidated Utility District

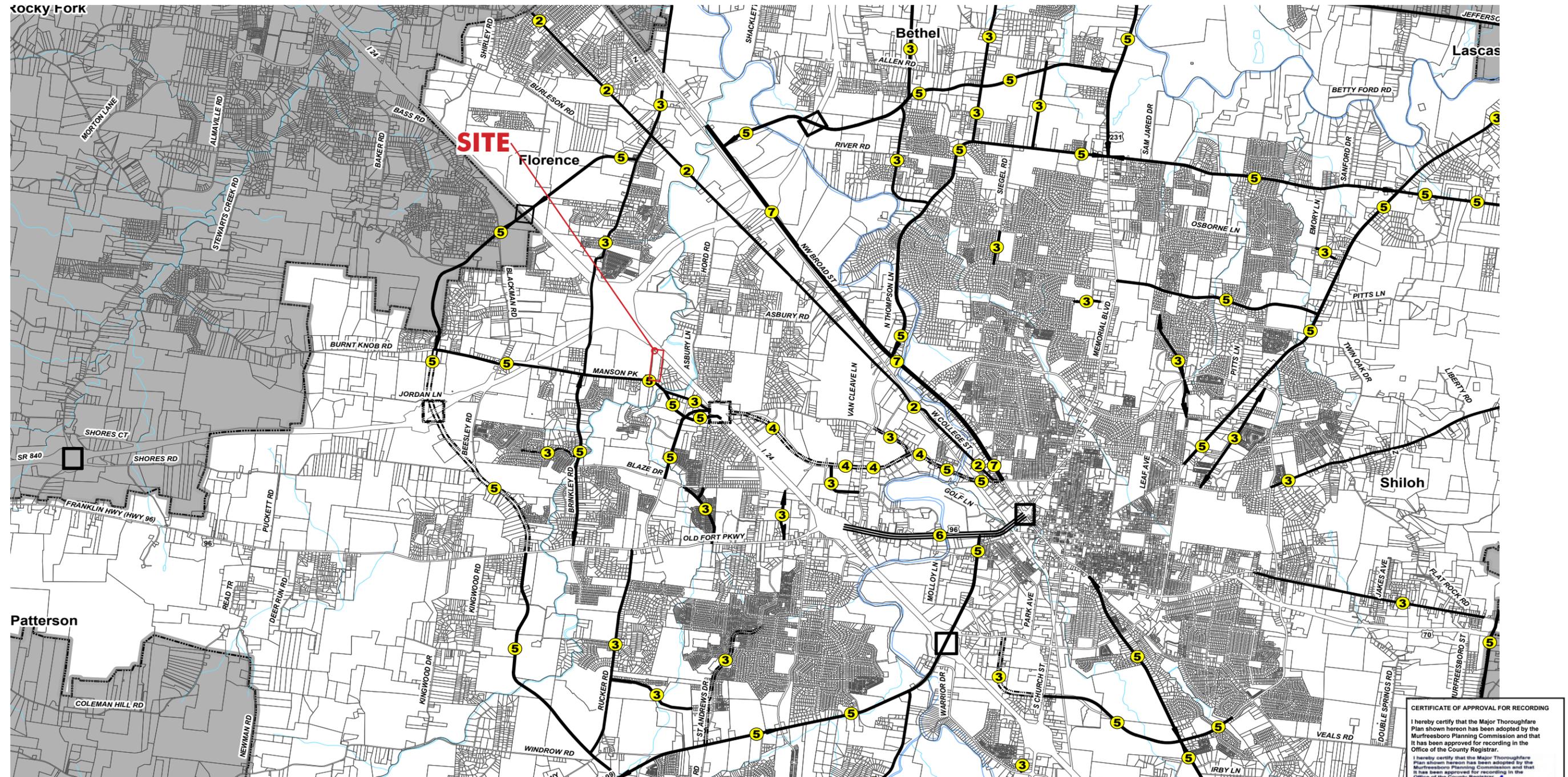
Atmos Energy

Natural gas will be supplied by Atmos Energy

ADJACENT ZONING



MAJOR THOROUGHFARE PLAN



CERTIFICATE OF APPROVAL FOR RECORDING

I hereby certify that the Major Thoroughfare Plan shown hereon has been adopted by the Murfreesboro Planning Commission and that it has been approved for recording in the Office of the County Registrar.

I hereby certify that the Major Thoroughfare Plan shown hereon has been adopted by the Murfreesboro Planning Commission and that it has been approved for recording in the Office of the County Registrar.

10-14 2008 *[Signature]*
 10-14 2008 *[Signature]*
 Chairman, Planning Commission
 Mayor, Planning Commission
 City of Murfreesboro

PLAT BOOK: 34 PAGE: 111
 THIS PLAT VOIDS, VACATES AND REPLACES THE PREVIOUS MAJOR THOROUGHFARE PLANS RECORDED IN P.B. 19 PG-184, P.B. 21 PG-123, P.B. 24 PG-224, P.B. 26 PG-131

EXISTING CONDITIONS



1. ENTRANCE TO PROPERTY LOOKING FROM MANSON PIKE TOWARD EXISTING HOME



3. FROM EXISTING HOME TOWARD MANSON PIKE



2. TOWARD EXISTING HOME SHOWING MATURE TREES TO PRESERVE



4. FROM EXISTING DRIVE TOWARD EXISTING HOME



1. EAST PROPERTY LINE SHOWING EXISTING EVERGREEN BUFFER ADJACENT TO ABUTTING SINGLE FAMILY PROPERTY



2. EAST PROPERTY LINE SHOWING EXISTING EVERGREEN BUFFER ADJACENT TO ABUTTING SINGLE FAMILY PROPERTY



3. EAST PROPERTY LINE SHOWING EXISTING EVERGREEN BUFFER ADJACENT TO ABUTTING SINGLE FAMILY PROPERTY



4. EAST PROPERTY LINE SHOWING EXISTING EVERGREEN BUFFER ADJACENT TO ABUTTING SINGLE FAMILY PROPERTY



5. EAST PROPERTY LINE SHOWING EXISTING EVERGREEN BUFFER ADJACENT TO ABUTTING SINGLE FAMILY PROPERTY

SITE PLAN

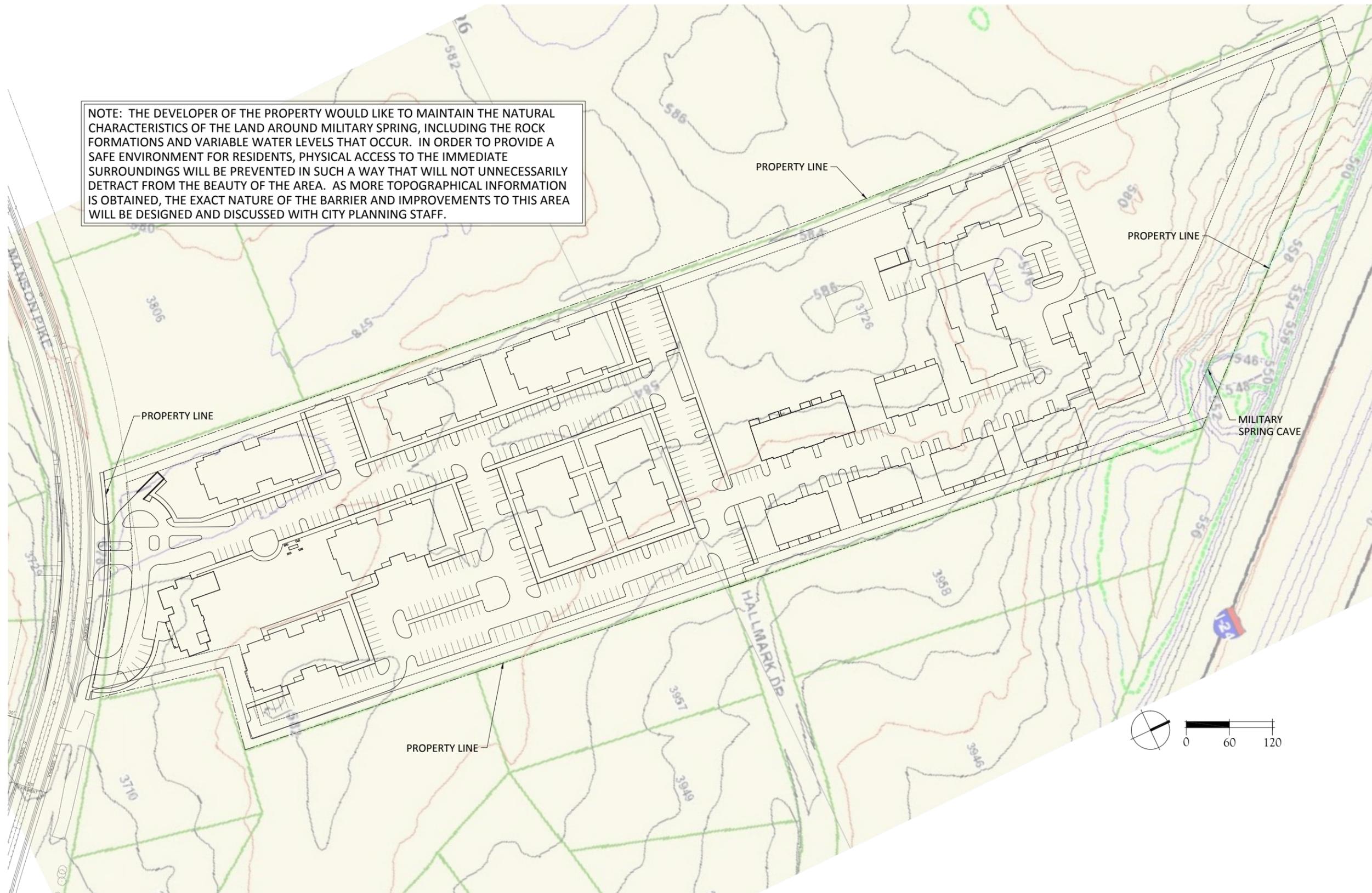
The heart of the Springfield development is the Springfield historic mansion, a house built by Colonel John Smith in 1805. Preserved within two acres of open space, it will remain a home to one of Springfield's residents, and the grounds will become a park area for the Springfield community. The historic approach from Manson Pike to the home will serve as the "main street" of the community, connecting residents to the clubhouse amenity center, and provides an important visible link to the property's history. The architecture and layout of the new residences have been thoughtfully designed to respect the scale and character of the historic home.

The development has been carefully planned to preserve significant natural features and groupings of existing vegetation throughout the site, most notably around the perimeter and near the Springfield home. Building, drives, and parking islands have been located to avoid specimen mature trees in the site interior which contribute to the aesthetics and sense of place. A sense of privacy will be established through the existing perimeter trees augmented with tall evergreen shrubs. The community will be buffered from Interstate 24 by over one hundred feet of preserved forest which includes the cave at Military Spring.

Vehicular access to the site will use the gated entrance on Manson Pike, and an emergency connection to Hallmark road will be gated to every day traffic. Parking lots are kept to the site interior and will be screened from exterior views.



SITE PLAN-EXISTING TOPOGRAPHY



NOTE: THE DEVELOPER OF THE PROPERTY WOULD LIKE TO MAINTAIN THE NATURAL CHARACTERISTICS OF THE LAND AROUND MILITARY SPRING, INCLUDING THE ROCK FORMATIONS AND VARIABLE WATER LEVELS THAT OCCUR. IN ORDER TO PROVIDE A SAFE ENVIRONMENT FOR RESIDENTS, PHYSICAL ACCESS TO THE IMMEDIATE SURROUNDINGS WILL BE PREVENTED IN SUCH A WAY THAT WILL NOT UNNECESSARILY DETRACT FROM THE BEAUTY OF THE AREA. AS MORE TOPOGRAPHICAL INFORMATION IS OBTAINED, THE EXACT NATURE OF THE BARRIER AND IMPROVEMENTS TO THIS AREA WILL BE DESIGNED AND DISCUSSED WITH CITY PLANNING STAFF.

OPEN SPACE CALCULATIONS

(O.S.R.) OPEN SPACE RATIO OF PRD	area (sf)
TOTAL SITE	758140
TOTAL BUILDING COVERAGE	143762
TOTAL DRIVEWAY AND PARKING	185718
TOTAL OPEN SPACE	428660
TOTAL FLOOR AREA	258229
OPEN SPACE RATIO	1.66

GATEWAY DESIGN OVERLAY OPEN SPACE	area (sf)
TOTAL SITE	758140
TOTAL BUILDING COVERAGE	143762
TOTAL DRIVEWAY AND PARKING	185718
TOTAL COMMON USE AREA	205774
OPEN SPACE RATIO	27%
FORMAL OPEN SPACE (Pool, Amenity Lawn)	21694
FORMAL OPEN SPACE (Springfield Park Grounds)	68433
FORMAL OPEN SPACE RATIO	9%

SITE DATA:

Total Acres: +/- 17.4
 Existing Zoning: RM
 Proposed Zoning: Planned Residential District (Multi-Family)
 Max Units: 270
 Gross Density: 15.5 du/acre
 Total Undeveloped Open Space: 160,000sf (21% of Site)
 Max. F.A.R. Provided with this PRD: 0.34
 Min O.S.R. Provided with this PRD: 1.74



FORMAL OPEN SPACE
SPRINGFIELD HOUSE GROUNDS
 Outdoor Kitchen
 Play Lawns (various)
 Fireplace/Firepit
 Gathering Areas (Seating, tables, etc.)
 Play Equipment

FORMAL OPEN SPACE
CLUBHOUSE AMENITIES
 Swimming Pool
 Outdoor Kitchen
 Play Lawn
 Fireplace/Firepit
 Gathering Areas (Seating, Tables, etc.)

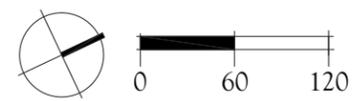
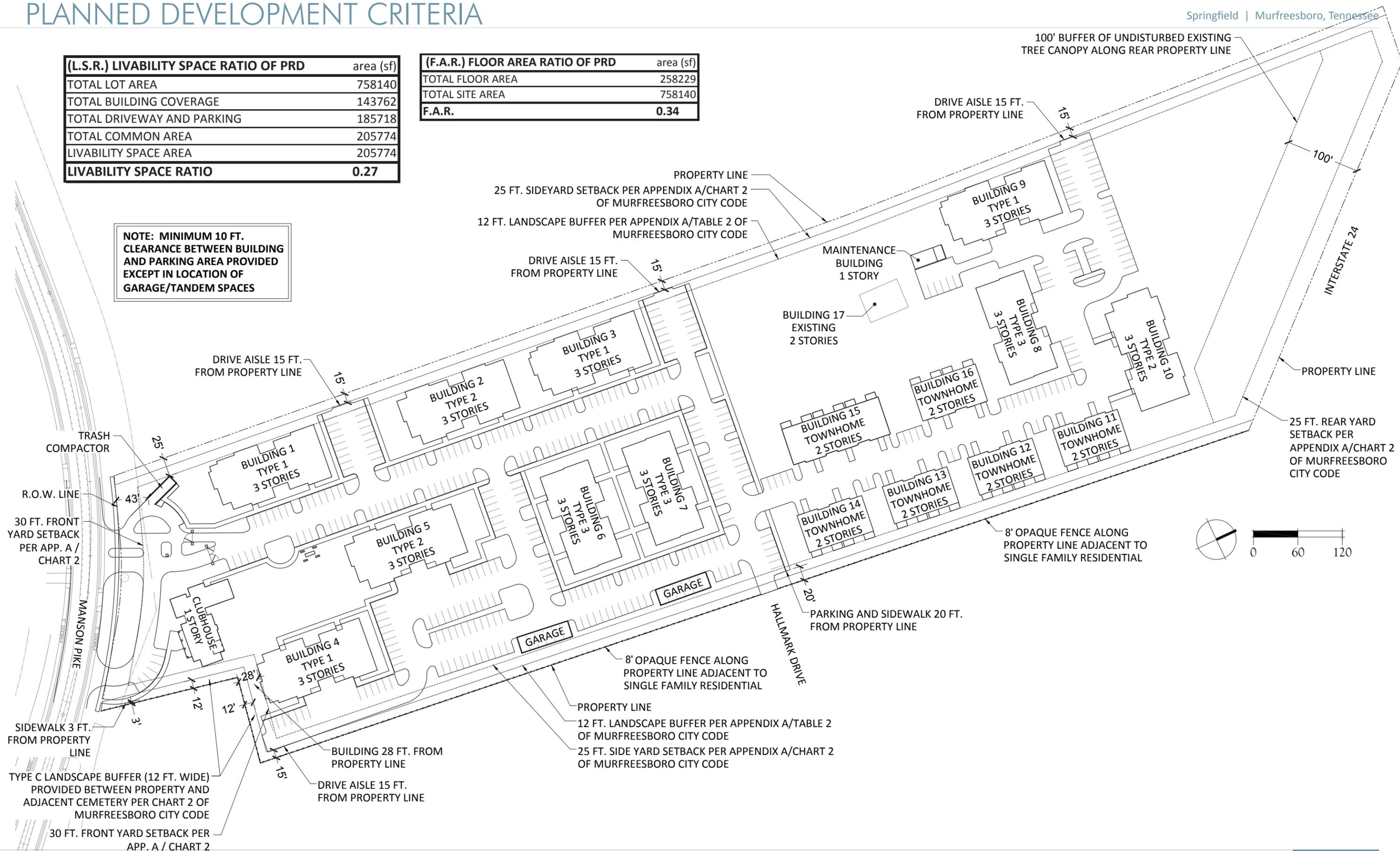
- Landscaped Common Use Area
205,774 SF
- Formal Open Space
90,127 SF
- Landscaped and Preserved Buffer
74,246 SF
- Preserved Natural Area
53,522 SF

PLANNED DEVELOPMENT CRITERIA

(L.S.R.) LIVABILITY SPACE RATIO OF PRD	area (sf)
TOTAL LOT AREA	758140
TOTAL BUILDING COVERAGE	143762
TOTAL DRIVEWAY AND PARKING	185718
TOTAL COMMON AREA	205774
LIVABILITY SPACE AREA	205774
LIVABILITY SPACE RATIO	0.27

(F.A.R.) FLOOR AREA RATIO OF PRD	area (sf)
TOTAL FLOOR AREA	258229
TOTAL SITE AREA	758140
F.A.R.	0.34

NOTE: MINIMUM 10 FT. CLEARANCE BETWEEN BUILDING AND PARKING AREA PROVIDED EXCEPT IN LOCATION OF GARAGE/TANDEM SPACES



PARKING CALCULATIONS

PARKING SUMMARY PROPOSED FOR THIS PRD	
Surface	388
Garage (To be regulated for parking only)	81
Tandem (Exception to allow for tandem spaces)	69
Tandem (25% not credited)	-18
TOTAL	520

REQUIRED PER MURFREESBORO ZONING ORDINANCE		
#UNITS	Parking Code	Totals
91	1 BEDROOM X 1.5	137
144	2 BEDROOMS X 2.2	317
35	3 BEDROOMS X 3.3	116
TOTAL =		570

ADA Parking Required	
Parking Need	530
2% ADA	11
Van Accessible	2

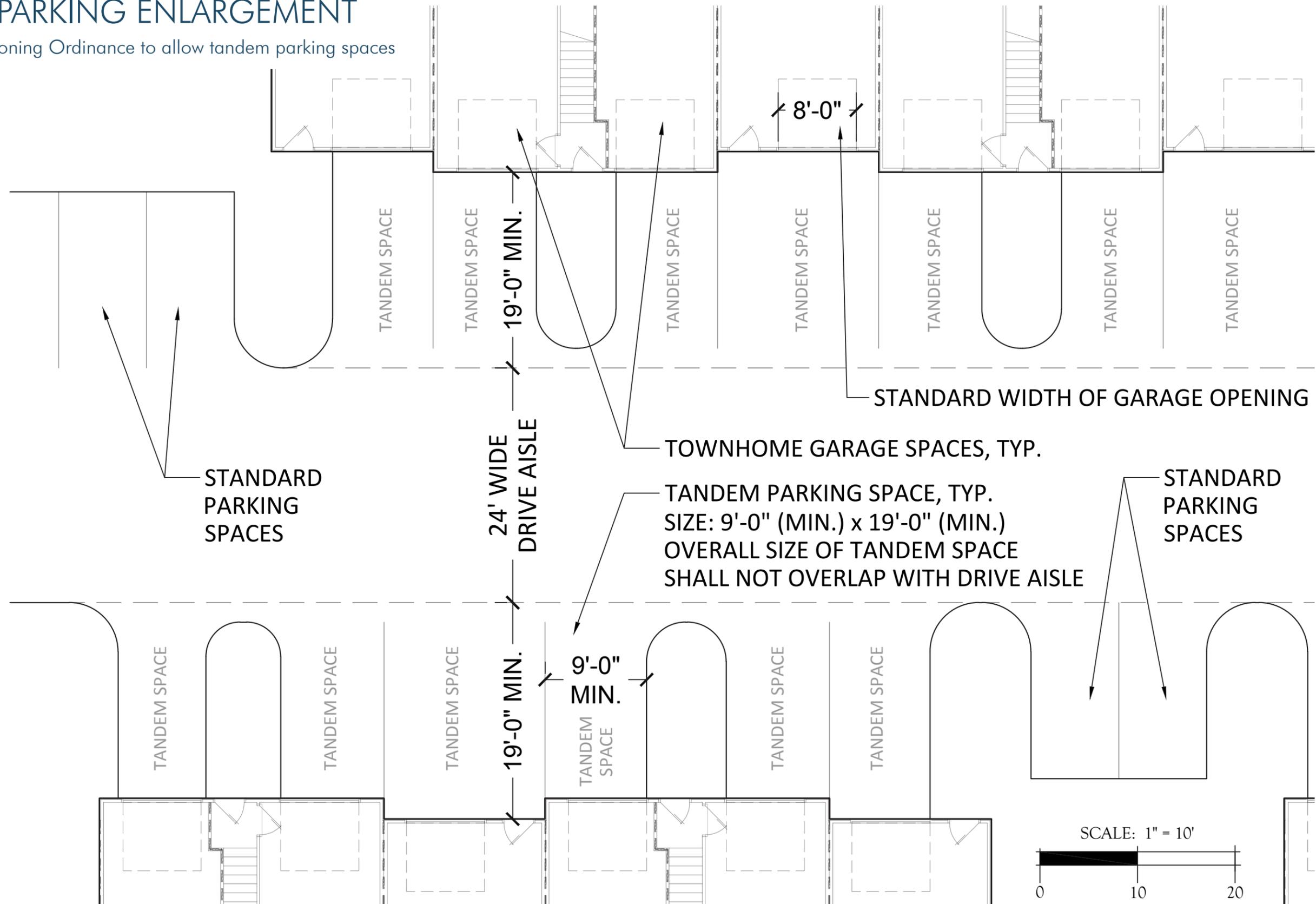
Note:

- Garage primary use shall be vehicular parking.
- Zoning Ordinance to allow tandem parking spaces

PARKING COMPARISONS TO SIMILAR MULTI-FAMILY DEVELOPMENTS												
Project Name	Location	Number of Bedrooms			Total Units	Total Bedrooms	Surface	Garage	Tandem	Total	Total Parking/Unit	Total Parking/Bedroom
		1	2	3								
SPRINGFIELD APARTMENTS	Murfreesboro, TN	91	144	35	270	484	388	81	51	520	1.93	1.07
Tapestry Park	Birmingham, AL	78	42	11	131	195	225	0	0	225	1.72	1.15
Tapestry at Citrus Park	Tampa, FL	132	204	64	400	732	397	184	176	757	1.89	1.03
Tapestry Lake Park	Tampa, FL	60	93	24	177	318	222	65	49	336	1.90	1.06
Tapestry at Hollingsworth Park	Greenville, SC	82	122	38	242	440	289	58	58	405	1.67	0.92
Tapestry Long Farms	Baton Rouge, LA	99	141	36	276	489	381	49	49	479	1.74	0.98
Velo Verdae	Greenville, SC	86	126	50	262	488	286	77	77	440	1.68	0.90

TANDEM PARKING ENLARGEMENT

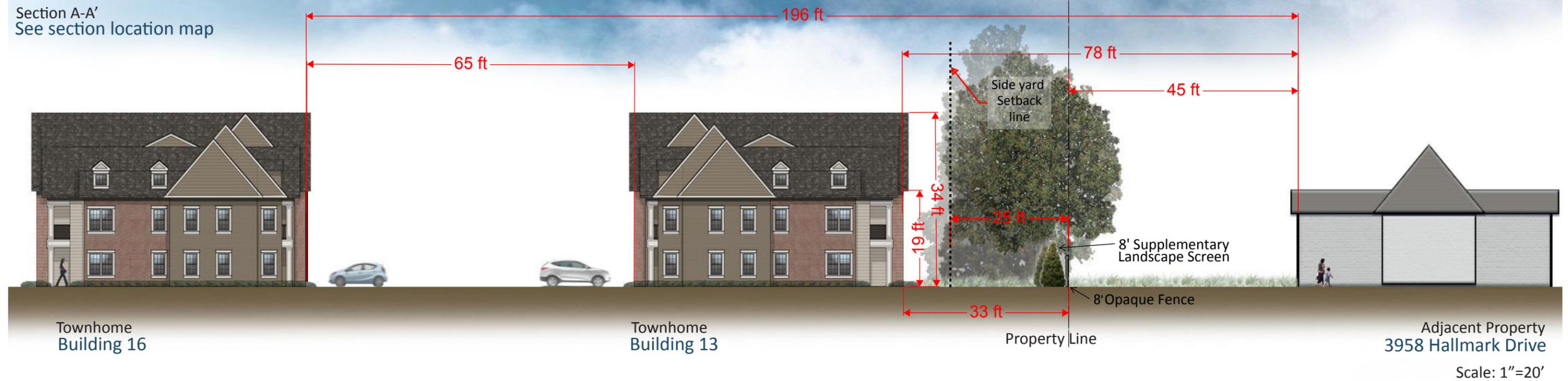
Exception from Zoning Ordinance to allow tandem parking spaces



SECTIONS-ADJACENT CONTEXT

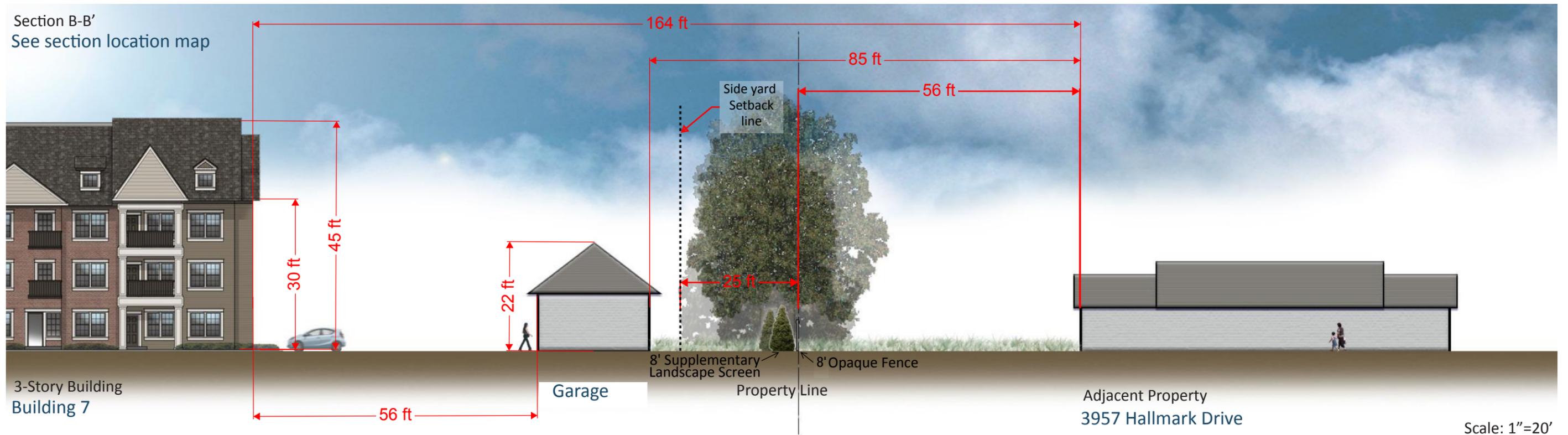
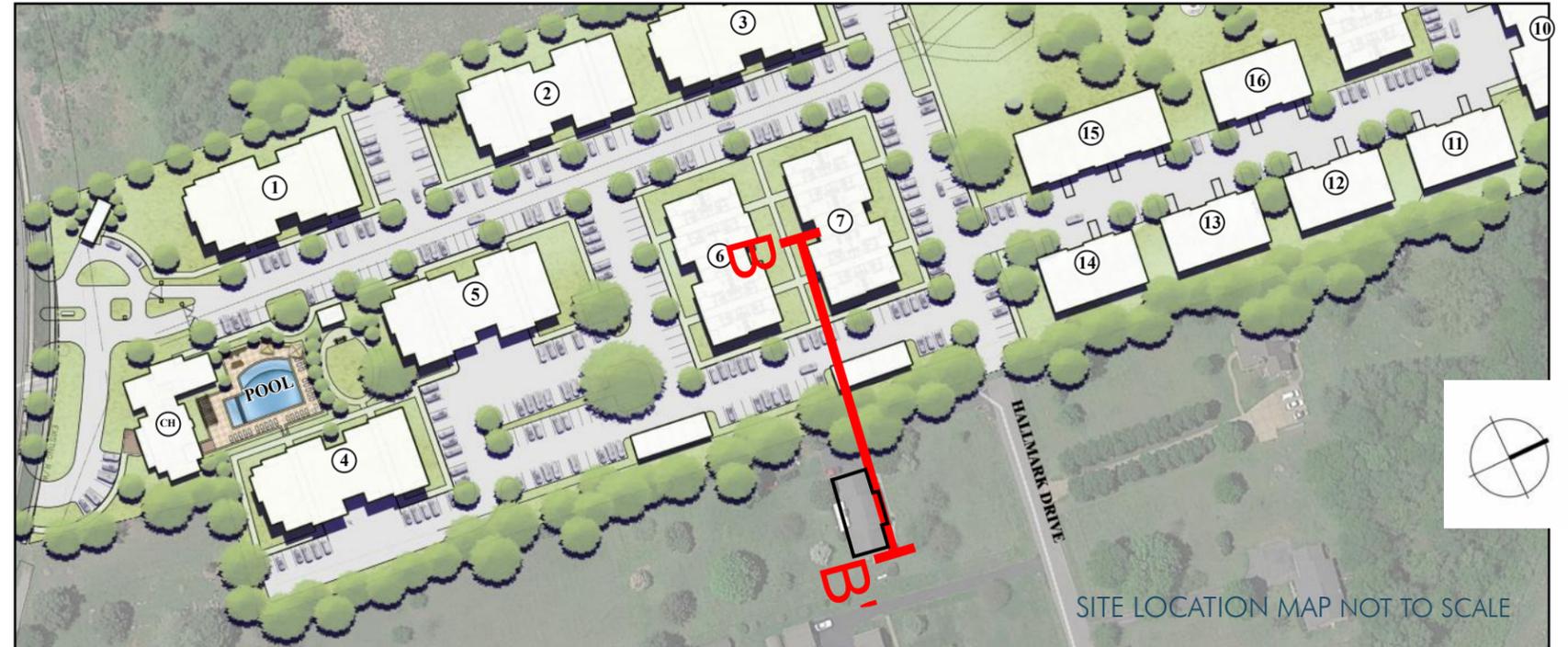


Section A-A'
See section location map



NOTE: All dimensions are approximate

SECTIONS-ADJACENT CONTEXT



NOTE: All dimensions are approximate

SITE DATA / SITE UNITS

SITE DATA:

Total Acres: +/- 17.4
 Existing Zoning: RM
 Proposed Zoning: Planned Residential District (Multi-Family)
 Max Units: 270
 Gross Density: 15.5 du/acre
 Total Undeveloped Open Space: 160,000sf (21% of Site)
 Max. F.A.R. Provided with this PRD: 0.34
 Min O.S.R. Provided with this PRD: 1.74



TYPE 1 UNITS: 3 Story Building



TYPE 3 UNITS: 3 Story Building



NOTE: dormers are not windows into inhabitable space, shown for architectural detail only



TYPE 2 UNITS: 3 Story Building

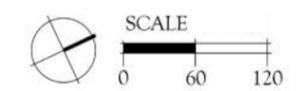


TOWNHOME UNITS: 2 Story Building



DWELLING UNITS:

TYPE 1 UNITS:	92
TYPE 2 UNITS:	68
TYPE 3 UNITS:	70
TOWNHOME UNITS:	39
SINGLE FAMILY RESIDENCE:	1
TOTAL:	270



CLUBHOUSE-ELEVATION

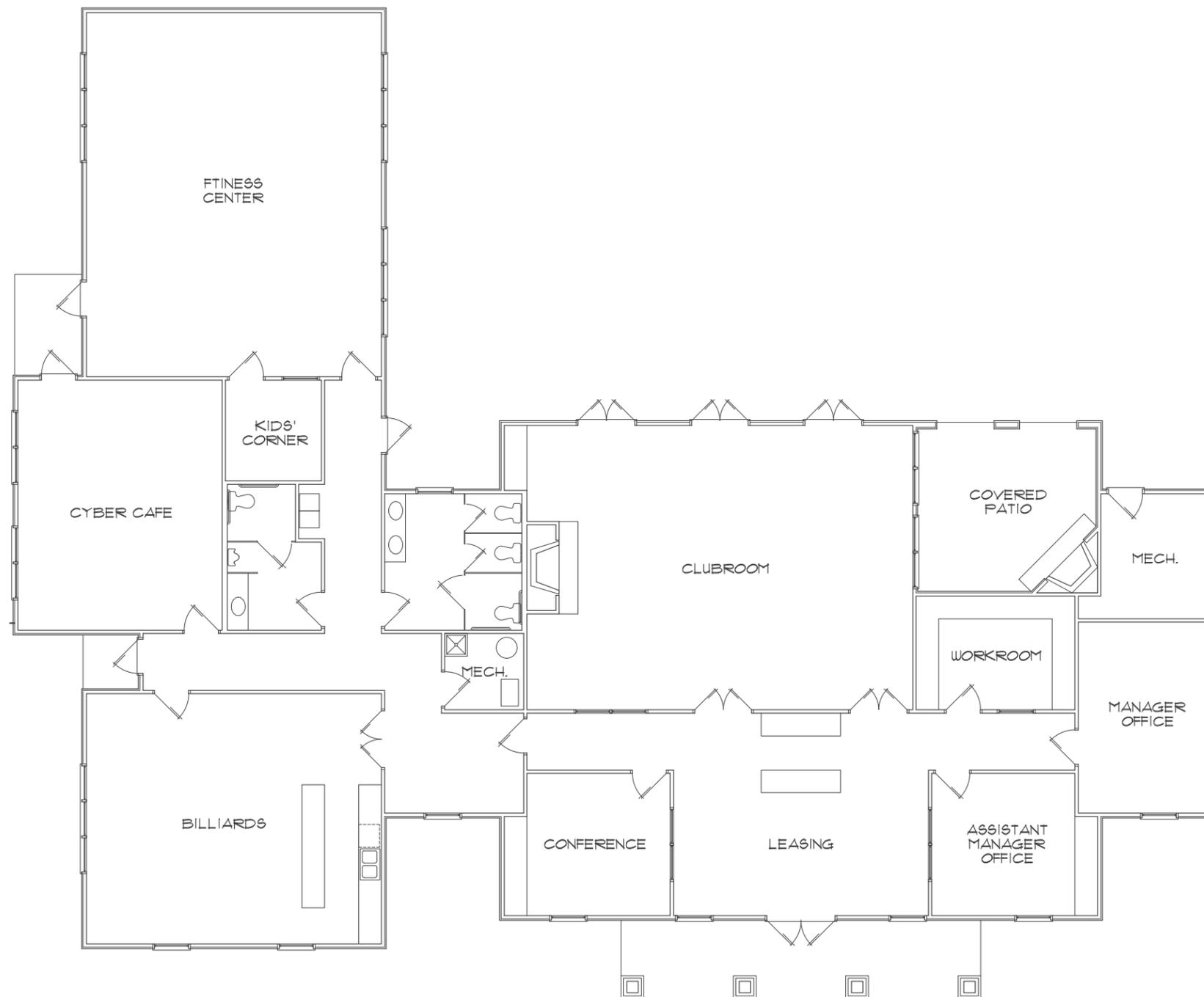


Inspiration Image

The Clubhouse

- Primarily brick and Hardie board
- The style and character of the clubhouse is consistent with the existing home.

CLUBHOUSE PLAN



NOTE: SLABS ARE 1' ABOVE FINISH GRADE ON ALL BUILDINGS

CLUBHOUSE

GROSS: 4,972 SQ. FT.

Clubhouse Amenities

- The clubroom invites residents to engage in a more formal, but comfortable setting and enjoy the views out onto the pool or enjoy a nice warm fire during cool winter days.
- The game room provides a more casual atmosphere where residents can relax, unwind, and enjoy a game of pool or watch their favorite TV programming.
- The Cyber Café is a great alternative to the conventional utilitarian Business Center. Here residents can enjoy the same functionality with a small town coffee house feel.
- A well-equipped fitness center with free weights, cardio, and resistance equipment provides something for people of all ages and physiques. The kids' corner provides plenty of entertainment so that mom and dad can get caught up on their new year's resolution.
- The covered patio provides an all year all weather amenity. Whether it's shade from the sun or the warmth of the fireplace you are seeking.

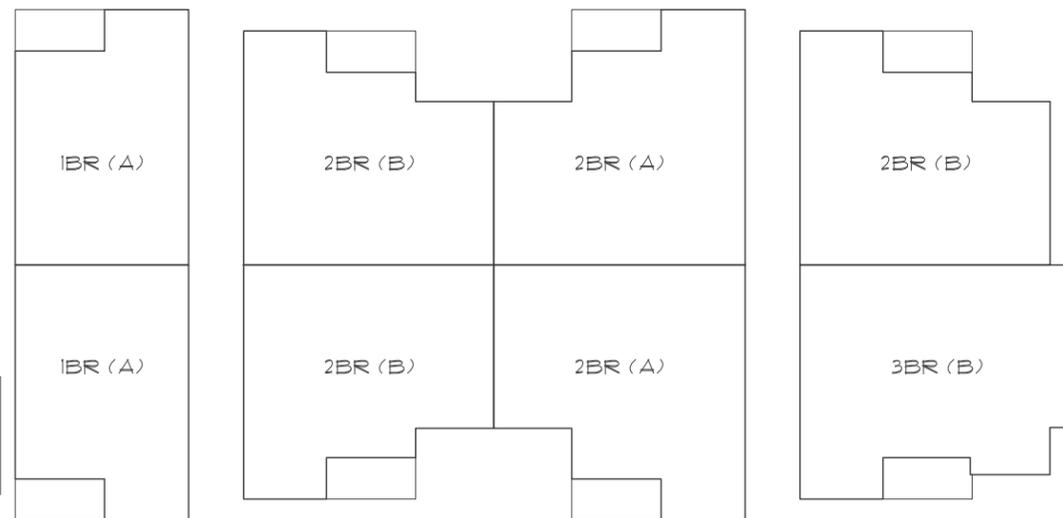
ARCHITECTURE-BUILDING TYPES 1 & 2



TYPE 1 FRONT ELEVATION
FACING INTERNAL PARKING



TYPE 1 SIDE ELEVATION
FACING MANSON PIKE



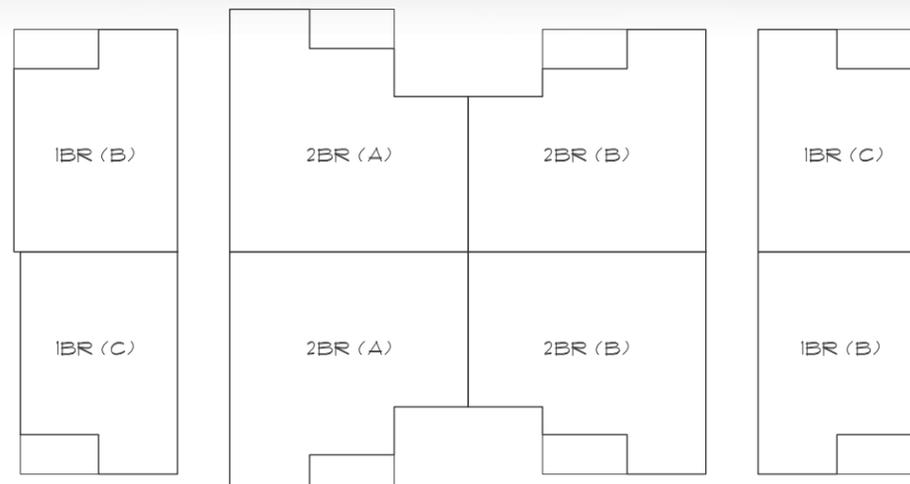
FLOOR PLAN

NOTE: SLABS ARE 1' ABOVE FINISH GRADE ON ALL BUILDINGS

Architectural Characteristics

- Primarily brick and Hardie board
- The style of architecture is designed to stay in character with the historic nature of the site and the existing home.

ARCHITECTURE-BUILDING TYPE 3



FLOOR PLAN

NOTE: SLABS ARE 1' ABOVE FINISH GRADE ON ALL BUILDINGS

Architectural Characteristics

- Buildings are a mixture of one, two and three bedroom units
- Buildings will be two or three stories in height with the building height being influenced by their location to the property lines and adjacent neighborhoods.

ARCHITECTURE-TOWNHOUSE

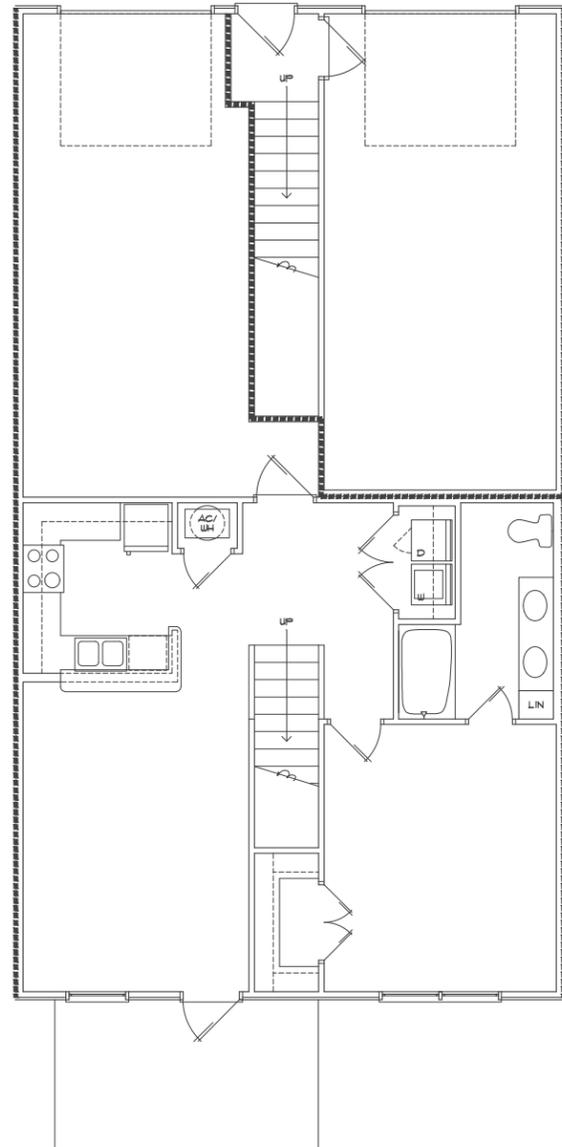


TOWNHOUSE REAR ELEVATION

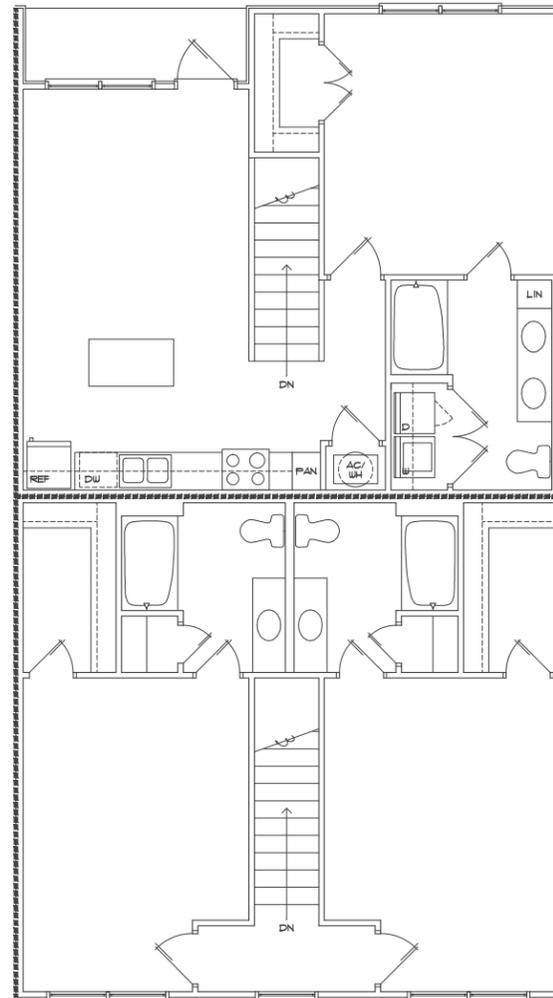


TOWNHOUSE FRONT ELEVATION

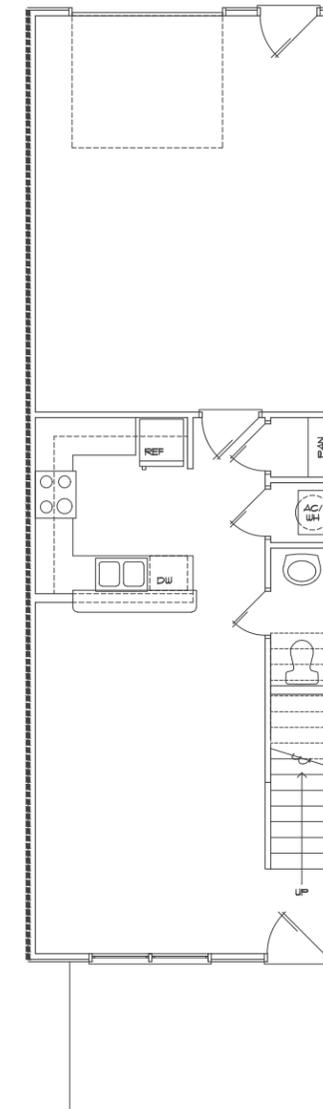
ARCHITECTURE-TOWNHOUSE FLOOR PLANS



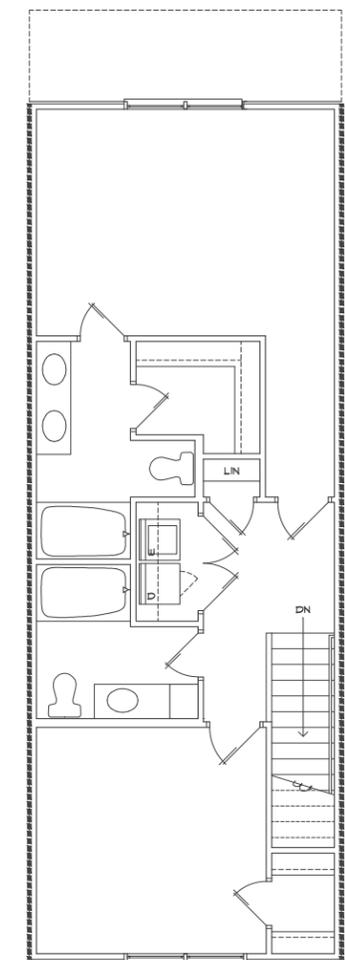
FIRST FLOOR PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN



SECOND FLOOR PLAN

3BR / 1BR TOWNHOUSE

3BR UNIT

GROSS: 1,504 SQ. FT.
 NET: 1,420 SQ. FT.
 GARAGE: 330 SQ. FT.

1BR UNIT

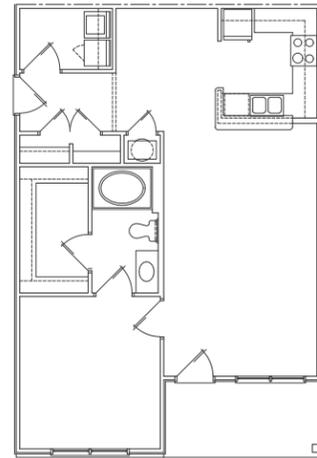
GROSS: 737 SQ. FT.
 NET: 698 SQ. FT.
 GARAGE: 330 SQ. FT.

2BR TOWNHOUSE

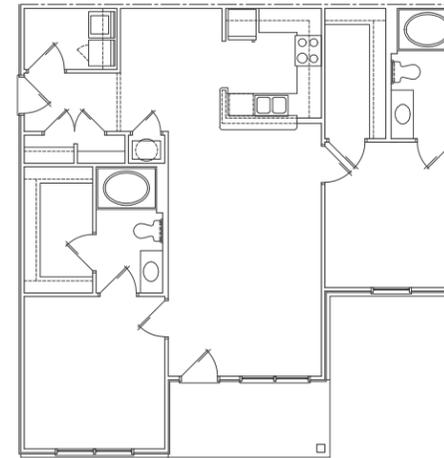
GROSS: 1,206 SQ. FT.
 NET: 1,122 SQ. FT.
 GARAGE: 353 SQ. FT.

NOTE: SLABS ARE 1' ABOVE FINISH GRADE ON ALL BUILDINGS

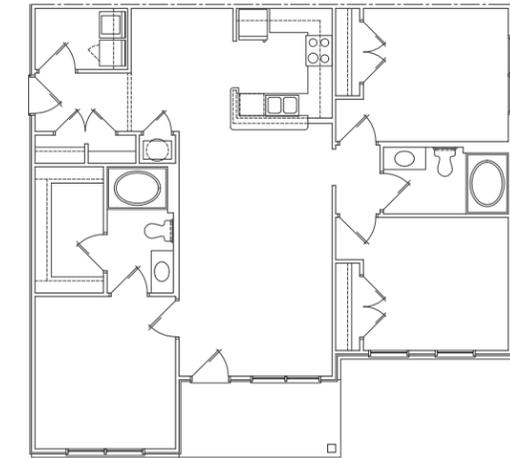
ARCHITECTURE-UNIT FLOOR PLAN



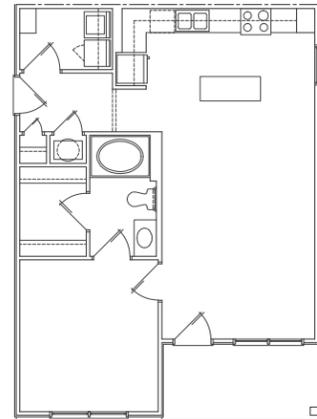
1BR (A)
GROSS: 841 SQ. FT.
NET: 811 SQ. FT.



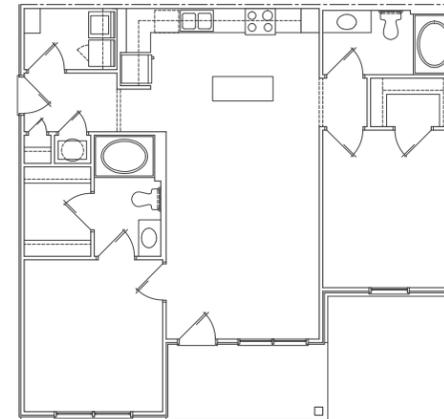
2BR (A)
GROSS: 1,122 SQ. FT.
NET: 1,070 SQ. FT.



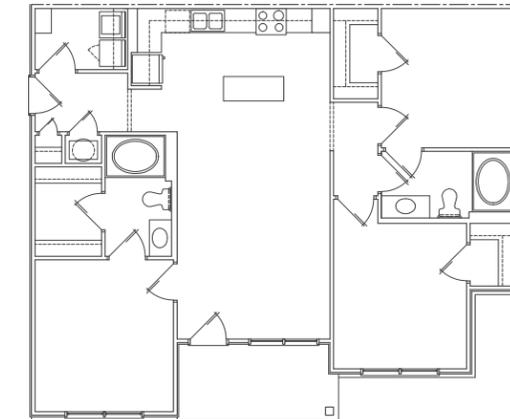
3BR (A)
GROSS: 1,276 SQ. FT.
NET: 1,221 SQ. FT.



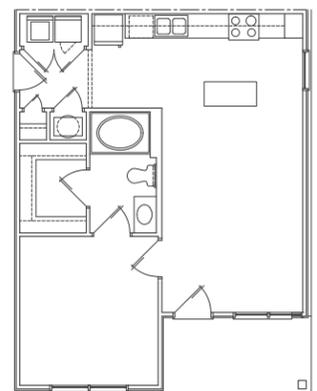
1BR (B)
GROSS: 770 SQ. FT.
NET: 730 SQ. FT.



2BR (B)
GROSS: 1,038 SQ. FT.
NET: 986 SQ. FT.

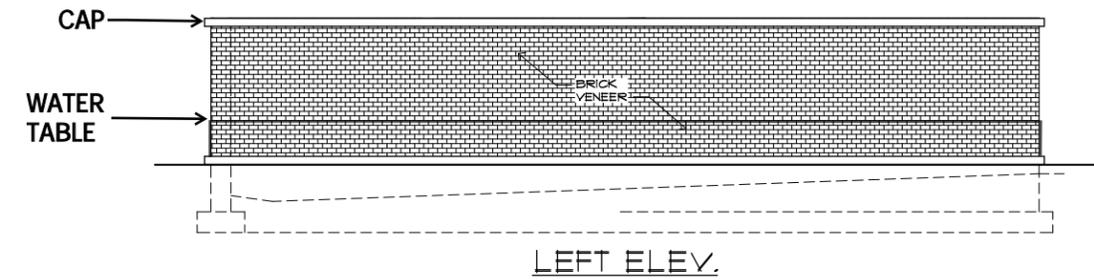
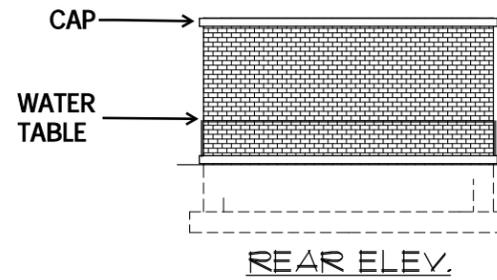
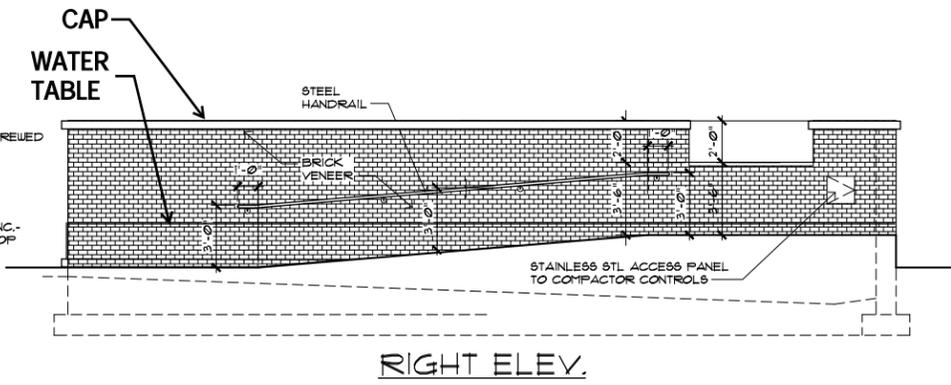
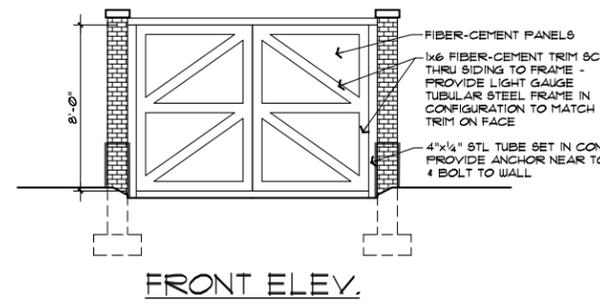
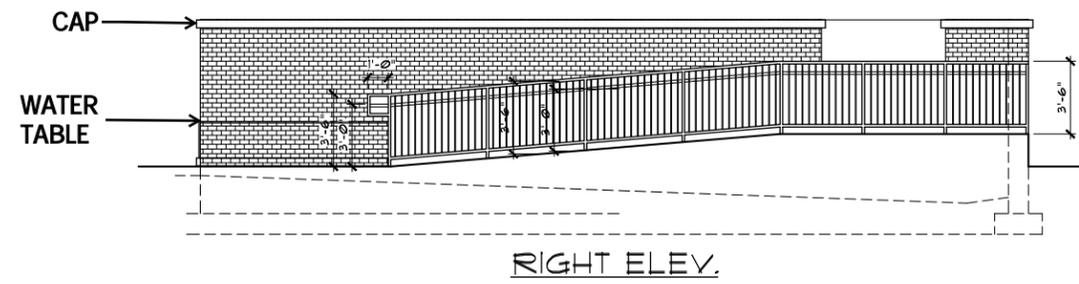


3BR (B)
GROSS: 1,207 SQ. FT.
NET: 1,154 SQ. FT.

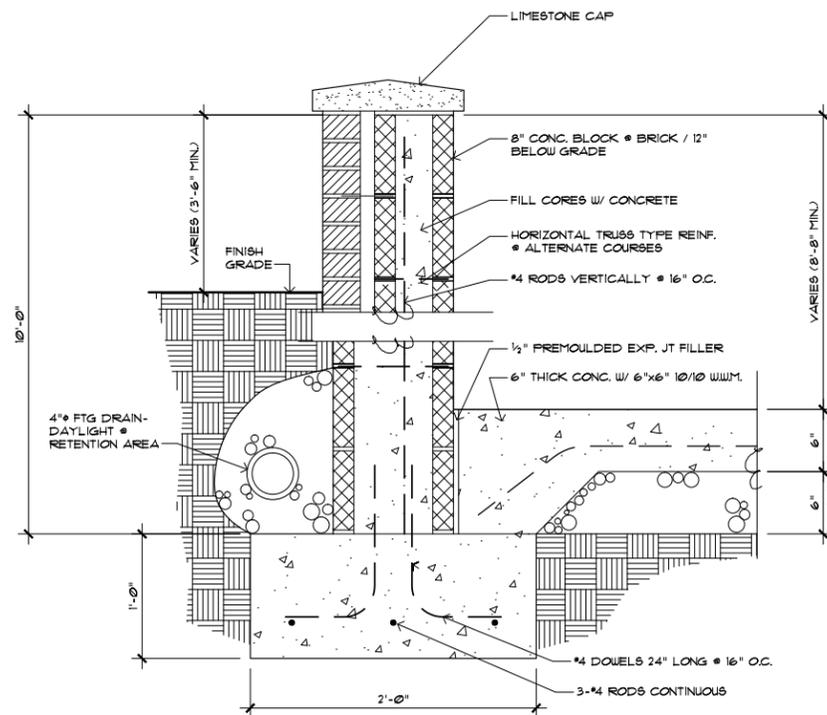


1BR (C)
GROSS: 679 SQ. FT.
NET: 641 SQ. FT.

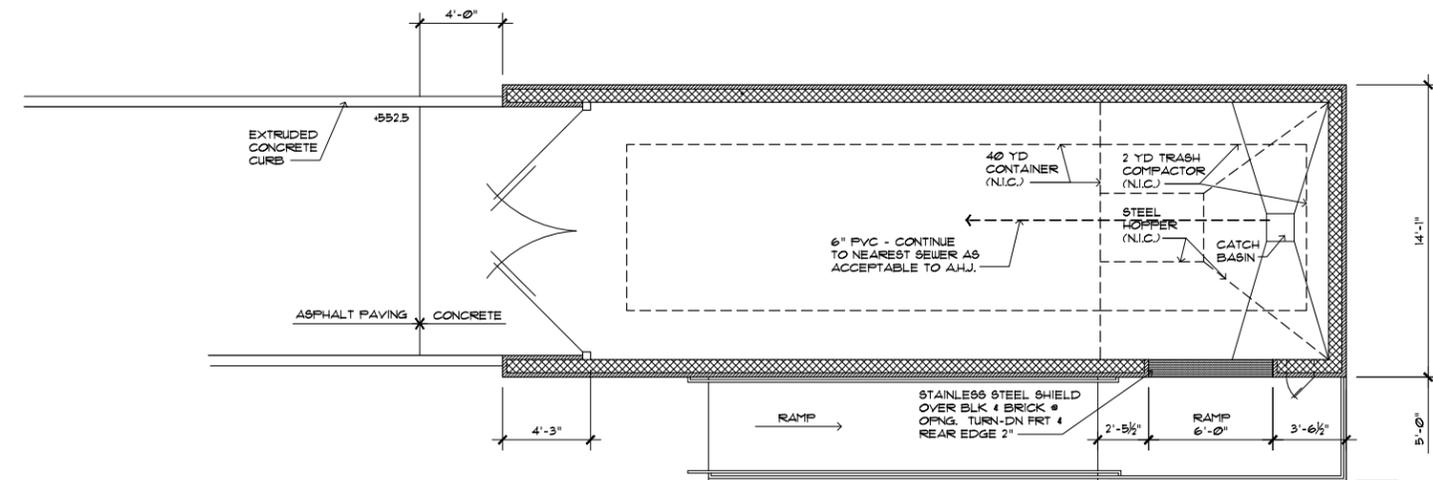
ARCHITECTURE-TRASH COMPACTOR



TRASH COMPACTOR ENCLOSURE ELEVATIONS



ENCLOSURE SECTION 'A'



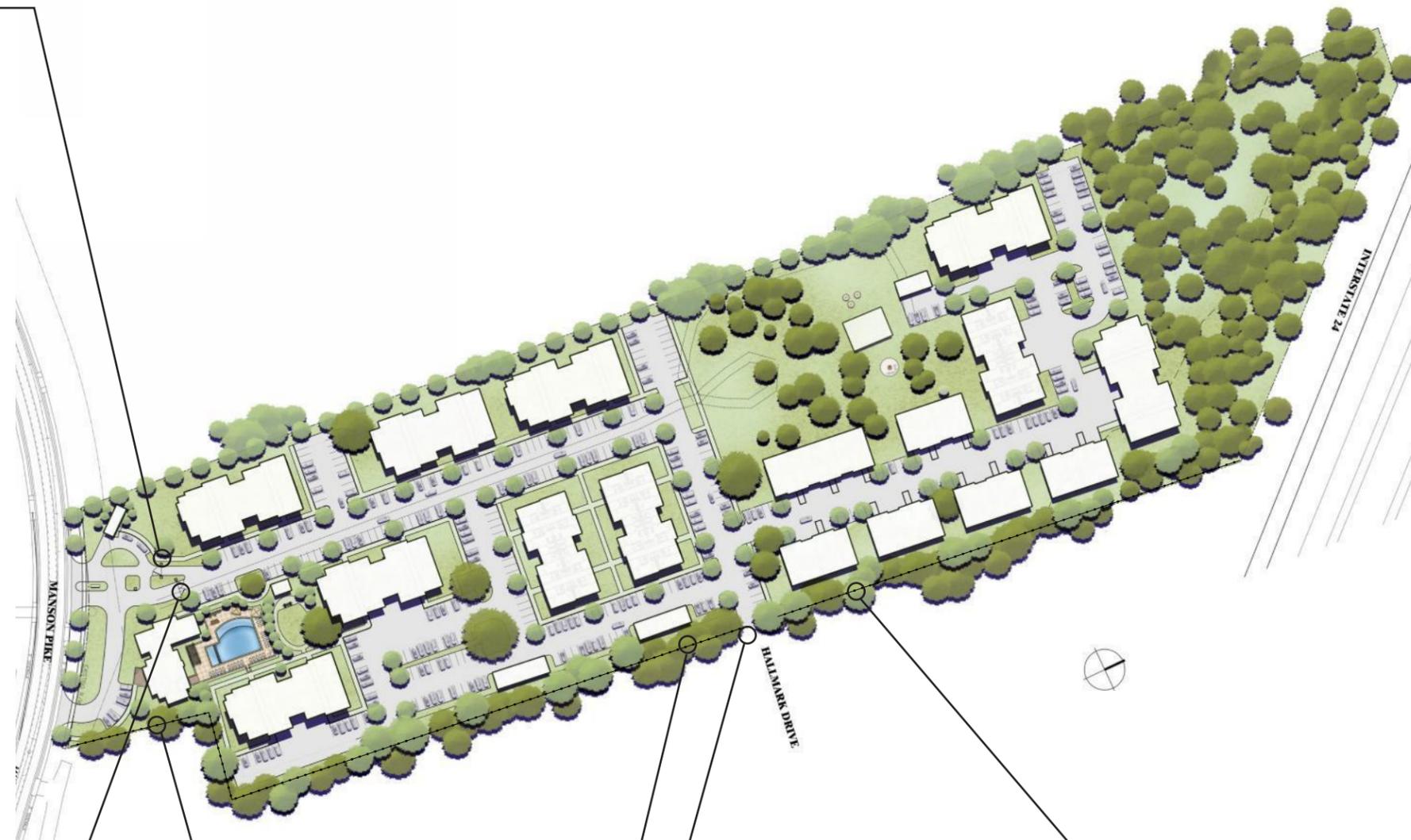
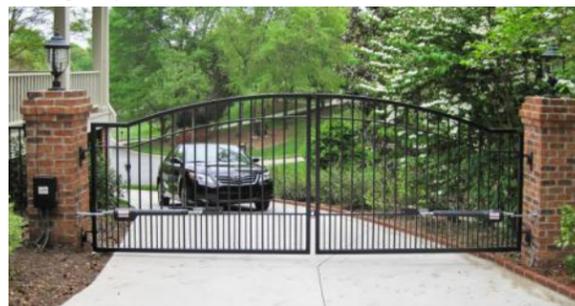
TRASH COMPACTOR ENCLOSURE PLAN

FENCE AND GATE EXHIBIT

IRON FENCE AT ENTRY DRIVE:
Gates are accessible via controlled access cards for residents and via yelp mode for emergency vehicles



IRON FENCE AT ENTRY DRIVE:
Gates are accessible via controlled access cards for residents and via yelp mode for emergency vehicles



8' HT. WOODEN PRIVACY FENCE
ALONG PROPERTY LINE ADJACENT
TO SINGLE FAMILY RESIDENTIAL

WOODEN ENTRY GATE: Gate is only operable via yelp mode for emergency vehicle access. No other vehicular traffic is allowed.



8' HT. WOODEN PRIVACY FENCE
ALONG PROPERTY LINE ADJACENT
TO SINGLE FAMILY RESIDENTIAL

SIGNAGE



Signage Character

Unique, sculptural development signage, to tie in with local character, accented by striking landscaping; and to comply with GDO requirements.

LUXURY OUTDOOR AMENITIES



DINING



TRANQUILITY



COMMUNITY



PLAY



GATHERING

- Resort style pool area with multiple gathering areas to build community among the residents
- Outdoor dining, fire pit, and custom arbors provide multi-purpose gathering spaces for residents
- Green space to include open lawn activity areas to provide residents with an opportunity to be active outdoors.
- A designated pet area

CLUBHOUSE CHARACTER



LOCAL PLANT PALETTE



Regal Mist Muhly
Muhlenbergia capillaris 'Lenca'



Adagio Maiden Grass
Miscanthus sinensis 'Adagio'



Carissa Holly
Ilex cornuta 'Carissa'



Natchez Crape Myrtle
Lagerstroemia indica x fauriei 'Natchez'



Oakleaf Hydrangea
Hydrangea quercifolia



Yew, *Taxus x media* 'Densiformis'



Eastern Redbud
Cercis canadensis



Claudia Wannamaker Magnolia
Magnolia grandiflora
'Claudia Wannamaker'



Nellie R. Stevens Holly
Ilex 'Nellie R. Stevens'



Encore Azalea Autumn Lily
Azalea x Encore Azalea 'Autumn Lily'



Emerald Snow Loropetalum
Loropetalum chinense 'Shang white'



Arborvitae
Thuja 'Green Giant'



Australis Bay Magnolia
Magnolia virginiana
'Australis'



Willow Oak
Quercus phellos



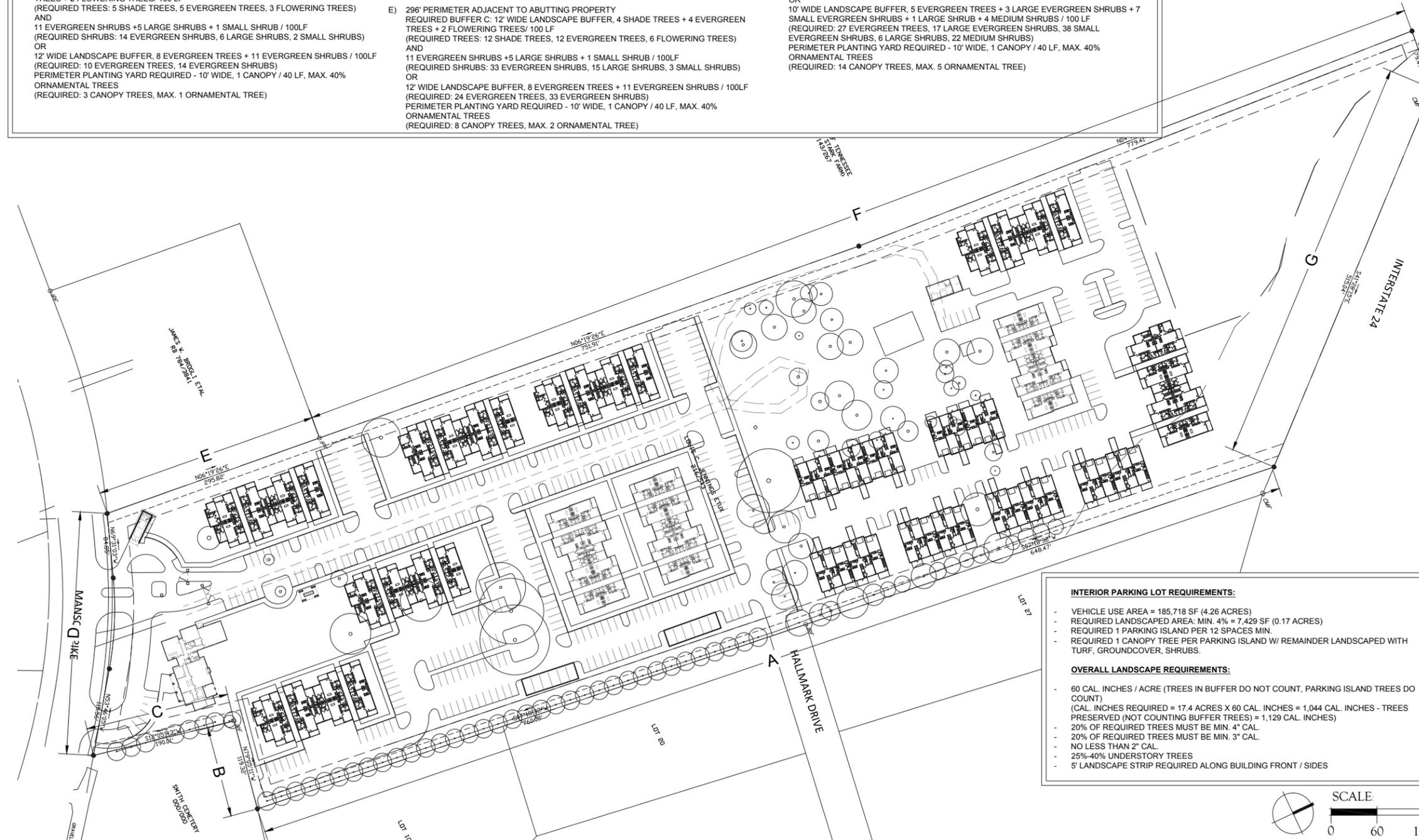
Nuttall Oak
Quercus nuttallii



Idyllwild Eastern Red Cedar
Juniperus virginiana 'Idyllwild'

SECTION 27 LANDSCAPE COMPLIANCE PLAN

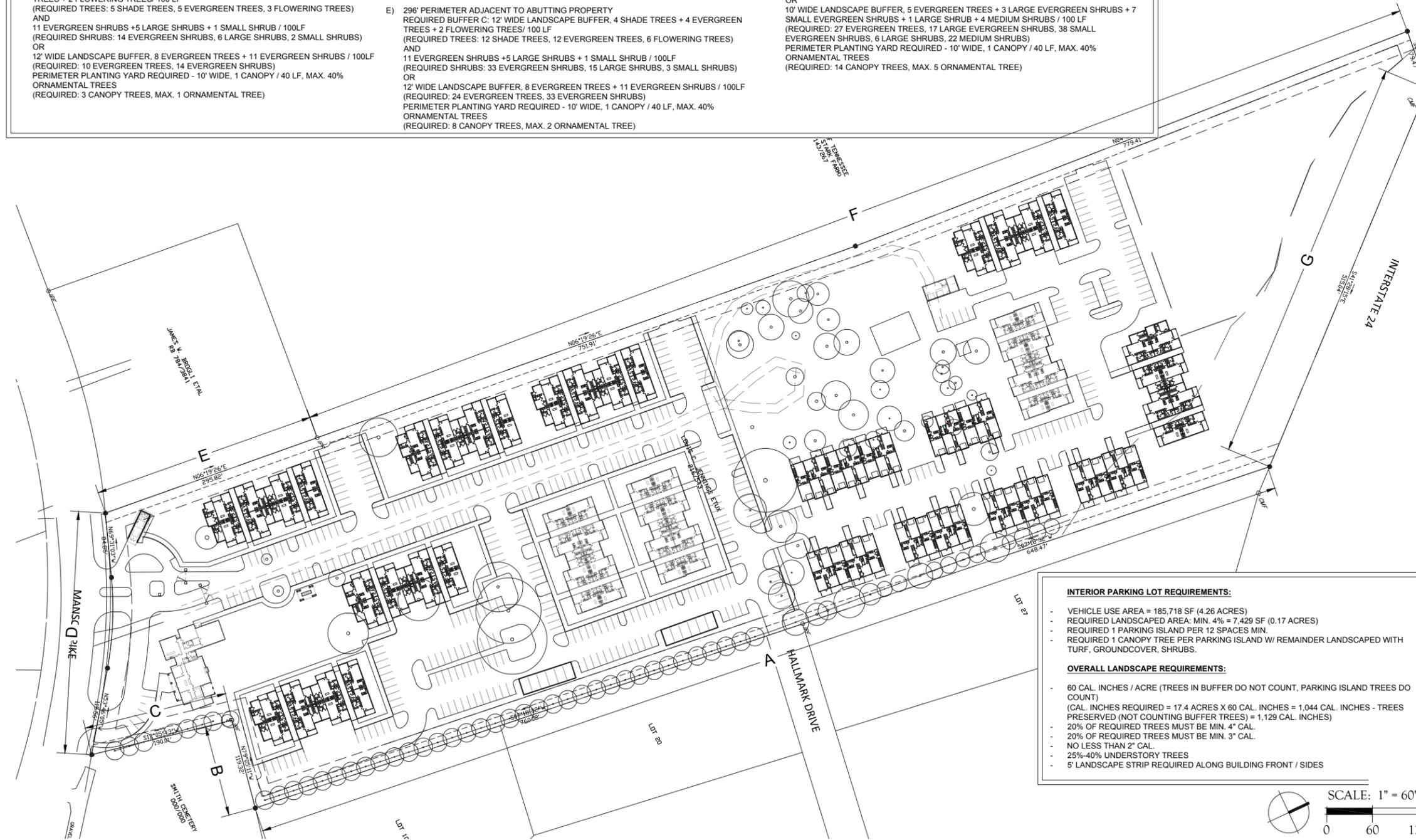
- LANDSCAPE BUFFER / PERIMETER LANDSCAPE REQUIREMENTS:**
- A) 1408' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES / 100 LF
(REQUIRED TREES: 57 SHADE TREES, 57 EVERGREEN TREES, 29 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 155 EVERGREEN SHRUBS, 71 LARGE SHRUBS, 15 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 113 EVERGREEN TREES, 155 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 36 CANOPY TREES, MAX. 14 ORNAMENTAL TREES)
 - B) 120' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES / 100 LF
(REQUIRED TREES: 5 SHADE TREES, 5 EVERGREEN TREES, 3 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 14 EVERGREEN SHRUBS, 6 LARGE SHRUBS, 2 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 10 EVERGREEN TREES, 14 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 3 CANOPY TREES, MAX. 1 ORNAMENTAL TREE)
 - C) 191' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES / 100 LF
(REQUIRED TREES: 8 SHADE TREES, 8 EVERGREEN TREES, 4 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 22 EVERGREEN SHRUBS, 10 LARGE SHRUBS, 2 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 16 EVERGREEN TREES, 22 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 5 CANOPY TREES, MAX. 2 ORNAMENTAL TREE)
 - D) 321' STREET FRONTAGE - 68' ENTRANCE DRIVES = 253' STREET FRONTAGE LANDSCAPE AS REQUIRED BY GATEWAY STREETSCAPE MASTER PLAN
REQUIRED 30' FRONT YARD: 1 CANOPY TREE / 50 LF OF STREET FRONTAGE LANDSCAPE
(REQUIRED FRONTAGE TREES: 6 CANOPY TREES)
 - E) 296' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES / 100 LF
(REQUIRED TREES: 12 SHADE TREES, 12 EVERGREEN TREES, 6 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 33 EVERGREEN SHRUBS, 15 LARGE SHRUBS, 3 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 24 EVERGREEN TREES, 33 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 8 CANOPY TREES, MAX. 2 ORNAMENTAL TREE)
 - F) 1531' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER A: 10' WIDE LANDSCAPE BUFFER, 4 EVERGREEN TREES + 2 SHADE TREES + 2 ORNAMENTAL TREES / 100LF
(REQUIRED TREES: 62 EVERGREEN TREES, 31 SHADE TREES, 31 ORNAMENTAL TREES)
OR
10' WIDE LANDSCAPE BUFFER, 5 EVERGREEN TREES + 3 LARGE EVERGREEN SHRUBS + 7 SMALL EVERGREEN SHRUBS + 1 LARGE SHRUB + 4 MEDIUM SHRUBS / 100 LF
(REQUIRED: 77 EVERGREEN TREES, 46 LARGE EVERGREEN SHRUBS, 108 SMALL EVERGREEN SHRUBS, 16 LARGE SHRUBS, 62 MEDIUM SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 39 CANOPY TREES, MAX. 15 ORNAMENTAL TREE)
 - G) 539' PERIMETER ADJACENT TO I-24
REQUIRED BUFFER A: 10' WIDE LANDSCAPE BUFFER, 4 EVERGREEN TREES + 2 SHADE TREES + 2 ORNAMENTAL TREES / 100LF
(REQUIRED TREES: 22 EVERGREEN TREES, 11 SHADE TREES, 11 ORNAMENTAL TREES)
OR
10' WIDE LANDSCAPE BUFFER, 5 EVERGREEN TREES + 3 LARGE EVERGREEN SHRUBS + 7 SMALL EVERGREEN SHRUBS + 1 LARGE SHRUB + 4 MEDIUM SHRUBS / 100 LF
(REQUIRED: 27 EVERGREEN TREES, 17 LARGE EVERGREEN SHRUBS, 38 SMALL EVERGREEN SHRUBS, 6 LARGE SHRUBS, 22 MEDIUM SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 14 CANOPY TREES, MAX. 5 ORNAMENTAL TREE)



- INTERIOR PARKING LOT REQUIREMENTS:**
- VEHICLE USE AREA = 185,718 SF (4.26 ACRES)
 - REQUIRED LANDSCAPED AREA: MIN. 4% = 7,429 SF (0.17 ACRES)
 - REQUIRED 1 PARKING ISLAND PER 12 SPACES MIN.
 - REQUIRED 1 CANOPY TREE PER PARKING ISLAND W/ REMAINDER LANDSCAPED WITH TURF, GROUNDCOVER, SHRUBS.
- OVERALL LANDSCAPE REQUIREMENTS:**
- 60 CAL. INCHES / ACRE (TREES IN BUFFER DO NOT COUNT, PARKING ISLAND TREES DO COUNT)
 - (CAL. INCHES REQUIRED = 17.4 ACRES X 60 CAL. INCHES = 1,044 CAL. INCHES - TREES PRESERVED (NOT COUNTING BUFFER TREES) = 1,129 CAL. INCHES)
 - 20% OF REQUIRED TREES MUST BE MIN. 4" CAL.
 - 20% OF REQUIRED TREES MUST BE MIN. 3" CAL.
 - NO LESS THAN 2" CAL.
 - 25%-40% UNDERSTORY TREES
 - 5' LANDSCAPE STRIP REQUIRED ALONG BUILDING FRONT / SIDES

SECTION 27 TREE PRESERVATION PLAN

- LANDSCAPE BUFFER / PERIMETER LANDSCAPE REQUIREMENTS:**
- A) 1408' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES/ 100 LF
(REQUIRED TREES: 57 SHADE TREES, 57 EVERGREEN TREES, 29 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 155 EVERGREEN SHRUBS, 71 LARGE SHRUBS, 15 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 113 EVERGREEN TREES, 155 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 36 CANOPY TREES, MAX. 14 ORNAMENTAL TREES)
 - B) 120' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES/ 100 LF
(REQUIRED TREES: 5 SHADE TREES, 5 EVERGREEN TREES, 3 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 14 EVERGREEN SHRUBS, 6 LARGE SHRUBS, 2 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 10 EVERGREEN TREES, 14 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 3 CANOPY TREES, MAX. 1 ORNAMENTAL TREE)
 - C) 191' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES/ 100 LF
(REQUIRED TREES: 8 SHADE TREES, 8 EVERGREEN TREES, 4 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 22 EVERGREEN SHRUBS, 10 LARGE SHRUBS, 2 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 16 EVERGREEN TREES, 22 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 5 CANOPY TREES, MAX. 2 ORNAMENTAL TREE)
 - D) 321' STREET FRONTAGE - 68' ENTRANCE DRIVES = 253' STREET FRONTAGE LANDSCAPE AS REQUIRED BY GATEWAY STREETSCAPE MASTER PLAN
REQUIRED 30' FRONT YARD: 1 CANOPY TREE / 50 LF OF STREET FRONTAGE LANDSCAPE
(REQUIRED FRONTAGE TREES: 6 CANOPY TREES)
 - E) 296' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER C: 12' WIDE LANDSCAPE BUFFER, 4 SHADE TREES + 4 EVERGREEN TREES + 2 FLOWERING TREES/ 100 LF
(REQUIRED TREES: 12 SHADE TREES, 12 EVERGREEN TREES, 6 FLOWERING TREES)
AND
11 EVERGREEN SHRUBS + 5 LARGE SHRUBS + 1 SMALL SHRUB / 100LF
(REQUIRED SHRUBS: 33 EVERGREEN SHRUBS, 15 LARGE SHRUBS, 3 SMALL SHRUBS)
OR
12' WIDE LANDSCAPE BUFFER, 8 EVERGREEN TREES + 11 EVERGREEN SHRUBS / 100LF
(REQUIRED: 24 EVERGREEN TREES, 33 EVERGREEN SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 8 CANOPY TREES, MAX. 2 ORNAMENTAL TREE)
 - F) 1531' PERIMETER ADJACENT TO ABUTTING PROPERTY
REQUIRED BUFFER A: 10' WIDE LANDSCAPE BUFFER, 4 EVERGREEN TREES + 2 SHADE TREES + 2 ORNAMENTAL TREES / 100LF
(REQUIRED TREES: 62 EVERGREEN TREES, 31 SHADE TREES, 31 ORNAMENTAL TREES)
OR
10' WIDE LANDSCAPE BUFFER, 5 EVERGREEN TREES + 3 LARGE EVERGREEN SHRUBS + 7 SMALL EVERGREEN SHRUBS + 1 LARGE SHRUB + 4 MEDIUM SHRUBS / 100 LF
(REQUIRED: 77 EVERGREEN TREES, 46 LARGE EVERGREEN SHRUBS, 108 SMALL EVERGREEN SHRUBS, 16 LARGE SHRUBS, 62 MEDIUM SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 39 CANOPY TREES, MAX. 15 ORNAMENTAL TREE)
 - G) 539' PERIMETER ADJACENT TO I-24
REQUIRED BUFFER A: 10' WIDE LANDSCAPE BUFFER, 4 EVERGREEN TREES + 2 SHADE TREES + 2 ORNAMENTAL TREES / 100LF
(REQUIRED TREES: 22 EVERGREEN TREES, 11 SHADE TREES, 11 ORNAMENTAL TREES)
OR
10' WIDE LANDSCAPE BUFFER, 5 EVERGREEN TREES + 3 LARGE EVERGREEN SHRUBS + 7 SMALL EVERGREEN SHRUBS + 1 LARGE SHRUB + 4 MEDIUM SHRUBS / 100 LF
(REQUIRED: 27 EVERGREEN TREES, 17 LARGE EVERGREEN SHRUBS, 38 SMALL EVERGREEN SHRUBS, 6 LARGE SHRUBS, 22 MEDIUM SHRUBS)
PERIMETER PLANTING YARD REQUIRED - 10' WIDE, 1 CANOPY / 40 LF, MAX. 40% ORNAMENTAL TREES
(REQUIRED: 14 CANOPY TREES, MAX. 5 ORNAMENTAL TREE)



- INTERIOR PARKING LOT REQUIREMENTS:**
- VEHICLE USE AREA = 185,718 SF (4.26 ACRES)
 - REQUIRED LANDSCAPED AREA: MIN. 4% = 7,429 SF (0.17 ACRES)
 - REQUIRED 1 PARKING ISLAND PER 12 SPACES MIN.
 - REQUIRED 1 CANOPY TREE PER PARKING ISLAND W/ REMAINDER LANDSCAPED WITH TURF, GROUND COVER, SHRUBS.
- OVERALL LANDSCAPE REQUIREMENTS:**
- 60 CAL. INCHES / ACRE (TREES IN BUFFER DO NOT COUNT, PARKING ISLAND TREES DO COUNT)
 - (CAL. INCHES REQUIRED = 17.4 ACRES X 60 CAL. INCHES = 1,044 CAL. INCHES - TREES PRESERVED (NOT COUNTING BUFFER TREES) = 1,129 CAL. INCHES)
 - 20% OF REQUIRED TREES MUST BE MIN. 4" CAL.
 - 20% OF REQUIRED TREES MUST BE MIN. 3" CAL.
 - NO LESS THAN 2" CAL.
 - 25%-40% UNDERSTORY TREES
 - 5' LANDSCAPE STRIP REQUIRED ALONG BUILDING FRONT / SIDES

PLANNED DEVELOPMENT CRITERIA

General Applicability Per Section 13 - Planned Development Regulations

1. **Ownership and division of land:** The site is owned by Louis and Elizabeth Jennings. The lot is currently zoned RM in Rutherford County.
2. **Waiver of BZA action:** No action of the BZA shall be required for approval of this planned commercial development.
3. **Common open space:** Formal open space will be provided as required by the Gateway Overlay District
4. **Accessibility to site:** The property is accessible from Manson Pike.
5. **Off street parking .** The developer will provide ample parking spaces provided at a rate of 1.5 spaces for a one bedroom, 2 spaces for a two bedroom unit and 3 spaces for a three bedroom unit. This is an exception from the Zoning Ordinance.
6. **Pedestrian circulation:** A sidewalk will be provided along Manson Pike and connect to a network of walkways throughout the development.
7. **Privacy and screening:** Surrounding land uses to the West is owned by Middle Tennessee State University, the property to the North is Interstate 24, the property to the East is an established subdivision, the property is bordered by Manson Pike to the South. The property has substantial vegetation to the North and the East. The buffer to the East is to be preserved in order to provide a substantial separation from the adjacent neighborhood.
8. **Zoning and subdivision modifications proposed:** The property owner is requesting the property be rezoned from the current RM designation to a Planned Residential Development. Once approved as a PRD only the uses specified in this document will be permitted.
9. **Phasing:** The project shall be completed in one phase.

10. **Annexation:** Annexation is requested with this zoning request.

11. **Landscaping:** Landscaping buffers, and perimeter yard planting will be included with the site plan.

12. **Major Thoroughfare Plan:** The PRD is consistent with the Major thoroughfare plan.

13. **Applicant contact information:** Contact information is located on sheet 3

14. **Proposed Signage:** Signage location is depicted on the Conceptual Master Section 13 – Project Development Criteria Requirements

1. **Identification of existing utilities:** Shown in pattern book sheet 6

2/3. **Graphics, renderings, maps and or aerial photography showing existing conditions and natural features of the site:** Shown in pattern book sheet 5-10, 12

4/5. **Drawing and/or diagrams identifying areas of development, proposed buildings, screening, proposed landscaping and pedestrian and vehicular circulation:** Shown in pattern book 17,18,32-34

6. **Development schedule:** The project is currently being projected to start immediately upon permit acquisitions.

7. **Relationship of the planned development to current city polices and plans:** The development is consistent with the growth in the area however, it is a different use than what is projected within the Blackman Land Use Study.

8. **Proposed deviation from zoning and subdivision ordinance:** See exceptions below.

Exceptions:

- Reduced overall parking requirements as 1.5 spaces for 1 bedroom units, 2 spaces per 2 bedroom unit, and 3 spaces per 3 bedroom unit.
- Tandem parking spaces shall be included toward the overall parking requirements.
- Front building setback requirement at building 4 as indicated on the site plan.

9. **Site tabulation data for land area, FAR, LSR, and OSR:** Data provided on sheets 13, 14.

10. **The nature and extent of any overlay zones as described in Section 24 and 34:** The PRD will be in compliance with the Gateway Overlay District (GDO1)



... creating a better quality of life.

Agenda

March 18, 2016

Honorable Mayor and Members of City Council

Re: First Reading – Ordinance 16-OZ-05

Background

The City Council conducted a public hearing on the matter below on March 3rd.

Rezoning application [2016-401] for approximately 11 acres located along Manson Pike to be rezoned from RS-15 to PRD (Maddington Parke), David Alcorn applicant.

During the public hearing, a representative of the adjacent neighborhoods expressed concerns with the design and requested specific changes to the plan. After the public hearing, the City Council voted to defer action. The City Council also directed Staff and the developer to hold a neighborhood meeting before bringing the request back for first reading. On the evening of March 16th, Staff and the developer held a neighborhood meeting at the Blackman Community Center. It was attended by approximately thirteen (13) residents of the neighboring subdivisions. The developer's representative discussed with the neighbors their concerns as well as the commitments his client was willing to make to address those concerns. After the discussion, the neighbors seemed generally pleased with the developer's response to their concerns.

The developer has submitted a letter requesting that this rezoning application be considered once again on first reading at the next City Council meeting. In the letter, he lists each of the concerns and requests made by the adjacent neighborhoods, as well as a response to each of those concerns. A revised PRD program book has also been submitted. The revised program book includes the commitments made by the developer in response to the neighborhood's concerns.

Recommendation

The City Council will need to discuss this matter, after which it will need to consider an ordinance for adoption on first reading.

Concurrences

The Murfreesboro Planning Commission conducted a public hearing on this rezoning request during its regular meeting on February 3, 2016 and recommends approval. When

the City Council conducted its public hearing on March 3rd, the minutes from the February 3rd Planning Commission meeting were not included, because they had not yet been completed. The minutes have now been completed and were approved by the Planning Commission at its March 16th meeting. The approved minutes are attached.

Attachments

1. Staff Comments from the February 3, 2016 Planning Commission meeting
2. Illustrations of the area
3. *General Development for the Blackman Community* future land use map
4. Rezoning application
5. Letter from the applicant's representative
6. Revised PRD program book
7. Minutes from the February 3, 2016 Planning Commission meeting

Respectfully Submitted,

Matthew T. Blomeley
Principal Planner

**MURFREESBORO PLANNING COMMISSION
STAFF COMMENTS, PAGE 1
FEBRUARY 3, 2016**

Rezoning application [2016-401] for approximately 11 acres located along Manson Pike to be rezoned from RS-15 to PRD (Maddington Parke), David Alcorn applicant.

The subject property is located along the south side of Manson Pike, just east of State Route 840. It is currently developed with one (1) single-family residence. It was annexed by the City in early 2015 without a companion zoning request. As a result, it came into the City with an interim zoning classification of RS-15 (Single-family Residential District 15). It has since been purchased by Alcorn Properties, LLC, who has requested rezoning from the interim RS-15 zoning to PRD (Planned Residential District).

The subject property is bordered on its east and south sides by several single-family residential subdivisions zoned RS-12, including Oakton, Princeton Oaks, and Blackman Meadows. The property to the north across Manson Pike is in the unincorporated County and is developed with single-family residential uses and a church. There is also a church on the property directly to the west. Further to the west, on the other west side of the church, is a vacant tract that has passed second reading before the City Council for rezoning to CH (Commercial Highway) and CF (Commercial Fringe).

The proposed PRD is for a new residential development called Maddington Parke, which would consist of 88 dwelling units to be sold under a horizontal property regime. All streets would be private. A two-story townhome style of construction is proposed, with units ranging from 1,500 square-feet to 2,100 square-feet. Each unit will have its own garage and a driveway, allowing for 2-4 cars to park at each home site. There will also be 84 guest parking spaces provided throughout the development. The development will exceed minimum multi-family residential parking requirements. Per the Planning Commission's direction at the January 20 work session, the plan has been revised to commit to the use of a compactor to handle solid waste.

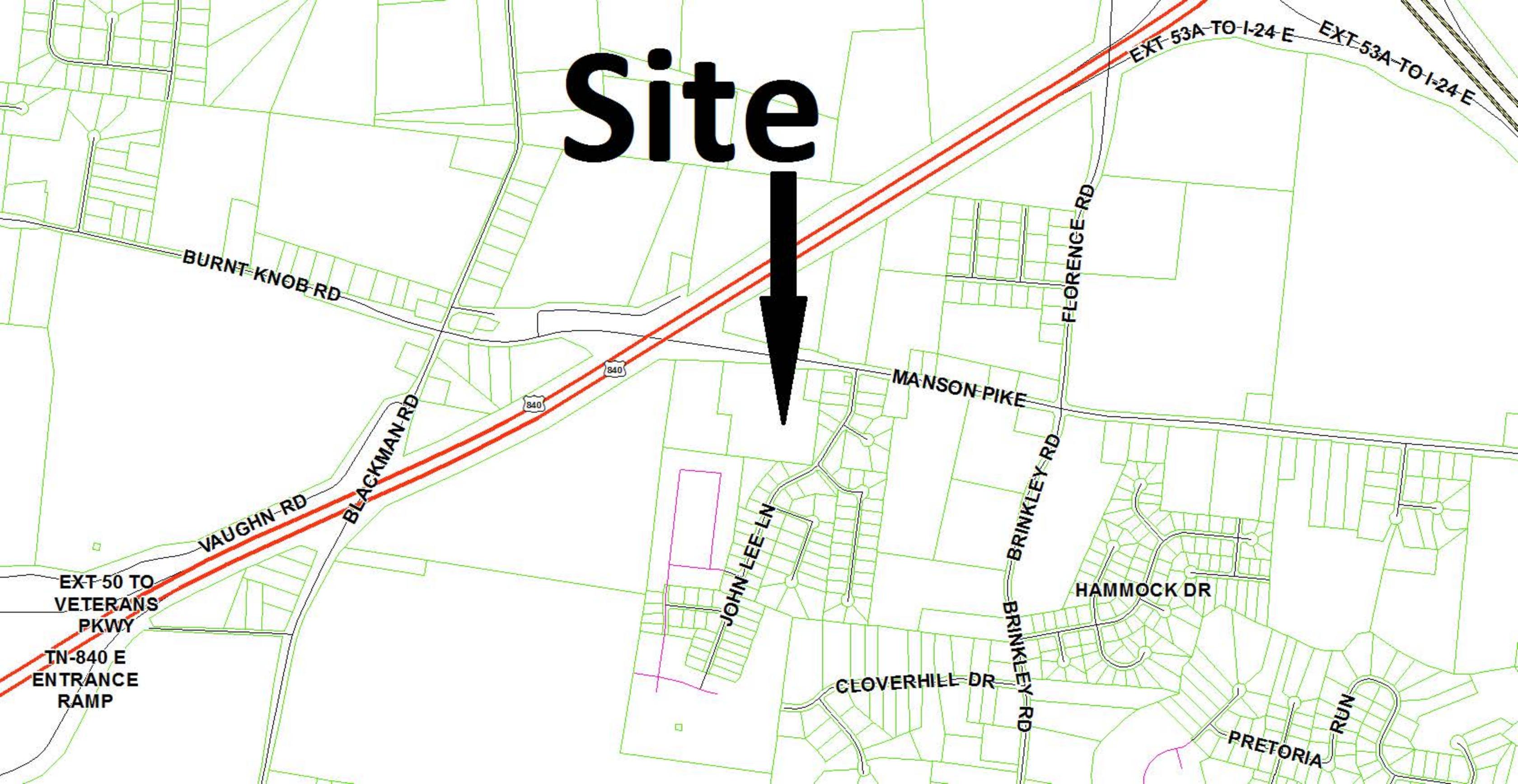
Front elevations will consist of brick, stone, and cement board siding for exterior materials. In addition, after the discussion at the January 20 work session, the applicant has revised the plans to flip the buildings adjacent to Manson Pike so that the fronts of these two buildings are oriented to face Manson Pike. Side elevations adjacent to internal streets and the perimeter property boundary will consist of brick on the first floor and heavy-gauge vinyl siding or cement board siding on the second floor. Rear elevations adjacent to the perimeter property

boundary have been upgraded, per the Planning Commission's direction at the January 20 work session, and will consist of a mixture of brick, stone, cement board siding, and heavy-gauge vinyl siding. The side and rear elevations facing the sides and rears of other internal buildings will consist primarily of heavy-gauge vinyl siding.

The future land use map contained in the *General Development Plan for the Blackman Community* recommends that the subject property develop as "Office/Distribution." It defines "Office/Distribution" as "office and distribution flex space in a well-planned setting" with permitted uses of "office showroom, distribution facilities, and ancillary retail." As a caveat, however, the plan stated that the designation of this property as "Office/Distribution" largely hinged on accessibility to the Veterans Parkway interchange. The future land use map showed a planned arterial road running from Veterans Parkway to Manson Pike parallel to State Route 840. This arterial road was never constructed and, with the development of the single-family subdivisions in this area, such a road improvement seems very unlikely. Without this roadway, it may be argued that the "Office/Distribution" recommendation is no longer applicable. With respect to the proposed PRD at hand, it might also be argued that such a multi-family use would be an appropriate transition from the single-family residential zoning to the east to the commercial zoning to the west.

The Planning Commission will need to conduct a public hearing, after which it will need to discuss this matter and then formulate a recommendation for City Council.

Site



BURNT-KNOB RD

EXT-53A-TO-I-24-E

EXT-53A-TO-I-24-E

840

840

VAUGHN RD

BLACKMAN RD

EXT-50 TO
VETERANS
PKWY

TN-840 E
ENTRANCE
RAMP

JOHN-LEE LN

MANSON-PIKE

FLORENCE RD

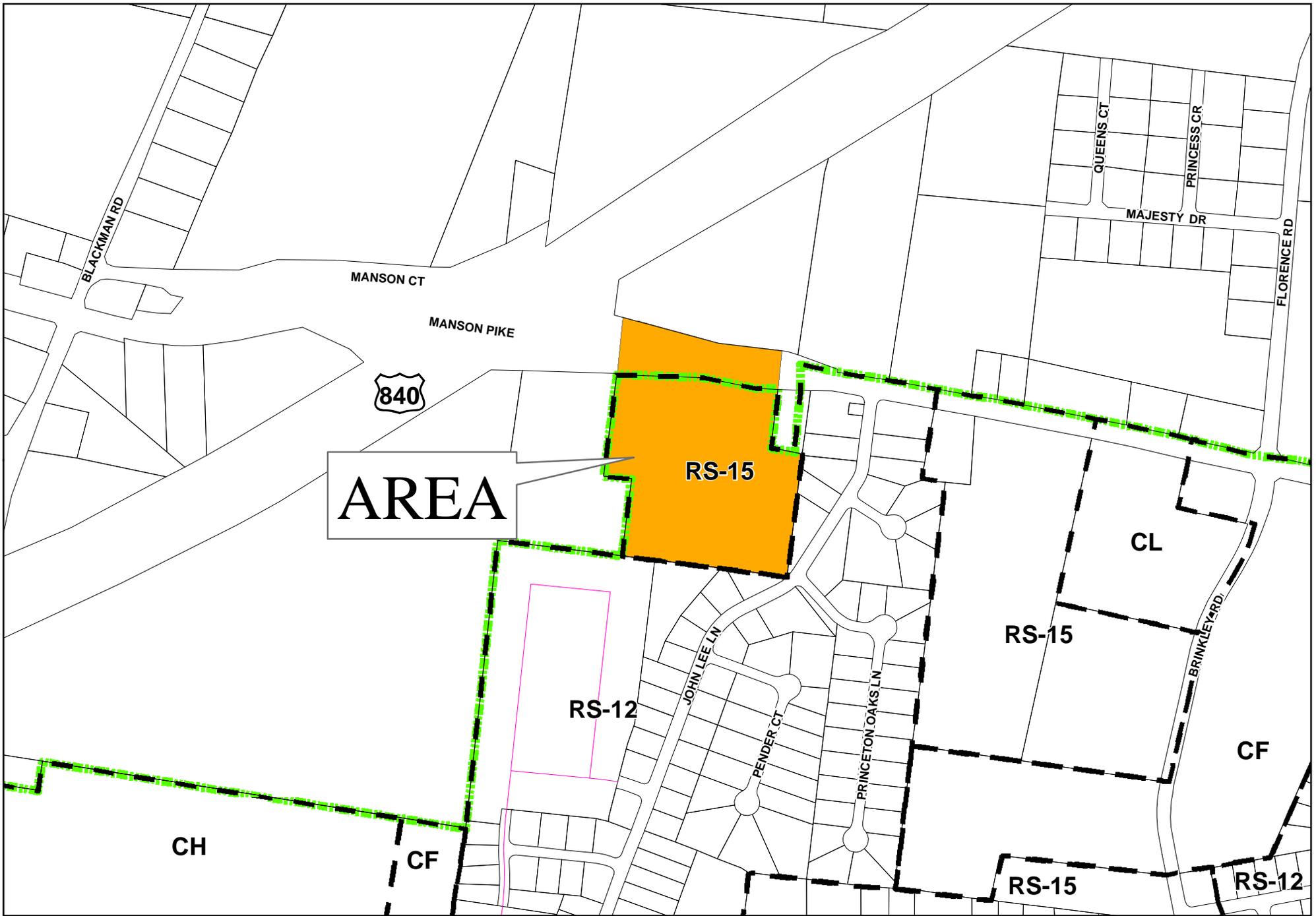
BRINKLEY RD

HAMMOCK DR

CLOVERHILL DR

PRETORIA

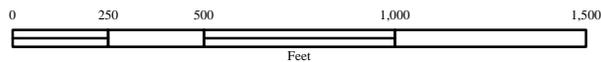
RUN



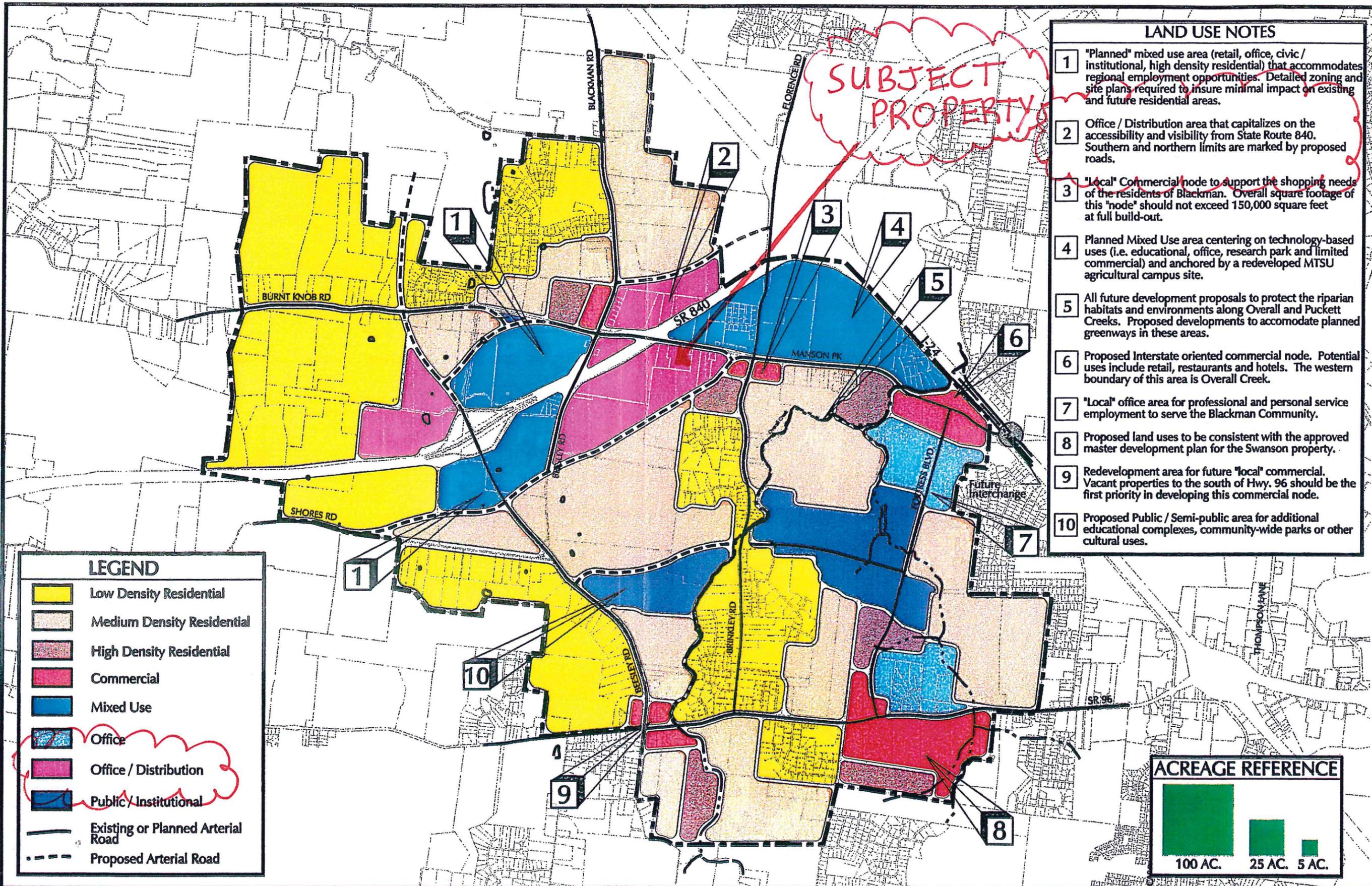
Path: G:\planning\rezon\4439MansonPkRS15_PRD.mxd



Rezoning Request For Property Along Manson Pk. from RS-15 to PRD



GIS Department
City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130
www.murfreesborotn.gov

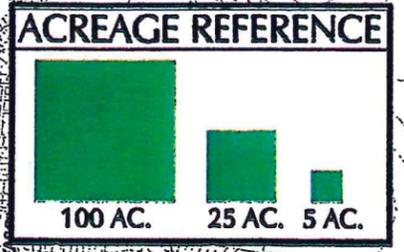


LAND USE NOTES

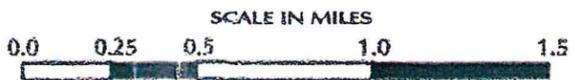
- 1 "Planned" mixed use area (retail, office, civic / institutional, high density residential) that accommodates regional employment opportunities. Detailed zoning and site plans required to insure minimal impact on existing and future residential areas.
- 2 Office / Distribution area that capitalizes on the accessibility and visibility from State Route 840. Southern and northern limits are marked by proposed roads.
- 3 "Local" Commercial node to support the shopping needs of the residents of Blackman. Overall square footage of this "node" should not exceed 150,000 square feet at full build-out.
- 4 Planned Mixed Use area centering on technology-based uses (i.e. educational, office, research park and limited commercial) and anchored by a redeveloped MTSU agricultural campus site.
- 5 All future development proposals to protect the riparian habitats and environments along Overall and Puckett Creeks. Proposed developments to accommodate planned greenways in these areas.
- 6 Proposed Interstate oriented commercial node. Potential uses include retail, restaurants and hotels. The western boundary of this area is Overall Creek.
- 7 "Local" office area for professional and personal service employment to serve the Blackman Community.
- 8 Proposed land uses to be consistent with the approved master development plan for the Swanson property.
- 9 Redevelopment area for future "local" commercial. Vacant properties to the south of Hwy. 96 should be the first priority in developing this commercial node.
- 10 Proposed Public / Semi-public area for additional educational complexes, community-wide parks or other cultural uses.

LEGEND

- Low Density Residential
- Medium Density Residential
- High Density Residential
- Commercial
- Mixed Use
- Office
- Office / Distribution
- Public / Institutional
- Existing or Planned Arterial Road
- Proposed Arterial Road



BLACKMAN COMMUNITY



BWSC BARRIS WASSNER SUMNER & GARDNER, INC.
ENGINEERS ARCHITECTS PLANNERS LANDSCAPE ARCHITECTS AND SURVEYORS

RPM Associates

FUTURE LAND USE MAP

BLACKMAN COMMUNITY LAND USE PLAN

REZONING APPLICATION FORM



Creating a better quality of life

City of Murfreesboro
Planning and Engineering Department
111 W. Vine Street, P.O. Box 1139
Murfreesboro, TN 37133-1139
(615) 893-6441 Fax (615) 849-2606
www.murfreesborotn.gov

REZONING APPLICATION FORM
\$600.00 per application

Procedure for applicant:

The applicant must submit the following information to initiate a rezoning:

- 1. A completed rezoning application (below).
2. A plot plan, property tax map, survey, and/or a legal description of the property proposed for rezoning. (Please attach to application.)
3. A \$600.00 non-refundable application fee.

For assistance or questions, please contact a planner at 615-893-6441.

To be completed by applicant:

APPLICANT: ALCORN PROPERTIES, LLC. ATTN: DAVID ALCORN

Address: 239 VETERANS PARKWAY - SUITE C City/State/Zip: MURFREESBORO, TN 37128

Phone: 615-369-6464 E-mail address:

PROPERTY OWNER: ALCORN PROPERTIES, LLC

Street Address or property description: 4439 MANSON PIKE, MURFREESBORO, TN

and/or Tax map #: 78 Group: Parcel (s): 29.00

Existing zoning classification: RS-15

Proposed zoning classification: PRD Acreage: 11.00 ACRES

RECEIVED
DEC 31 2015
BY:

Contact name & phone number for publication and notifications to the public (if different from the applicant): ROB MOLCHAN 615-890-7901

E-mail: RMOLCHAN@SEC-CIVIL.COM

APPLICANT'S SIGNATURE (required): Kevin T. Alcorn

DATE: 12/31/15

*****For Office Use Only*****

Date received: MPC YR.: MPC #: 2016-401

Amount paid: 600.00 Receipt #: 922568

Revised 1/2010

March 17, 2016

Mr. Matthew Blomeley
City of Murfreesboro Planning Dept.
111 West Vine Street
Murfreesboro, TN 37133-1139

RE: Maddington Parke PRD Rezoning
Response to Neighbors Request
SEC Project No. 15158

Dear Matthew,

We have reviewed the requests submitted by the neighbors in Oakton, Princeton Oaks and Blackman Meadows Subdivisions in regards to Maddington Parke PRD. Below is the list of their requests regarding the approval of Maddington Parke PRD. We have outlined our responses to their requests written below each of the items. We presented and discussed these requests and responses last night at the neighborhood meeting. The neighbors agreed with these conditions at the conclusion of the meeting last night. Please enter this letter into public record for the City Council to take into account with their decision on this rezoning.

Requests made at City Council Meeting:

- 1) Setbacks will be increased from 20 feet to 30 feet.

Response: We will increase the rear/side building setbacks along the boundary lines with Oakton, Princeton Oaks and Blackman Meadows subdivisions from 20 feet to 30 feet. All other building setbacks to the project boundary line will remain at 20 feet.

- 2) "Live fencing" will be upgraded to Type D.
 - a. Will there be any physical fences on the Maddington Parke side of the property lines?
 - i. If so, we assume the Type D foliage be planted on the Oakton side of the physical fence

Response: The "Live Fencing" will be upgraded to a 15 feet wide Type 'D' landscape buffer.

There will not be any physical fencing along these property lines. The planting requirements associated with the upgraded Type 'D' landscape buffer and preserved existing tree line are more than adequate to provide screening between Maddington Parke and Oakton Subdivision.

- 3) We are in agreement that the existing trees will be kept intact when possible.

Response: Our intent is to leave the existing tree lines intact between Maddington Parke and the neighboring developments. There may be areas where a utility or drainage easement might disturb the existing tree line, otherwise it shall remain intact.

- 4) The side and rear elevations will no longer have vinyl but Hardie Board (Cement Fiber) siding.

Response: We will change the vinyl siding to a Hardie Board (Cement Fiber) siding material on those rear/side elevations facing Oakton, Princeton Oaks and Blackman Meadows subdivisions. All other elevations will adhere to the material options outlined in the PRD Booklet.

- 5) You have stated that the “donut” loop will allow ample space for school bus and other large vehicles to enter and exit the community.

Response: The proposed private street network will provide for adequate turning movements for school buses and large vehicles entering and exiting the development. As for the routing of school buses, that is at the discretion of the transportation departments for city and county school systems.

- 6) We understand that the storm water retention pond (and therefore the walking path) cannot be moved to Phase 4 due to grading.

Response: As stated at the City Council meeting, due to the elevations of the property, the detention/retention pond cannot be relocated to the southeast corner of the property in Phase 4.

Requests made after City Council Meeting:

- 7) Our request is that the Type D foliage be planted in its entirety in Phase 1 and maintained throughout the project. This will allow foliage ample time to grow and provide coverage for both the construction and completed units.

Response: Although we understand the request to install the Type ‘D’ buffer with Phase 1, it is not practical to install this buffer at the beginning of the project due to potential impacts from the construction process. The buffers will be installed with each phase they are located in at the time they are constructed.

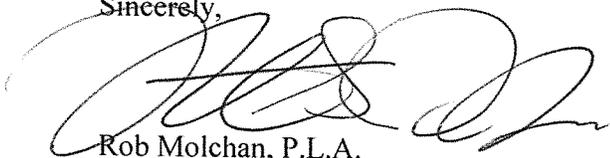
- 8) We request that SEC and Alcorn Properties provide a proposed compromise on Phase 4 to eliminate a row of townhomes or provide another option to help provide the appearance of less units from the Oakton vantage point.

Response: In regards to the request to eliminate townhomes in Phase 4 to lessen the appearance of townhomes in Oakton, we feel that increasing the landscape buffer to a Type 'D' Buffer, along with preserving the existing tree lines, increasing the building setbacks from 20 feet to 30 feet, and upgrading building materials adequately screens/lessens the impact of the proposed townhomes from the Oakton Subdivision.

We feel we have worked with the neighbors to make both developments better for all those who live in Oakton, Princeton Oaks, Blackman Meadows Subdivisions and for those who will live in Maddington Parke should the City Council approve this project. This letter is our attempt to outline the efforts by SEC, Inc. & Alcorn Properties to work with and satisfy the requests of our neighbors to the best of our and the project's ability. Some requests could not be 100% satisfied due to physical or practical difficulties or impossibilities.

Should you need any clarification concerning this letter and the items both parties have agreed upon, please feel free to contact me at 615-890-7901 or rmolchan@sec-civil.com.

Sincerely,



Rob Molchan, P.L.A.
Landscape Architect & Land Planner
SEC, Inc.

Maddington Parke Developer



David Alcorn
Owner
Alcorn Properties

MADDINGTON PARKE

A REQUEST FOR REZONING TO A PRD

SUBMITTED DECEMBER 31, 2015

RESUBMITTED ON JANUARY 13, 2016

RESUBMITTED ON JANUARY 25, 2016 FOR FEBRUARY 3, 2016 PLANNING COMMISSION PUBLIC HEARING

RESUBMITTED ON FEBRUARY 22, 2016 FOR MARCH 3, 2016 CITY COUNCIL PUBLIC HEARING

RESUBMITTED ON MARCH 17, 2016 FOR CITY COUNCIL FIRST READING



DEVELOPER
ALCORN PROPERTIES, LLC

ATTN: DAVID ALCORN
239 VETERANS PARKWAY
MURFREESBORO, TN 37128
615-369-6464

SEC, Inc.

ENGINEERING . SURVEYING . LAND PLANNING
LANDSCAPE ARCHITECTURE
SEC, INC.

ATTN: ROB MOLCHAN, P.L.A.
850 MIDDLE TENNESSEE BLVD.
MURFREESBORO, TN. 37129
615-890-7901
WWW.SEC-CIVIL.COM

SEC PROJECT # 15158

INTRODUCTION
SYNOPSIS 3
PROPOSED CONCEPT PLAN 4

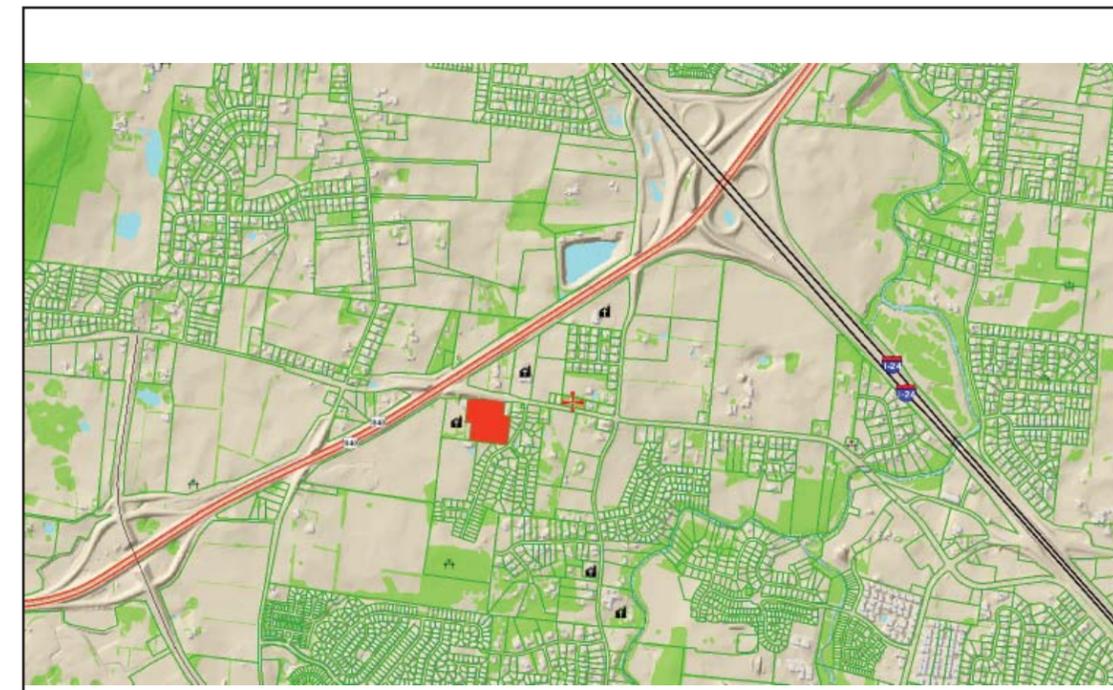
EXISTING CONDITIONS
RIGHTS-OF-WAY, UTILITIES, AND TOPOGRAPHY 5
ON-SITE PHOTOS AND EXISTING ZONING 6
SURROUNDING OFF-SITE PHOTOS (A) 7
SURROUNDING OFF-SITE PHOTOS (B) 8

PROPOSED P.R.D.
DEVELOPMENT STANDARDS 9
DEVELOPMENT STANDARDS AND PHASING PLAN10
PROPOSED HOMES (STANDARDS).....11
PROPOSED BUILDING ELEVATIONS MATERIALS PLAN12
PROPOSED HOMES (FRONT AND SIDE ELEVATIONS AND FLOOR PLAN)13
PROPOSED HOMES (REAR ELEVATION MATERIAL OPTIONS).....14
CONCEPTUAL LANDSCAPE PLAN15
CONCEPTUAL LANDSCAPE PLAN (ZOOMED IN).....16
AMENITIES17
INGRESS/EGRESS18

ZONING CHAPTER 13
SUBSECTION D ITEM 2A: 1 - 619
SUBSECTION D ITEM 2A: 7 - 1520



CURRENT AERIAL OF THE SITE



CURRENT GIS OF THE SITE IN RELATION TO THE REGION

ALCORN PROPERTIES, LLC. RESPECTIVELY REQUESTS REZONING THE PROPERTY AT 4439 MANSON PIKE FROM RS-15 TO PLANNED RESIDENTIAL DEVELOPMENT (PRD) TO CREATE THE MADDINGTON PARKE PRD. THE PROPERTY IS APPROXIMATELY 11.00 ACRES AND LOCATED ALONG THE SOUTH SIDE OF MANSON PIKE, TO THE WEST OF PROPERTY BELONGING TO CHARLES MULLINS, NORTH AND WEST OF OAKTON SUBDIVISION, AND EAST OF PROPERTY BELONGING TO BLACKMAN UNITED METHODIST CHURCH. IT IS IDENTIFIED AS PARCEL 29.00 OF TAX MAP 78.

THIS REQUEST IS TO REZONE 11.00 ACRES FROM RS-15 TO A PLANNED RESIDENTIAL DEVELOPMENT (PRD). THE PRD ZONING WILL CONSIST OF NO MORE THAN 88 TOWNHOMES YIELDING AN OVERALL DENSITY OF 8.00 DWELLING UNITS / ACRE. THE UNITS WILL BE SOLD UNDER A HORIZONTAL PROPERTY REGIME. THE PROPOSED TOWNHOMES WILL RANGE IN SIZE FROM 1,500 SF. TO 2,100 SF. ALL TOWNHOMES WILL HAVE A MINIMUM OF 2 BEDROOMS, AND A ONE CAR GARAGE. THERE WILL BE AN H.O.A TO MAINTAIN THE COMMON AREAS, WHICH INCLUDES STREETS, BUILDING EXTERIORS, A PAVILION, A STORMWATER AREA, AND ALL OTHER PROPERTY.

MADDINGTON PARKE

CONCEPT PLAN

LAND USE DATA:
 TOTAL LAND AREA: ±11.00 ACRES
 TOTAL NUMBER OF LOTS: 88 TOWNHOMES
 YIELD: 85 LOTS/11.0 ACRES= 8.00 UNITS/ACRE
 TOTAL OPEN SPACE/STORMWATER: ±1.84 ACRES
 MINIMUM UNIT PAD: 1,050 SF (25' WIDE X 42' DEEP)
 MINIMUM PAD WIDTH AT FRONT SETBACK: 25 FEET

TOWNHOME UNIT MIX

BUILDING TYPE	# OF BUILDINGS	UNITS PER TYPE	END UNITS	INTERNAL UNITS
4 UNIT	1	4	2	2
5 UNIT	1	5	2	3
6 UNIT	5	30	10	20
7 UNIT	7	49	14	35
TOTAL	14 BUILDINGS	88 UNITS	28 END	60 INTERNAL

2 BEDROOM UNITS = 40%
 2 BEDROOM INTERNAL UNITS = 24 UNITS

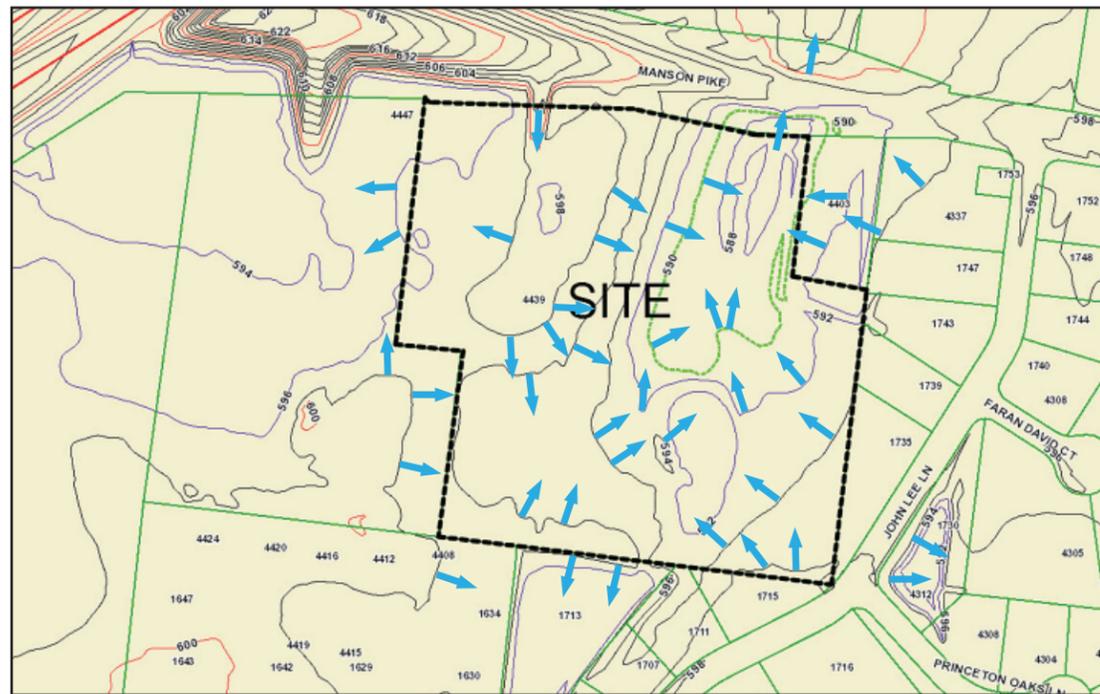
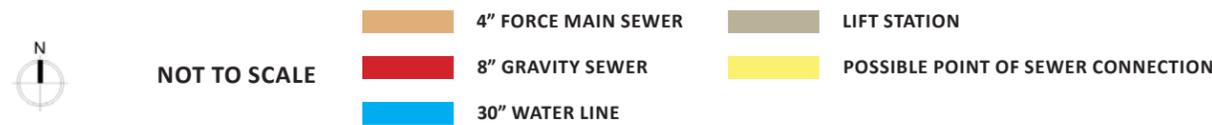
3 BEDROOM UNITS = 60%
 3 BEDROOM INTERNAL UNITS = 36 UNITS
 3 BEDROOM CORNER UNITS = 28 UNITS

PARKING
 (64) 3 BEDROOM UNITS X 1.1 PER BEDROOM = 211 SPACES
 (24) 2 BEDROOM UNITS X 1.1 PER BEDROOM = 53 SPACES
 PARKING REQUIRED = 264 SPACES
 PARKING PROVIDED = 288 SPACES (24 SPACES OVER REQUIRED)
 60 UNITS (1 GARAGE & 1 DRIVEWAY) = 120 SPACES
 28 UNITS (1 GARAGE & 2 DRIVEWAY) = 84 SPACES
 *GARAGES ARE RESTRICTED TO VEHICULAR PARKING ONLY.
 *HOUSEHOLD STORAGE, BOAT STORAGE, ETC. IS PROHIBITED.
 VISITOR PARKING AREAS = 84 SPACES

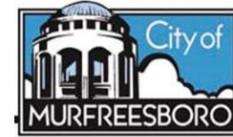


SCALE: 1" = 120'

- UNIT PAD
- STORMWATER AREA
- DRIVEWAY/ PATIO PAD
- OPEN SPACE
- SIDEWALK/ TRAIL
- TRASH COMPACTOR



TOPOGRAPHY AND HYDROLOGY MAP



CITY OF MURFREESBORO

THE PROPERTY HAS/WILL HAVE ACCESS TO PUBLIC RIGHTS-OF-WAY ALONG MANSON PIKE. THE DEVELOPMENT WILL CONNECT TO MANSON PIKE AS ITS SOLE MEANS OF INGRESS/EGRESS. MANSON PIKE WILL BE WIDENED TO MATCH THE EXISTING THREE LANE CROSS SECTION UP TO THE PROPOSED ENTRANCE OF THIS DEVELOPMENT. THE EXTENSION WILL NOT INCLUDE CURB AND GUTTER, BUT WILL HAVE PAVED SHOULDER.



MURFREESBORO WATER AND SEWER DEPARTMENT

SANITARY SEWER SERVICE HAS BEEN EXTENDED TO THE EDGE OF THE SITE ALONG THE SOUTHERN AND EASTERN SIDES OF THE PROPERTY. SECTION 1 CONSTRUCTION WILL EXTEND THE SEWER SERVICE INTO THE SITE AND WILL CONTINUE TO BE EXTENDED WITH EACH SECTION OF THE DEVELOPMENT. THE DEVELOPER WILL BE RESPONSIBLE FOR EXTENDING THE SEWER INTO THIS PROPERTY. SANITARY SEWER SERVICE WILL BE PROVIDED BY THE MURFREESBORO WATER & SEWER DEPARTMENT.



CONSOLIDATED UTILITY DISTRICT OF RUTHERFORD COUNTY

A 30" WATER MAIN IS LOCATED ALONG THE SOUTHERN SIDE OF MANSON PIKE. WATER SERVICE WILL BE CONNECTED TO THE MAIN WITH SECTION 1 CONSTRUCTION, AND WILL CONTINUE TO BE EXTENDED WITH EACH SECTION OF CONSTRUCTION. THE DEVELOPER WILL BE RESPONSIBLE FOR EXTENDING THE WATERLINE INTO THIS PROPERTY AND INTO THE SITE FOR DOMESTIC AND FIRE WATER SERVICE. WATER SERVICE WILL BE PROVIDED BY CONSOLIDATED UTILITY DISTRICT OF RUTHERFORD COUNTY.



MURFREESBORO ELECTRIC DEPARTMENT

MURFREESBORO ELECTRIC DEPARTMENT WILL BE PROVIDING ELECTRICAL SERVICE. ALL ELECTRIC SERVICE WILL BE UNDERGROUND. ELECTRIC IS CURRENTLY LOCATED ALONG THE SOUTHERN SIDE OF MANSON PIKE ON THIS PROPERTY'S NORTHERN BOUNDARY.

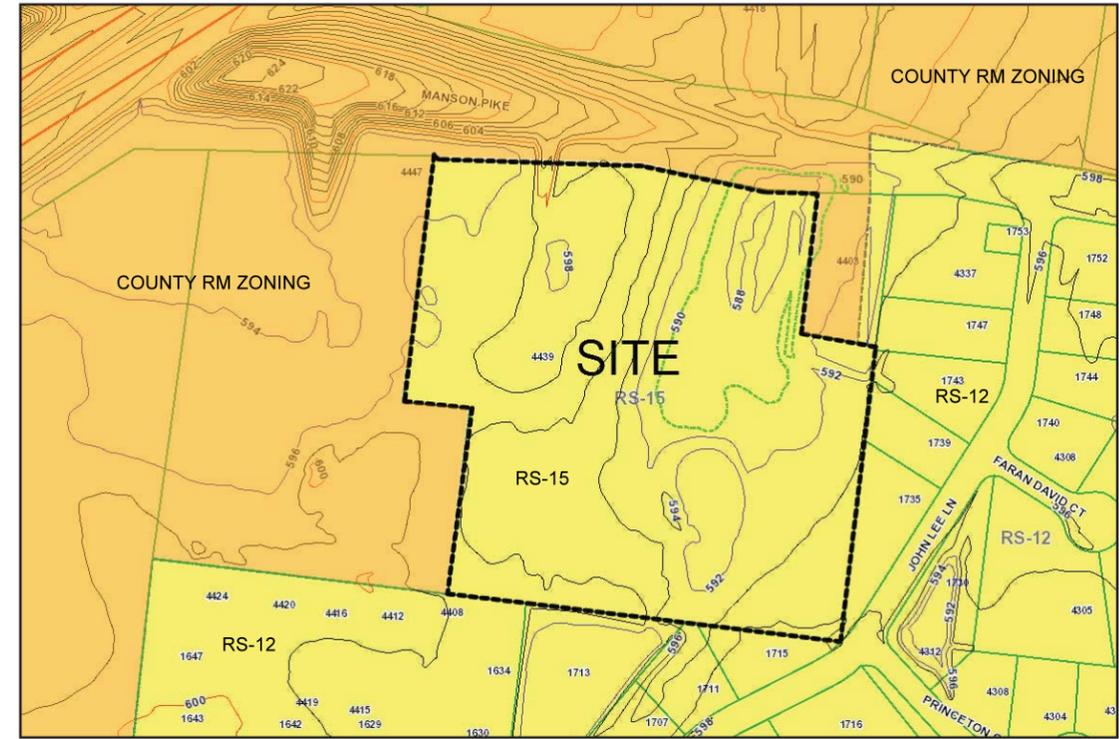
THE EXISTING TOPOGRAPHY OF THE SITE SHOWS THE SITE'S DRAINAGE BASIN IS GENERALLY FROM SOUTH TO NORTH. STORMWATER RUNOFF FROM THE MAJORITY OF THE SITE DRAINS UNDER MANSON PIKE TO THE NORTH OF THE PROPERTY. THE SITE DRAINS FROM THE PERIMETER OF THE PROPERTY TO THE CENTER, IT FLOWS TOWARD A DISCHARGE POINT UNDER MANSON PIKE. STORMWATER FROM OAKTON SUBDIVISION ENTERS THE PROPERTY ALONG THE SOUTHERN BOUNDARIES. A STORM WATER DETENTION POND IS LOCATED IN OAKTON JUST SOUTH OF THE PROPERTY. A STORM PIPE FROM OAKTON DISCHARGES JUST TO THE EAST OF THE PROPERTY AND FLOWS ONTO THE SITE IN AN OPEN DITCH.



ON-SITE PHOTOS



NOT TO SCALE



EXISTING ZONING
COUNTY RM ZONING



NOT TO SCALE



IMAGE #1

VIEW FROM MANSON PIKE TOWARDS THE AREA OF THE PROPOSED STORM-WATER AREA.



IMAGE #2

VIEW SOUTHEAST FROM MANSON PIKE INTO THE HEART OF THE SITE.



IMAGE #3

VIEW FROM THE ADJACENT CHURCH PARKING LOT ALONG THE WEST PROPERTY LINE OF THE SITE SHOWING THE EXISTING COLONIAL-STYLE HOUSE.



IMAGE #4

VIEW FROM JOHN LEE LANE INTO THE SITE FROM THE SOUTHEAST CORNER OF THE SITE. THIS VIEW SHOWS THE EXISTING FARM POND AT THE CENTER OF THE PROPERTY.



NOT TO SCALE

OFF-SITE PHOTOS



IMAGE #5

VIEW DOWN THE SLOPED DRIVEWAY FROM MANSON PIKE TO THE CHURCH PROPERTY WEST OF THE SITE.



IMAGE #6

VIEW NORTHWEST ALONG MANSON PIKE TOWARDS 840 OVERPASS.



IMAGE #7

VIEW NORTH ONTO THE RESIDENTIAL PROPERTY ACROSS MANSON PIKE.



IMAGE #8

VIEW EAST ALONG MANSON PIKE TOWARDS THE ENTRANCE TO SUBDIVISION.



NOT TO SCALE

OFF-SITE PHOTOS



IMAGE #9

VIEW SOUTH ONTO RESIDENTIAL PROPERTY EAST OF THE SITE.



IMAGE #10

VIEW NORTHEAST ACROSS MANSON PIKE TOWARDS CHURCH PROPERTY.

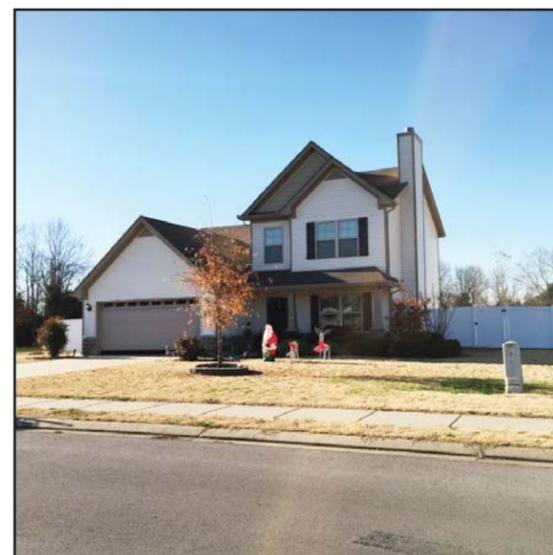


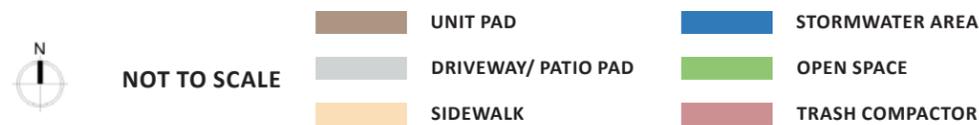
IMAGE #11

EXISTING RESIDENCE IN OAKTON SUBDIVISION BACKING UP TO MADDINGTON PARKE.



IMAGE #12

EXISTING RESIDENCE IN OAKTON SUBDIVISION BACKING UP TO MADDINGTON PARKE.

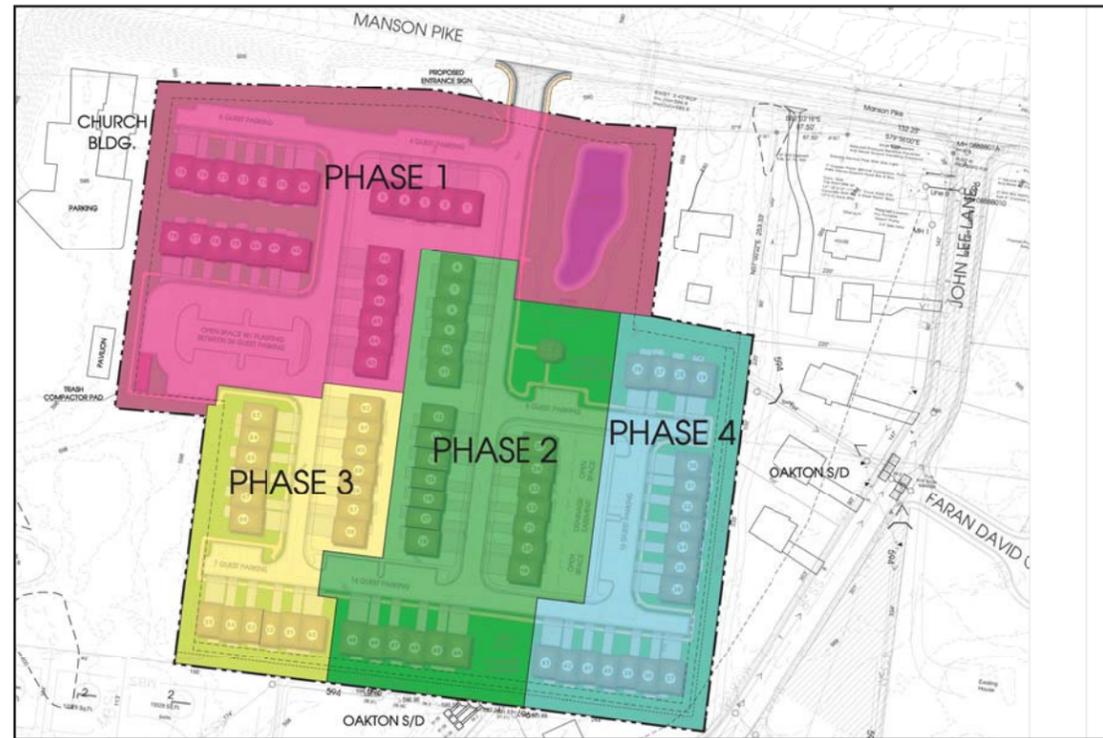


EXAMPLE OF AN ENTRANCE SIGN

SYNOPSIS

MADDINGTON PARK CONSISTS OF 88 TOWNHOME UNITS ON 11.00 ACRES FOR A DENSITY OF 8.00 UNITS/ACRE. THIS REQUEST IS TO REZONE 11.00 ACRES FROM RS-15 TO A PLANNED RESIDENTIAL DEVELOPMENT (PRD). THE UNITS WILL BE SOLD UNDER A HORIZONTAL PROPERTY REGIME. THERE WILL BE AN H.O.A TO MAINTAIN THE COMMON AREAS, WHICH INCLUDES STREETS, BUILDING EXTERIORS, A PAVILION, A STORMWATER AREA, AND ALL OTHER PROPERTY. THE PROPOSED TOWNHOMES SIZES WILL RANGE FROM 1,500-2,100 SQUARE FEET. THE DEVELOPMENT WILL INCLUDE AN AMENITIES PROGRAM THAT WILL INCLUDE A WALKING TRAIL AROUND THE PROPOSED STORMWATER AREA, A PAVILION, AND SIDEWALKS ALONG BOTH SIDES OF ALL STREETS TO CREATE A WALKING CIRCUIT.

- 88 TOWNHOME UNITS WITH 2 BEDROOMS OR MORE.
- THE UNITS WILL RANGE IN SIZE FROM 1,500 S.F. TO 2,100 S.F. THE UNITS ARE A TYPICAL 25' WIDE BY 42' DEEP.
- SETBACKS:
 - FRONT = 25 FEET BEHIND SIDEWALK
 - REAR = 20 FEET BETWEEN BUILDINGS AND TO ADJACENT PROPERTY LINES
 - REAR = 30 FEET BETWEEN BUILDINGS AND ADJACENT PROPERTY LINES WITH OAKTON & BLACKMAN MEADOWS
 - SIDE = 10 FEET BETWEEN BUILDINGS AND 20 FEET TO ADJACENT PROPERTY LINES
 - SIDE = 30 FEET BETWEEN BUILDINGS AND ADJACENT PROPERTY LINES WITH OAKTON & BLACKMAN MEADOWS
- ALL STREETS WILL BE PRIVATE AND MAINTAINED BY THE H.O.A.
- SIDEWALKS ALONG BOTH SIDES OF ALL STREETS THROUGHOUT THE DEVELOPMENT TO CREATE A PEDESTRIAN FRIENDLY NEIGHBORHOOD.
- ENTRANCE OFF MANSON PIKE WILL HAVE A NEW ENTRANCE SIGN CONSTRUCTED OF MASONRY MATERIALS AND ANCHORED BY LANDSCAPING.
- ALL HOMES WILL BE REQUIRED TO BE CONSTRUCTED WITH A MIXTURE OF BRICK, STONE, CEMENT BOARD SIDING, AND VINYL SIDING. A REPRESENTATION OF MATERIAL MIXTURES ARE OUTLINED IN THE PROPOSED HOME PAGES.
- EACH TOWNHOME WILL PROVIDE A MINIMUM OF 2 PARKING SPACES PER UNIT (1 IN THE DRIVEWAY & 1 IN THE GARAGE).
- ALL GARAGES WILL BE A MINIMUM 25' BEHIND THE SIDEWALK. ALL WILL PROVIDE A MINIMUM OF ONE CAR PARKING IN THE DRIVEWAY, WHILE END UNITS WILL PROVIDE A 2 CAR DRIVEWAY.
- ALL GARAGES WILL NOT BE ALLOWED TO BE USED FOR STORAGE AND WILL ONLY BE ALLOWED TO BE USED FOR VEHICULAR PARKING. THIS WILL BE ENFORCED BY THE H.O.A. AND IN THE RESTRICTIVE COVENANTS.
- ALL DRIVEWAYS WILL BE CONCRETE.
- ALL FRONT AND SIDE YARDS WILL BE SODDED, WHILE REAR YARDS WILL BE SEED AND STRAW.
- OPEN SPACE AREA AROUND THE PAVILION AND THE OPEN SPACE ISLAND WILL ALSO BE SODDED. THE REMAINING OPEN SPACE AREAS AROUND THE STORMWATER POND, AND DRAINAGE EASEMENTS WILL BE SEED MATTED.
- PRIOR TO CONSTRUCTION PLAN REVIEW, A COMPLETE AND THOROUGH DESIGN OF THE STORMWATER MANAGEMENT SYSTEM AND FACILITIES WILL BE COMPLETED.
- ALL UTILITIES WILL BE UNDERGROUND.
- SOLID WASTE SERVICE WILL BE PROVIDED BY PRIVATE HAULER VIA A TRASH COMPACTOR
- STREET LIGHTS WILL BE STANDARD MED STREET LIGHTS.
- ALL HOME OWNERS WILL BE REQUIRED TO BE A MEMBER OF THE H.O.A.



	UNITS	ACRES
PHASE 1	25	4.58
PHASE 2	26	3.03
PHASE 3	19	1.7
PHASE 4	18	2.11

- THE PROJECT IS ANTICIPATED TO BE BUILT IN FOUR PHASES.
- CONSTRUCTION OF PHASE 1 IS PLANNED TO BEGIN WITHIN 120-150 DAYS AFTER THE COMPLETION OF THE REZONING PROCESS.
- THE TIMING OF THE REMAINING PHASES OF CONSTRUCTION WILL BE MARKET DRIVEN AND DEPENDENT UPON THE ABSORPTION OF THE UNITS IN THE PREVIOUS SECTION.
- IN GENERAL, FOLLOWING SECTION CONSTRUCTION WILL BEGIN AFTER THE PREVIOUS PHASE IS 80%-85% SOLD.
- ALL SIDEWALKS ARE LOCATED IN THE COMMON AREAS OF THE DEVELOPMENT. ALL SIDEWALKS WILL BE MAINTAINED BY THE H.O.A. ONCE INSTALLED. ANY SIDEWALKS IN COMMON AREAS LOCATED BETWEEN THE FRONT, SIDE, OR REAR BUILDING ELEVATIONS AND THE ADJACENT ROADWAY SHALL BE CONSTRUCTED BY THE HOME BUILDER. ANY SIDEWALKS LOCATED IN COMMON AREAS NOT ASSOCIATED WITH BUILDING FRONTAGE SHALL BE INSTALLED BY THE DEVELOPER.
- EACH PHASE IS ANTICIPATED TO RANGE IN SIZE FROM 15-30 DWELLING UNITS.
- PHASE 1 WILL INCLUDE THE ENTRANCE SIGNAGE AT MANSON PIKE, AS WELL AS THE STORMWATER AREA OPEN SPACE.



BUILDING AND DRIVEWAY DIMENSIONS



TOWNHOME ELEVATION

THE ELEVATIONS ARE MEANT TO CONVEY THE GENERAL APPEARANCE AND FUNCTIONALITY OF THE BUILDINGS.

- ALL UNITS WILL RANGE IN SIZE FROM 1,500 S.F. TO 2,100 S.F..
- ALL UNITS WILL HAVE 1 CAR GARAGES AND WILL BE FRONT LOADED.
- ALL GARAGES WILL BE SET BACK A MINIMUM OF 25 FEET FROM THE SIDEWALK TO PROVIDE A DRIVEWAY PARKING SPACE.
- THE HOMES WILL BE 2-STORY BUILDINGS.
- ALL HOMES WILL HAVE EAVES.
- MAXIMUM BUILDING HEIGHT SHALL BE 35'.
- ALL HOMES WILL HAVE AT LEAST 2 BEDROOMS.
- GARAGE DOORS WILL BE DECORATIVE AND HAVE A NEUTRAL COLOR (NOT WHITE).
- ALL TOWN HOMES WILL BE SOLD UNDER THE HORIZONTAL PROPERTY REGIME ACT.

BUILDING ELEVATIONS

PLEASE REFERENCE PAGES 13 & 14 FOR GRAPHICAL ELEVATIONS DEPICTING THE OPTIONS LISTED BELOW:

- FRONT ELEVATIONS** WILL BE CONSTRUCTED WITH A MIXTURE OF BRICK, STONE, OR CEMENT BOARD SIDING. VINYL SIDING WILL BE USED IN THE TRIM AND SOFFIT AREAS ONLY.
- REAR ELEVATIONS** (UNIT-TO-UNIT FACING) WILL BE CONSTRUCTED PRIMARILY WITH HEAVY GAUGE VINYL SIDING. VINYL SIDING WILL BE USED IN THE TRIM AND SOFFIT AREAS.
- SIDE ELEVATIONS** (STREET-FACING & BOUNDARY-FACING) WILL BE CONSTRUCTED WITH WITH BRICK OR STONE ON THE FIRST FLOOR, AND HEAVY-GAUGE VINYL SIDING OR CEMENT BOARD ON THE SECOND FLOOR. VINYL SIDING WILL BE USED IN THE TRIM AND SOFFIT AREAS.
- SIDE ELEVATIONS** (UNIT-TO-UNIT FACING) WILL BE CONSTRUCTED PRIMARILY WITH HEAVY GAUGE VINYL SIDING, BUT WILL ALLOW FOR CEMENT BOARD SIDING. VINYL SIDING WILL BE USED IN THE TRIM AND SOFFIT AREAS.
- REAR ELEVATIONS** (STREET-FACING & BOUNDARY-FACING) WILL BE CONSTRUCTED WITH MIXTURE OF MATERIAL OPTIONS AS SHOWN ON PAGE 14. THE DEVELOPER COMMITS TO USING A VARIETY OF EXTERIOR MATERIALS, INCLUDING BRICK, STONE, CEMENT BOARD SIDING, AND HEAVY-GAUGE VINYL SIDING, AS SHOWN ON PAGE 14. THE DEVELOPER COMMITS TO BREAKING UP THE MATERIALS TO CREATE INTEREST, AS SHOWN ON PAGE 14. VINYL SIDING WILL ALSO BE USED IN THE TRIM AND SOFFIT AREAS.
- REAR & SIDE ELEVATIONS** (ALONG BOUNDARY WITH OAKTON & BLACKMAN MEADOWS) WILL BE CONSTRUCTED WITH A MIXTURE OF BRICK, STONE, AND SIDING SIMILAR TO REAR ELEVATION 'E' ABOVE. THE ONLY DIFFERENCE IS THAT VINYL SIDING SHALL BE PROHIBITED, ONLY SIDING PERMITTED SHALL BE CEMENT FIBER BOARD. VINYL SIDING WILL BE USED IN TRIM AND SOFFIT AREAS.



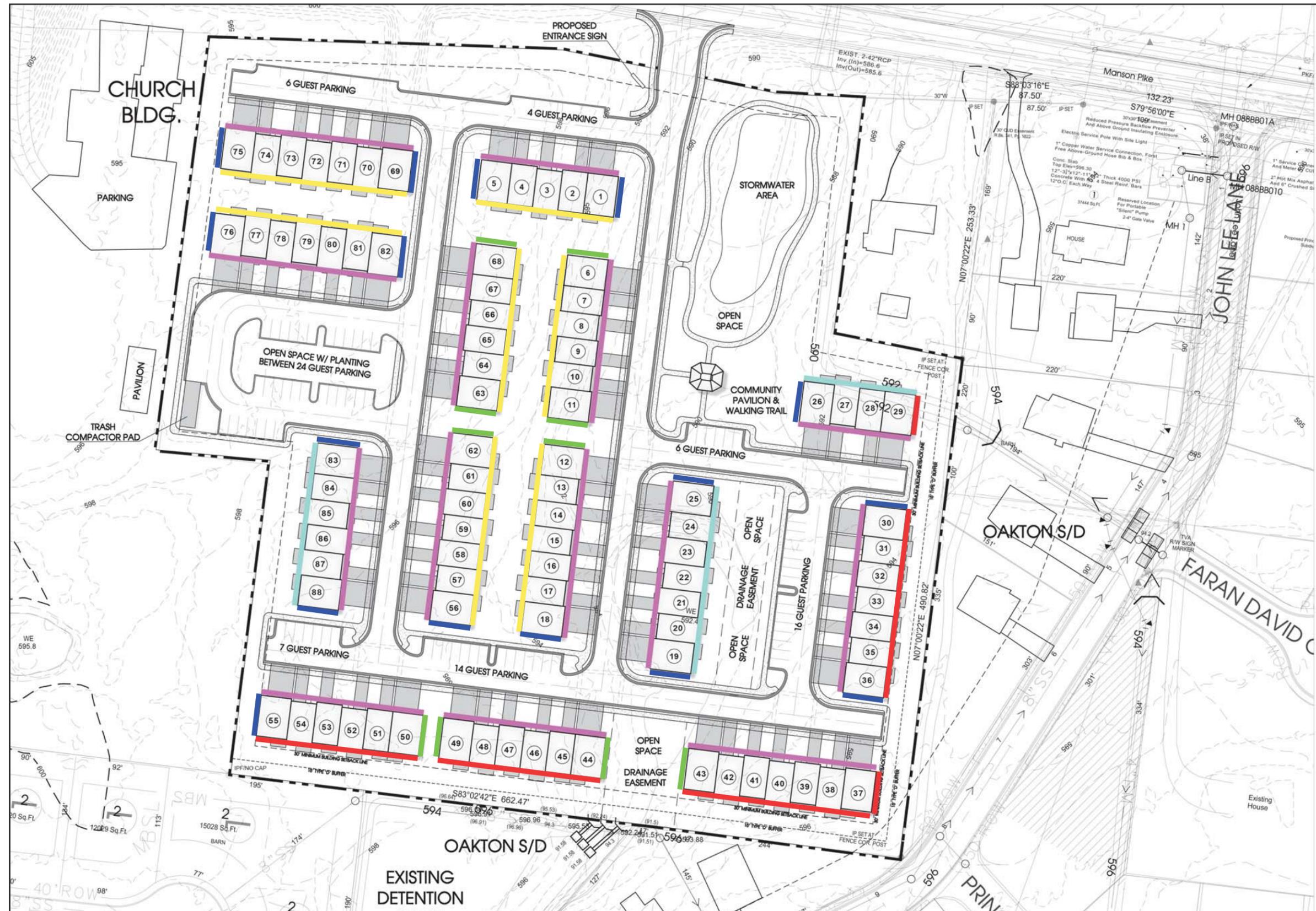
EXAMPLE OF THE CEMENT BOARD (DIFFERENT COLORS WILL BE ALLOWED)



EXAMPLE OF THE STONE VENEER (DIFFERENT COLORS, CUTS, PATTERNS WILL BE ALLOWED)



EXAMPLE OF POSSIBLE BRICK (DIFFERENT COLORS WILL BE ALLOWED)



NOT TO SCALE

- | | |
|---|--|
| FRONT ELEVATION - (A) | REAR ELEVATION - (B) |
| SIDE ELEVATION - (C) | REAR ELEVATION - (E) |
| SIDE ELEVATION - (D) | REAR & SIDE ELEVATION - (F) |

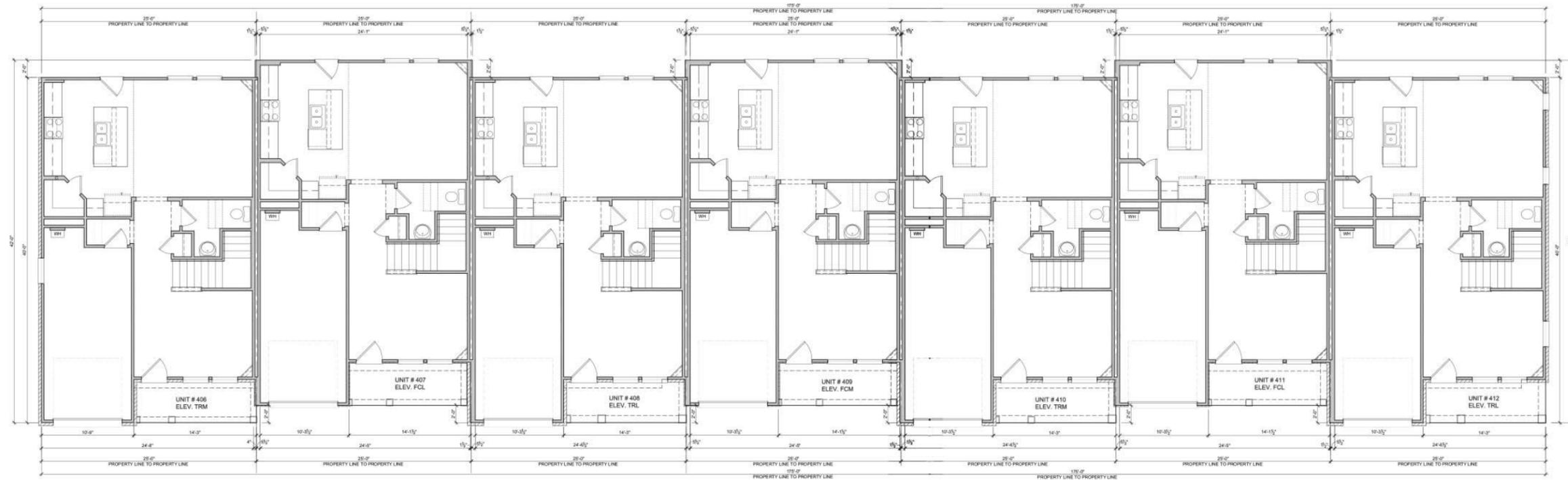


E REAR ELEVATION (STREET-FACING/BOUNDARY-FACING)

F REAR ELEVATION (FACING OAKTON AND BLACKMAN MEADOWS)

*VINYL SIDING SHALL BE PROHIBITED WITH REAR ELEVATION 'F' (ONLY SIDING PERMITTED SHALL BE CEMENT FIBER BOARD).

*VINYL SIDING WILL BE USED IN TRIM & SOFFIT AREAS.



MADDINGTON PARKE

CONCEPT PLAN

LAND USE DATA:
 TOTAL LAND AREA: ±11.00 ACRES
 TOTAL NUMBER OF LOTS: 88 TOWNHOMES
 YIELD: 85 LOTS/11.0 ACRES= 8.00 UNITS/ACRE
 TOTAL OPEN SPACE/STORMWATER: ±1.84 ACRES
 MINIMUM UNIT PAD: 1,050 SF (25' WIDE X 42' DEEP)
 MINIMUM PAD WIDTH AT FRONT SETBACK: 25 FEET

TOWNHOME UNIT MIX

BUILDING TYPE	# OF BUILDINGS	UNITS PER TYPE	END UNITS	INTERNAL UNITS
4 UNIT	1	4	2	2
5 UNIT	1	5	2	3
6 UNIT	5	30	10	20
7 UNIT	7	49	14	35
TOTAL	14 BUILDINGS	88 UNITS	28 END	60 INTERNAL

2 BEDROOM UNITS = 40%
 2 BEDROOM INTERNAL UNITS = 24 UNITS

3 BEDROOM UNITS = 60%
 3 BEDROOM INTERNAL UNITS = 36 UNITS
 3 BEDROOM CORNER UNITS = 28 UNITS

PARKING
 (64) 3 BEDROOM UNITS X 1.1 PER BEDROOM = 211 SPACES
 (24) 2 BEDROOM UNITS X 1.1 PER BEDROOM = 53 SPACES
 PARKING REQUIRED = 264 SPACES
 PARKING PROVIDED = 288 SPACES (24 SPACES OVER REQUIRED)
 60 UNITS (1 GARAGE & 1 DRIVEWAY) = 120 SPACES
 28 UNITS (1 GARAGE & 2 DRIVEWAY) = 84 SPACES
 *GARAGES ARE RESTRICTED TO VEHICULAR PARKING ONLY.
 *HOUSEHOLD STORAGE, BOAT STORAGE, ETC. IS PROHIBITED.
 VISITOR PARKING AREAS = 84 SPACES



SCALE: 1" = 120'

- UNIT PAD
- DRIVEWAY/ PATIO PAD
- SIDEWALK/ TRAIL
- STORMWATER AREA
- OPEN SPACE
- TRASH COMPACTOR

MADDINGTON PARKE HAS BEEN DESIGNED WITH AMPLE OPEN SPACE AND LANDSCAPING TO PROVIDE NOT ONLY AN AESTHETICALLY PLEASING EXPERIENCE, BUT TO AID IN MITIGATING IMPACTS TO THE SURROUNDING AREAS. TO ENSURE THESE CHARACTERISTICS, SOME STANDARDS ARE OUTLINED BELOW AS WELL AS A SAMPLE PALETTE PROVIDED

LANDSCAPING CHARACTERISTICS

- OVER 10% OF THE SITE HAS BEEN SET ASIDE FOR COMMON OPEN SPACES, AMENITIES AND LANDSCAPING FOR RESIDENTS AND THEIR GUESTS.
- EXISTING TREE LINES ALONG THE BOUNDARY WITH OAKTON AND BLACKMAN MEADOWS WILL REMAIN INTACT, ASIDE FROM AREAS WHERE UTILITY AND DRAINAGE MAY BE REQUIRED.
- ALL BUILDINGS AND PARKING AREAS ADJACENT TO SURROUNDING DEVELOPMENTS HAVE BEEN SETBACK A MINIMUM 20 FEET FROM THOSE PROPERTY LINES, AND 30' FROM OAKTON AND BLACKMAN MEADOWS SUBDIVISION.
- THE EAST AND SOUTH PERIMETER WILL HAVE A TYPE 'D' LANDSCAPE BUFFER PLANTED
- ALL MECHANICAL EQUIPMENT WILL BE SCREENED WITH LANDSCAPING
- THE BASE OF THE ALL BUILDINGS WILL HAVE AT LEAST 3 FOOT LANDSCAPE BED ALONG THE FRONT AND SIDES OF BUILDINGS FACING STREETS
- THE ENTRY MONUMENT SIGN WILL BE SUPPLEMENTED WITH LANDSCAPING
- ALL LAWN AREAS ON THE FRONT AND SIDE YARDS OF THE BUILDINGS WILL BE SODDED
- ALL BACKYARDS OF THE BUILDINGS WILL BE SEEDED AND STRAWED
- THE OPEN SPACE AREA IMMEDIATELY AROUND THE PAVILLION AND THE OPEN SPACE ISLAND BETWEEN PARKING WILL BE SODDED
- ANY DRAINAGE EASEMENTS AND/SLOPES WILL BE SEED MATTED
- ALL REMAINING OPEN SPACE AREAS WILL BE SEEDED AN STRAWED
- LANDSCAPING WILL BE IN CONFORMANCE WITH CITY OF MURFREESBORO'S LANDSCAPING ORDINANCE



NOT TO SCALE

	UNIT PAD		STORMWATER AREA
	DRIVEWAY/ PATIO PAD		OPEN SPACE
	SIDEWALK/ TRAIL		TRASH COMPACTOR



CONCEPTUAL BUILDING FOUNDATION LANDSCAPING



MANSON PIKE CONCEPTUAL LANDSCAPE BUFFER



COMMUNITY WALKING TRAIL SURROUNDING THE RETENTION POND

WITH THIS REQUEST, THE PLAN WILL BE DEDICATING OVER 10% TO OPEN SPACE. THIS OPEN SPACE AREA WILL CONTAIN THE STORMWATER MANAGEMENT AREAS AS WELL AS PASSIVE RECREATIONAL AREAS. THE AMENITIES PROGRAM INCLUDES WALKING TRAILS AROUND THE STORMWATER AREA, A PAVILION FOR HOSTING ANY NEIGHBORHOOD GATHERINGS, A COUPLE OF GRILLING STATIONS AROUND THE PAVILION, AND SIDEWALKS ON BOTH SIDES OF ALL STREETS TO PROVIDE A WALKING SYSTEM LINKING THE ENTIRE NEIGHBORHOOD. AMENITIES WILL BE CONSTRUCTED WITH THE PHASE THEY ARE PART OF.

THE RESIDENTS OF MADDINGTON PARKE WILL BE REQUIRED TO BE MEMBERS OF THE H.O.A. AND HAVE ACCESS TO THE PROPOSED FACILITIES AND AMENITIES WITHIN THE DEVELOPMENT. AS A MEMBER OF THE H.O.A., THE RESIDENTS WILL BE SUBJECT TO RESTRICTIVE COVENANTS AND BE REQUIRED TO PAY MEMBERSHIP DUES AS DETERMINED BY THE 3RD PARTY MANAGEMENT COMPANY.



COMMUNITY PAVILION



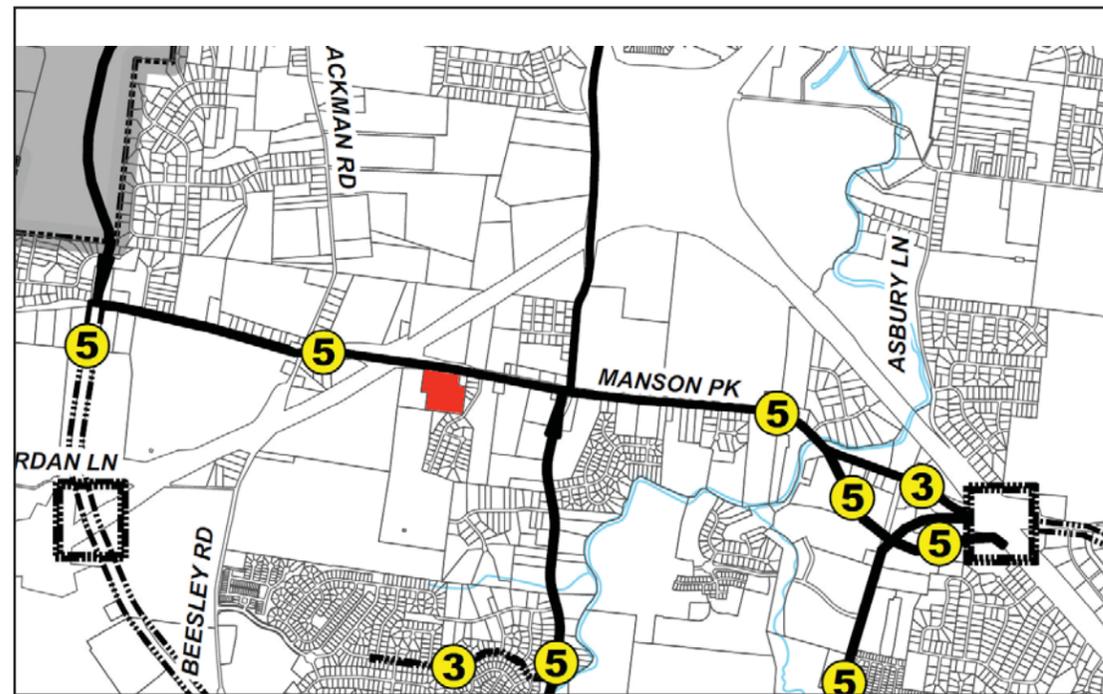
WALKING PATH AROUND A POND



GRILLING STATION



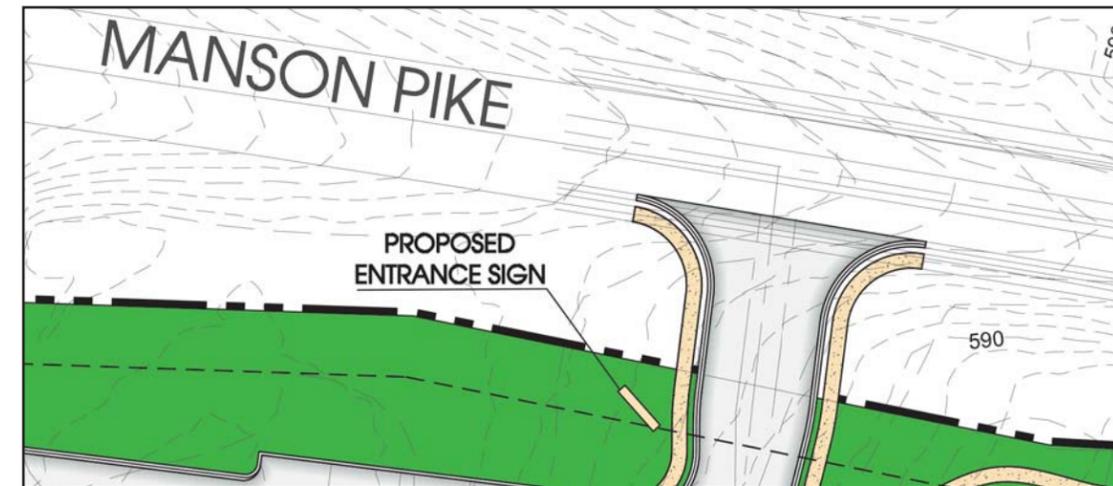
CONTINUOUS SIDEWALK THROUGHOUT THE PROPERTY



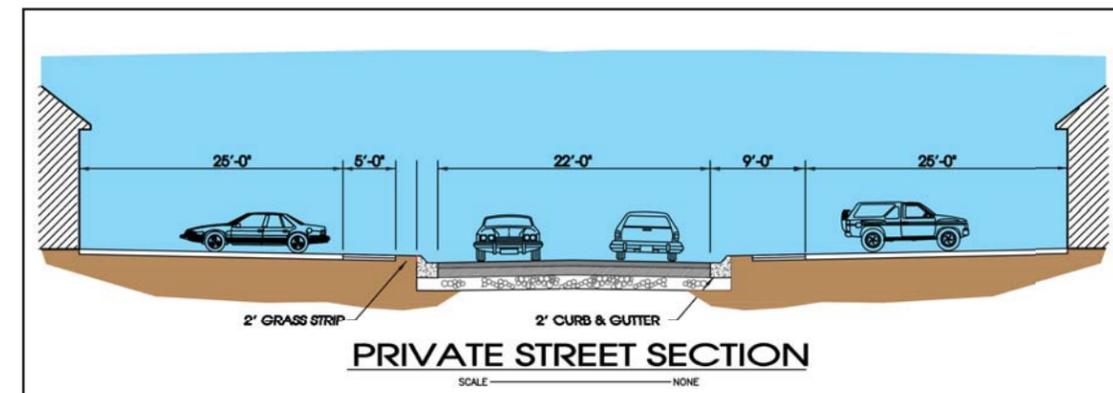
THOROUGHFARE PLAN

THE MAIN ENTRANCE TO MADDINGTON PARKE IS LOCATED ALONG THE SOUTH SIDE OF MANSON PIKE. HERE THE NEIGHBORHOOD ENTRANCE SIGN WILL GREET RESIDENTS AND GUESTS AS THEY ENTER THE NEIGHBORHOOD. THE ENTRANCE WILL BE FURTHER ENHANCED WITH LANDSCAPING TO ADD TO THE WELCOMING EXPERIENCE. ALL STREETS WITHIN MADDINGTON PARKE WILL BE PRIVATE AND PROVIDE A 22 FOOT WIDE PAVEMENT CROSS-SECTION WITH 2 FEET OF CURB & GUTTER ALONG ALL EDGES. SIDEWALKS WILL BE PROVIDED ON BOTH SIDES OF ALL STREETS WITH A 2 FOOT GRASS STRIP BETWEEN THE BACK OF CURB AND SIDEWALK. THERE ARE 75 GUEST PARKING SPACES LOCATED IN VARIOUS PLACES ALONG THE STREETS TO PROVIDE ADDITIONAL PARKING FOR VISITORS.

PURSUANT TO THE MURFREESBORO MAJOR THOROUGHFARE PLAN, MANSON PIKE IS PLANNED TO BE UP-GRADED FROM ITS CURRENT 2 LANE COUNTY ROAD CROSS-SECTION TO A 5 LANE MAJOR ARTERIAL. CURRENTLY, MANSON PIKE IS A 3 LANE CURB & GUTTER CROSS-SECTION THAT ENDS JUST EAST OF THE NORTH-EAST CORNER OF THE DEVELOPMENT. WITH THIS DEVELOPMENT, THE CITY IS REQUESTING THAT MANSON PIKE BE WIDENED TO A 3 LANE CROSS-SECTION FROM THE END POINT OF THE CURRENT 3 LANE DESIGN TO MADDINGTON PARKE'S ENTRANCE. THEN FROM THE ENTRANCE WEST TOWARDS THE 840 OVERPASS, IT TAPERS BACK TO EXISTING 2 LANE CROSS-SECTION. THIS NEW 3 LANE SEGMENT WILL NOT HAVE CURB & GUTTER, BUT WILL HAVE A PAVED SHOULDER WITH A GRAVEL EDGE. THE MIDDLE LANE IN THE NEW ROADWAY WILL BE STRIPED TO FUNCTION AS A DEDICATED LEFT HAND TURN LANE INTO MADDINGTON PARKE. THIS ENTIRE SECTION OF MANSON PIKE ALONG THE DEVELOPMENT LIES WITHIN TDOT'S GRADING TAPER ZONE FOR THE 840 OVERPASS. THE APPLICANT ALSO UNDERSTANDS THAT DEDICATION OF RIGHT-OF-WAY AND/OR EASEMENTS MAY BE REQUIRED WITH THIS PROJECT AND IS READY TO PARTICIPATE AS NECESSARY.



ENTRANCE INTO MADDINGTON PARKE



PRIVATE STREET SECTION

1.) A MAP SHOWING AVAILABLE UTILITIES, EASEMENTS, ROADWAYS, RAIL LINES AND PUBLIC RIGHT-OF-WAY CROSSING AND ADJACENT TO THE SUBJECT PROPERTY.

RESPONSE: AN EXHIBIT IS GIVEN ON PAGE 3 ALONG WITH DESCRIPTIONS OF EACH.

2.) A GRAPHIC RENDERING OF THE EXISTING CONDITIONS AND/OR AERIAL PHOTOGRAPH(S) SHOWING THE EXISTING CONDITIONS AND DEPICTING ALL SIGNIFICANT NATURAL TOPOGRAPHICAL AND PHYSICAL FEATURES OF THE SUBJECT PROPERTY; LOCATION AND EXTENT OF WATER COURSES, WETLANDS, FLOODWAYS, AND FLOODPLAINS ON OR WITHIN ONE HUNDRED (100) FEET OF THE SUBJECT PROPERTY; EXISTING DRAINAGE PATTERNS; LOCATION AND EXTENT OF TREE COVER; AND COMMUNITY GREENWAYS AND BICYCLE PATHS AND ROUTES IN PROXIMITY TO THE SUBJECT PROPERTY.

RESPONSE: AN EXHIBIT IS GIVEN ON PAGE 5 THAT SHOWS THE EXISTING CONTOURS AND DRAINAGE PATTERNS ALONG WITH AN AERIAL PHOTOGRAPH OF THE AREA. NO PORTION OF THE PROPERTY IS SUBJECT TO FLOODPLAINS OR FLOODWAYS, AND THE SITE ULTIMATELY DRAINS UNDER 840.

3.) A PLOT PLAN, AERIAL PHOTOGRAPH, OR COMBINATION THEREOF DEPICTING THE SUBJECT AND ADJOINING PROPERTIES INCLUDING THE LOCATION OF STRUCTURES ON-SITE AND WITHIN TWO HUNDRED (200) FEET OF THE SUBJECT PROPERTY AND THE IDENTIFICATION OF THE USE THEREOF.

RESPONSE: EXHIBITS AND PHOTOGRAPHS ON PAGES 3, 5, 6 & 7 GIVE THE LOCATION OF EXISTING STRUCTURES ON THE SUBJECT PROPERTY AND THE SURROUNDING PROPERTIES. AN EXHIBIT ON PAGE 6 GIVES THE ZONING OF THOSE SAME PROPERTIES.

4.) A DRAWING DEFINING THE GENERAL LOCATION AND MAXIMUM NUMBER OF LOTS, PARCELS OR SITES PROPOSED TO BE DEVELOPED OR OCCUPIED BY BUILDINGS IN THE PLANNED DEVELOPMENT; THE GENERAL LOCATION AND MAXIMUM AMOUNT OF AREA TO BE DEVELOPED FOR PARKING; THE GENERAL LOCATION AND MAXIMUM AMOUNT OF AREA TO BE DEVOTED TO OPEN SPACE AND TO BE CONVEYED, DEDICATED, OR RESERVED FOR PARKS, PLAYGROUNDS, RECREATION USES, SCHOOL SITES, PUBLIC BUILDINGS AND OTHER COMMON USE AREAS; THE APPROXIMATE LOCATION OF POINTS OF INGRESS AND EGRESS AND ACCESS STREETS; THE APPROXIMATE LOCATION OF PEDESTRIAN, BICYCLE AND VEHICULAR WAYS OR THE RESTRICTIONS PERTAINING THERETO AND THE EXTENT OF PROPOSED LANDSCAPING, PLANTING, SCREENING, OR FENCING.

RESPONSE: PAGES 8-12 LISTS STANDARDS AND EXHIBITS SHOWING THE CONCEPT PLAN WHICH SHOWS EACH OF THESE ITEMS.

5.) A TABULATION OF THE MAXIMUM NUMBER OF DWELLING UNITS PROPOSED INCLUDING THE NUMBER OF UNITS WITH TWO (2) OR LESS BEDROOMS AND THE NUMBER OF UNITS WITH MORE THAN TWO (2) BEDROOMS.

RESPONSE: PAGE 8 LISTS THIS INFORMATION.

6.) A TABULATION OF THE MAXIMUM FLOOR AREA PROPOSED TO BE CONSTRUCTED, THE F.A.R. (FLOOR AREA RATIO), THE L.S.R. (LIVABILITY SPACE RATIO), AND THE O.S.R. (OPEN SPACE RATIO). THESE TABULATIONS ARE FOR THE PRD.

FLOOR AREA RATIO (F.A.R.)	LIVABILITY SPACE RATIO (L.S.R.)	OPEN SPACE RATIO (O.S.R.)
<p>TOTAL MAXIMUM FLOOR AREA = (2,000X88) = 176,000 SF TOTAL SITE AREA = 479, 160 SF FAR = (176,000)/ (479, 160) = .37</p>	<p>TOTAL MAXIMUM FLOOR AREA = 176,000 SF TOTAL SITE AREA = 479, 160 SF TOTAL DRIVE/PARKING AREA = 25, 520 SF TOTAL LIVABLE SPACE = (479, 160) - (25, 520) = 453, 640 SF LIVABILITY SPACE RATIO = (453, 640)/ (176,000) = 2.58</p>	<p>TOTAL OPEN SPACE = 87, 749 SF TOTAL MAXIMUM FLOOR AREA = 176,000 SF OPEN SPACE RATIO = (87, 749)/ (176,000) = .50</p>

7.) A WRITTEN STATEMENT GENERALLY DESCRIBING THE RELATIONSHIP OF THE PROPOSED PLANNED DEVELOPMENT TO THE CURRENT POLICIES AND PLANS OF THE CITY AND HOW THE PROPOSED PLANNED DEVELOPMENT IS TO BE DESIGNED, ARRANGED AND OPERATED IN ORDER TO PERMIT THE DEVELOPMENT AND USE OF NEIGHBORING PROPERTY IN ACCORDANCE WITH THE APPLICABLE REGULATIONS OF THIS ARTICLE.

RESPONSE: THE PROPERTY IS CURRENTLY ZONED RS-15. THE SURROUNDING AREAS HAS A MIXTURE OF RESIDENTIAL PROPERTIES. THE CONCEPT PLAN AND DEVELOPMENT STANDARDS COMBINED WITH THE ARCHITECTURAL REQUIREMENTS OF THE HOMES SHOWN WITHIN THIS BOOKLET ALIGN AND CLOSELY MIMIC THE TYPE OF DEVELOPMENTS IN THE SURROUNDING NEIGHBORHOODS AND ARE ENVISIONED TO COMPLETE THE DEVELOPMENT IN THIS AREA.

9.) PROPOSED MEANS OF ASSURING THE CONTINUED MAINTENANCE OF COMMON SPACE OR OTHER COMMON ELEMENTS AND GOVERNING THE USE AND CONTINUED PROTECTION OF THE PLANNED DEVELOPMENT. FOR THIS PURPOSE, THE SUBSTANCE OF ANY PROPOSED RESTRICTIONS OR COVENANTS SHALL BE SUBMITTED.

RESPONSE: THIS REQUIREMENT HAS BEEN ADDRESSED ON PAGE 11.

10.) A STATEMENT SETTING FORTH IN DETAIL EITHER (1) THE EXCEPTIONS WHICH ARE REQUIRED FROM THE ZONING AND SUBDIVISION REGULATIONS OTHERWISE APPLICABLE TO THE PROPERTY TO PERMIT THE DEVELOPMENT OF THE PROPOSED PLANNED DEVELOPMENT OR (2) THE BULK, USE, AND/OR OTHER REGULATIONS UNDER WHICH THE PLANNED DEVELOPMENT IS PROPOSED.

RESPONSE: THE FRONT SETBACKS REQUESTED ARE UP TO 5-FEET LESS THAN THE REQUIRED SETBACK FOR A RM-12 DEVELOPMENT. THE SIDE SETBACKS REQUESTED ARE UP TO 10 FEET LESS THAN REQUIRED FOR A RM-12 DEVELOPMENT. THE REAR SETBACKS ARE UP TO 5-FEET LESS THAN THE REQUIRED SETBACK FOR A RM-12 DEVELOPMENT. THE DENSITY IS WITHIN THE ALLOWABLE DENSITY FOR A RM-12 DEVELOPMENT. THE LOT COVERAGE IS WITHIN THE ALLOWABLE LOT COVERAGE FOR A RM-12 DEVELOPMENT.

11.) THE NATURE AND EXTENT OF ANY OVERLAY ZONE AS DESCRIBED IN SECTION 24 OF THIS ARTICLE AND ANY SPECIAL FLOOD HAZARD AREA AS DESCRIBED IN SECTION 34 OF THIS ARTICLE

RESPONSE: THIS PROPERTY IS NOT IN THE AIRPORT OVERLAY DISTRICT (AOD), BATTLEFIELD PROTECTION DISTRICT (BPD), GATEWAY DESIGN OVERLAY DISTRICT (GDO), HISTORIC DISTRICT (H-1), OR PLANNED SIGNAGE OVERLAY DISTRICT (PS). NO PORTION OF THIS PROPERTY LIES IN ZONE AE, WITHIN THE 100-YEAR FLOODPLAIN, ACCORDING TO THE CURRENT FEMA MAP PANEL.

12.) THE LOCATION AND PROPOSED IMPROVEMENTS OF ANY STREET DEPICTED ON THE MURFREESBORO MAJOR THOROUGHFARE PLAN AS ADOPTED AND AS IT MAY BE AMENDED FROM TIME TO TIME.

RESPONSE: PAGE 12 DISCUSSES THE MAJOR THOROUGHFARE PLAN. MANSON PIKE IS PLANNED TO BE UPGRADED TO A 5-LANE ROADWAY.

13.) THE NAME, ADDRESS, TELEPHONE NUMBER, AND FACSIMILE NUMBER OF THE APPLICANT AND ANY PROFESSIONAL ENGINEER, ARCHITECT, OR LAND PLANNER RETAINED BY THE APPLICANT TO ASSIST IN THE PREPARATION OF THE PLANNED DEVELOPMENT PLANS. A PRIMARY REPRESENTATIVE SHALL BE DESIGNATED.

RESPONSE: THE PRIMARY REPRESENTATIVE IS ROB MOLCHAN OF SEC, INC. DEVELOPER/ APPLICANT IS ALCORN PROPERTIES, LLC. CONTENT INFO FOR BOTH IS PROVIDED ON COVER.

14.) ARCHITECTURAL RENDERINGS, ARCHITECTURAL PLANS OR PHOTOGRAPHS OF PROPOSED STRUCTURES WITH SUFFICIENT CLARITY TO CONVEY THE APPEARANCE OF PROPOSED STRUCTURES. THE PLAN SHALL INCLUDE A WRITTEN DESCRIPTION OF PROPOSED EXTERIOR BUILDING MATERIALS INCLUDING THE SIDING AND ROOF MATERIALS, PORCHES, AND DECKS. THE LOCATION AND ORIENTATION OF EXTERIOR LIGHT FIXTURES AND OF GARAGES SHALL BE SHOWN IF SUCH ARE TO BE INCLUDED IN THE STRUCTURES.

RESPONSE: PAGES 8-12 SHOW THE ARCHITECTURAL CHARACTER OF THE PROPOSED HOMES WITH GARAGES SHOWN AND BUILDING MATERIALS LISTED. EACH HOME WILL BE ALLOWED TO HAVE REAR PORCHES AND ATTACHED LIGHTING. HOWEVER, EXACT CONFIGURATION FOR THESE ITEMS IS UNKNOWN AND WILL BE DETERMINED AS EACH UNIT IS BUILT.

15.) IF A DEVELOPMENT ENTRANCE SIGN IS PROPOSED THE APPLICATION SHALL INCLUDE A DESCRIPTION OF THE PROPOSED ENTRANCE SIGN IMPROVEMENTS INCLUDING A DESCRIPTION OF LIGHTING, LANDSCAPING, AND CONSTRUCTION MATERIALS.

RESPONSE: PAGE 2 & 14 SHOWS THE SITE PLAN INDICATING THE LOCATION OF THE ENTRANCE SIGN. ALSO, PAGE 12 PROVIDES A PICTURE OF A SIMILAR SIGN. THE SIGN WILL BE CONSTRUCTED OF MASONRY. IF LIT, THE SIGN WILL HAVE UPLIGHTING. THE SIGN WILL HAVE LANDSCAPING AROUND ITS BASE. ALL ELEMENTS OF THE SIGN WILL BE IN ACCORDANCE WITH THE CITY OF MURFREESBORO'S SIGN ORDINANCE.

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Mr. Rob Molchan was in attendance to represent the applicant. He came forward and made known the applicant would be modeling this subdivision after Southern Meadows. Continuing, Mr. Molchan began providing the details for this development from the applicant's program book. The applicant would be including nine percent of open space that would provide detention and recreation space for walking.

Vice Chairman Doug Young opened the public hearing. No one came forward to speak for or against the rezoning request; therefore, Vice Chair Young closed the public hearing.

Ms. Kathy Jones and Vice Chairman Young complimented the applicant for this being a great looking development.

Ms. Kathy Jones made a motion to approve the rezoning request, seconded by Mr. Ken Halliburton. The motion carried by unanimous vote in favor.

Rezoning application [2016-401] for approximately 11 acres located along Manson Pike to be rezoned from RS-15 to Maddington Parke PRD, David Alcorn applicant. Ms. Kathy Jones announced she would abstain from all discussion and vote with this rezoning request.

Mr. Matthew Blomeley began by describing the subject property located along the south side of Manson Pike, just east of State Route 840. It is currently developed with one (1) single-family residence. It was annexed by the City in early 2015 without a companion zoning request. As a result, it came into the City with an interim zoning classification of RS-15 (Single-family Residential District 15). It has since been purchased by Alcorn Properties, LLC, who has requested rezoning from the interim RS-15 zoning to PRD (Planned Residential District).

The subject property is bordered on its east and south sides by several single-family residential subdivisions zoned RS-12, including Oakton, Princeton Oaks, and Blackman Meadows. The property to the north across Manson Pike is in the unincorporated County and is developed with

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single-family residential uses and a church. There is also a church on the property directly to the west. Further to the west, on the other west side of the church, is a vacant tract that has passed second reading before the City Council for rezoning to CH (Commercial Highway) and CF (Commercial Fringe).

The proposed PRD is for a new residential development called Maddington Parke, which would consist of 88 dwelling units to be sold under a horizontal property regime. All streets would be private. A two-story townhome style of construction is proposed, with units ranging from 1,500 square-feet to 2,100 square-feet. Each unit will have its own garage and a driveway, allowing for 2-4 cars to park at each home site. There will also be 84 guest parking spaces provided throughout the development. The development will exceed minimum multi-family residential parking requirements. Per the Planning Commission's direction at the January 20 work session, the plan has been revised to commit to the use of a compactor to handle solid waste.

Front elevations will consist of brick, stone, and cement board siding for exterior materials. In addition, after the discussion at the January 20 work session, the applicant has revised the plans to flip the buildings adjacent to Manson Pike so that the fronts of these two buildings are oriented to face Manson Pike. Side elevations adjacent to internal streets and the perimeter property boundary will consist of brick on the first floor and heavy-gauge vinyl siding or cement board siding on the second floor. Rear elevations adjacent to the perimeter property boundary have been upgraded, per the Planning Commission's direction at the January 20 work session, and will consist of a mixture of brick, stone, cement board siding, and heavy-gauge vinyl siding. The side and rear elevations facing the sides and rears of other internal buildings will consist primarily of heavy-gauge vinyl siding.

The future land use map contained in the General Development Plan for the Blackman Community recommends that the subject property develop as "Office/Distribution." It defines "Office/Distribution" as "office and distribution flex space in a well-planned setting" with

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permitted uses of “office showroom, distribution facilities, and ancillary retail.” As a caveat, however, the plan stated that the designation of this property as “Office/Distribution” largely hinged on accessibility to the Veterans Parkway interchange. The future land use map showed a planned arterial road running from Veterans Parkway to Manson Pike parallel to State Route 840. This arterial road was never constructed and, with the development of the single-family subdivisions in this area, such a road improvement seems very unlikely. Without this roadway, it may be argued that the “Office/Distribution” recommendation is no longer applicable. With respect to the proposed PRD at hand, it might also be argued that such a multi-family use would be an appropriate transition from the single-family residential zoning to the east to the commercial zoning to the west.

Mr. Eddie Smotherman inquired, what was the building behind the church, in which Mr. Rob Molchan made known that it was a pavilion.

Mr. Rob Molchan was in attendance to represent the applicant. Mr. Molchan came forward to begin a power point presentation in which he provided details from the applicant’s program book. Included with the program book the applicant will be committed to the following:

- All garages would be for vehicle use only and the development would be managed by the Home Owners Association.
- They are committing to a Type C landscape buffer around fifty percent of their property line adjacent to Oakton and Blackman Meadows.
- They are committing to keep as much as possible of the existing trees along the property line for additional landscaping.
- This development would occur in four phases.

Vice Chairman Young wanted additional information regarding mailboxes. Mr. Molchan explained they were still working with the post office to see if the boxes could be placed at each

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front entry door. If that does not work they propose a kiosk in the common open space with the pavilion area.

Mr. Kirt Wade wanted to know what type buffer would be placed between their property line and the existing church. Mr. Molchan answered currently there was an existing row of scrub brush, hack berries etc. in place. There would not be a Type C buffer at this location.

Vice Chairman Young opened the public hearing.

1. **Mr. Tom Stevens 1743 John Lee Lane** – opposes this rezoning request. He does not want his view being two story buildings.
2. **Ms. Virginia Griffith 1620 John Lee Lane** – opposes this rezoning request. Where would the trash compactor be located? She requested for more information to be provided.
3. **Ms. Ann Strode 1735 John Lee Lane** – opposes this rezoning request. She does not want her view being two story buildings.
4. **Mr. John Edmonds 1612 John Lee Lane** – opposes this rezoning request. He does not want his view being two story buildings. The landscaping during the winter time will not provide proper screening. Also, he has concerns regarding the smell coming from the trash compactor.
5. **Ms. Alexis Denton 4217 Princeton Oaks Lane**- opposes this rezoning request. She stated the Blackman area as a whole has been disservice.
6. **Mr. Leslie Smith – 3949 Hallmark Drive**- opposes this rezoning request. He feels this rezoning request is an incompatible land use.
7. **Mr. John Moorehead 4321 Pender Court** – opposes this rezoning request. He agrees with all of his neighbors comments.
8. **Ms. Linda Lerchenfeld 1628 John Lee Lane** – opposes this rezoning request. She has concerns with the development being placed right on the street.
9. **Ms. Ashley Edmonds 1612 John Lee Lane** – opposes this rezoning request.

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Vice Chairman Young closed the public hearing.

Mr. Eddie Smotherman commented these were not low income homes. Can we prevent a home being rented? Mr. Blomeley began by addressing the concerns being the following:

- The trash compactor would be located along the far west side of the property, adjacent to the church property
- They propose selling the units under the Horizontal Property Regime development.
- The Home Owners Association could prevent renting in the subdivision, but not be enforced by the City of Murfreesboro
- What has been provided and shown in the PRD planned book is required to be adhered to. If approved, the only way to deviate from the PRD would be to come back before the Planning Commission to request amendments
- The seven unit buildings would have different elevations and materials

Mr. Sam Huddleston came forward making known the City has Manson Pike on the Major Thoroughfare Plan from Fortress Boulevard to Veterans Parkway. It has been proposed as a five lane curb and gutter road section. With this development the City anticipates the developer will make improvements to their part of Manson Pike. The applicant has allocated a left turn lane with this plan.

Vice Chairman Young made known it has been fifteen years since the Blackman Land Use Plan Study had been created. It was during this time that Blackman area would have a commercial interchange with commercial node to provide services to the area residents. This has been planned for years.

Mr. Ken Halliburton wanted to know if the rear setbacks for this PRD and Oakton subdivision lots 30-36 is different if it were zoned RS-12. Mr. Blomeley explained that Oakton is zoned RS-

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12 and their rear setback is 25 feet. What is being proposed with this PRD would have a minimum rear setback of 20 feet from the perimeter property line.

Mr. Eddie Smotherman wanted to know whom this development was geared towards. Mr. Rob Molchan stated the homes would be a minimum of \$200,000.00. The community would be managed and maintained by a Home Owners Association. Mr. Smotherman wanted to know if the City is involved with homes being rental, in which Mr. David Ives explained the City is not involved with homes being rented.

Mr. Ken Halliburton made a motion to approve the rezoning request subject to the guarantee's which have been provided within the applicant's program book. Mr. Eddie Smotherman commented on how the developers have listened to the area neighbors and have addressed their concerns, and seconded the motion. The motion passed with one abstention from Ms. Kathy Jones.

PUD amendment [2016-404] for approximately 26 acres in the Marymont Springs Mansion Estates PUD, Bob Parks and David Alcorn applicants. Ms. Kathy Jones announced she would be abstaining from all discussion and vote.

Ms. Margaret Ann Green began by describing the subject property being a portion of the developing Marymont Springs PUD known as the Mansion Estates located west of Rucker Lane. The request is to amend a 26 acre portion of the PUD known as the Mansion Estates. Originally the applicants provided the PUD amendment area as 46 acres; however they have refined the request down to 26 acres.

The existing PUD program book identifies the Mansion Estates to be a minimum of 65 feet wide with 35' front setbacks. In 2014 the PUD was amended to reduce the front setback to 30'. The applicants now wish to amend the Mansion Estates PUD portion to reduce the lot width from 65'

ORDINANCE 16-OZ-05 amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 11 acres along Manson Pike from Single-Family Residential (RS-15) District to Planned Residential Development (PRD) District (Maddington Parke); David Alcorn, applicant [2016-401].

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. That, the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to rezone the territory indicated on the attached map.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map be zoned and approved as Planned Residential Development (PRD) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and any additional conditions and stipulations referenced in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission be and it is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

3rd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

David A. Ives
City Attorney

SEAL



840

Ordinance 16-OZ-05

Area
Rezoned from
RS-15 to PRD

MANSON PIKE

RS-15

RS-15

RS-12

URROWS AVE

LATIMER
BURROWS
AVE

OAKTON
URROWS
DR

JOHN LEE LN

PENDER CT

PRINCETON OAKS LN

CF



TENNESSEE



... creating a better quality of life

March 15, 2016

Honorable Mayor and Members of City Council:

RE: Proposed Lease with Franklin Synergy

As an item for the agenda of March 24, 2016, it is recommended that City Council approve a lease with Franklin Synergy Bank. This lease will provide for the terms and conditions of Franklin Synergy's use of 1 East College Street during construction of their new headquarters in the Gateway.

Background

In January 2016, City Council approved the acquisition of 1 East College Street and 123 East College Street from Franklin Synergy for \$1.55 million. It was the former First United Methodist Church. The site totals 1.87 acres. Closing is scheduled to occur before April 1.

Franklin Synergy acquired the property from the church in 2003. The property has three main components: the former sanctuary, the former classrooms and gymnasium and an out-building that was the former location of a realty and auction company that was later acquired by Mid-South Bank/Franklin Synergy.

The bank converted the gymnasium to a bank lobby and used the building's classrooms as offices. Franklin Synergy originally hoped to convert the sanctuary to the main bank lobby, however, that never materialized. The former auction building contains the bank's mortgage division.

Proposed Lease

The Real Estate Purchase and Sale Agreement approved in January included a lease provision. Franklin Synergy Bank's new building in the Gateway is expected to be complete in late 2016. The bank desires to operate in downtown as long as possible and wishes to remain in these buildings until the City has the buildings obligated or until June 30, 2017.

Lease deal points

A complete copy of the lease is attached. The key deal points are:

- Triple net lease
- Term expires: June 30, 2017
- Rent: \$9,172 per month
- Utilities: Responsibility of Franklin Synergy
- Maintenance: Responsibility of Franklin Synergy

Administration Department

Recommendation

It is recommended that City Council approved the attached lease.

Robert J. Lyons

City Manager

C: Craig Tindall
David Ives
Paul Latture
Brian Hercules
Kathleen Hertzog
Jennifer Moody
Jim Crumley

LEASE AGREEMENT
(Triple Net)

THIS TRIPLE NET LEASE AGREEMENT (the "Lease"), dated this _____ day of March 2016, is made and entered into by the City of Murfreesboro, a Tennessee municipal corporation (the "City"), and Franklin Synergy Bank, a Tennessee state banking corporation (the "Tenant").

RECITALS

- A. Pursuant to a Purchase and Sale Agreement dated contemporaneous with the Lease, Tenant has sold the Premises (as defined below) to the City.
- B. Tenant desires to lease back the Premises from the City for a period of time.
- C. The City desires to lease the Premises to Tenant for the period and under the terms stated.

AGREEMENT

In consideration of the mutual promises and representations set forth in this Lease, the City and Tenant agree as follows:

1. Premises and Common Areas

- 1.1 Leased Premises. The City leases to Tenant and Tenant leases from the City the following (the "Premises"):

Approximately 1.87 acres designated by the Rutherford County Assessor as Parcels 8 and 9 of Map 91, Group G, including all Buildings (as defined below) and parking facilities.

- 1.2 Buildings. The Premises include all buildings located on the Premises, which are currently in use by Tenant, which have the addresses:

Building 1: 1 East College Street

Building 2: 123 E College Street.

- 2. **Term.** The City will let and Tenant will accept and rent the Premises in accordance with the terms of this Lease from February 29, 2016 (the "Commencement Date") until June 30, 2017 (the "Expiration Date"), unless earlier terminated as set forth herein (the "Lease Term"). Tenant shall have the right to terminate this Lease prior to the expiration of the Lease Term by written notice to Landlord delivered at least thirty (30) days prior to the termination date specified in such notice.

3. Rent

- 3.1 Rent. Tenant must pay monthly rent in advance, without deduction, setoff, prior notice, or demand, to the City on the first day of each month in the amount of \$9,172 per month throughout the Lease Term beginning on the Commencement Date. The first and last month's rent will be paid pro-rata based on the number of days from the Commencement Date until the end of the first month or from the first day of the month to the Expiration Date.

- 3.2 Assessments. Tenant must pay to the City, in addition to and simultaneously with any other amounts payable to the City under this Lease, a sum equal to the aggregate of any municipal, county, state, or federal excise, sales, use, or transaction privilege taxes now or hereafter legally levied or imposed against, or on account of, any or all amounts payable under this Lease by

Tenant or the receipt thereof by the City (except state, federal or any other income taxes, gift taxes, inheritance taxes and estate taxes imposed or levied against the City). Tenant must pay, prior to delinquency, all taxes levied upon fixtures, furnishings, equipment, and personal property placed on the Premises by Tenant. If any or all of Tenant's fixtures, furnishings, equipment, or personal property is assessed and taxed with any assessments or taxes paid by the City, Tenant must reimburse the City for such taxes within 10 days after delivery to Tenant by the City of a statement in writing setting forth the amount of such taxes applicable to the Tenant's property.

- 3.3 Independent Obligations. Tenant's obligation to pay the Rent and Assessments are independent of any other term, covenant, condition, or provision herein contained.

4. **Payment of Rent**

- 4.1 Recipient. Tenant must pay Rent and all other charges herein specified to the City at the address set forth herein or to another person and at another address as the City from time to time designates in writing.

- 4.2 Late Charges. Rent or other charges payable by Tenant to the City under the terms of this Lease that are not received within ten days after the date due (the "Delinquency Date") will automatically (and without notice) incur a one-time late charge of 5% of the delinquent amount.

- a. The parties acknowledge that this is a reasonable fee to compensate the City for its additional costs to process delinquencies, and is not a penalty.
- b. Further, any Rent or other charges payable by Tenant to the City and not paid prior to the Delinquency Date will bear interest from the Delinquency Date at the "Delinquency Interest Rate."
- c. As used in this Lease, the term "Delinquency Interest Rate" means the lesser of (i) 4% points over the interest rate publicly announced as prime rate from time to time by the federal reserve bank (if such term is no longer utilized, the interest rate utilized by banking institutions to replace the prime rate), or (ii) the maximum interest rate allowed by law.

- 4.3 Rights and Remedies. The City's right to receive, and the receipt or acceptance thereof, late charges or interest for delinquent amounts does not limit or restrict the City's other rights and remedies.

- a. The City's acceptance of partial payments of amounts due, or payments without inclusion of late charges or interest does not limit, restrict, or waive the City's right to collect the full amounts due and all accrued late charges and interest; nor is any endorsement or statement on any check or on any letter accompanying any check or payment as Rent an accord and satisfaction.
- b. The City may accept such check or payment without prejudice to the City's right to recover the balance of any unpaid or owing Rent or to pursue any other remedy set forth in this Lease.

- c. Receipt of a check does not constitute payment unless the check is honored by the bank upon which it is drawn, and late charges and interest will accrue from the original due date if a check is dishonored.
- d. No receipt of money by the City from Tenant after the termination of this Lease, after the service of any notice relating to the termination of this Lease, after the commencement of any suit, or after final judgment for possession of the Premises, reinstate, continue or extend the Lease Term or affect any such notice, demand, suit or judgment.

5. **Utilities**

- 5.1 Tenant must pay, prior to delinquency, all charges for gas, heating and cooling, electricity, power, telephone service, trash removal, and all other services or utilities used in, upon, or about the Premises by Tenant or any of Tenant's subtenants, licensees, or concessionaires during the Lease Term.
- 5.2 Except to the extent of the City's negligence or willful misconduct, the City is not liable for damages nor will rent or other charges abate in the event of any failure or interruption of any utility or service supplied to the Premises or Building by a utility or municipality, and no such failure or interruption entitles Tenant to terminate this Lease.

6. **Condition of the Premises.** Tenant accepts Premises "as is" and the City makes warranties with respect to condition or use of the Premises. The parties acknowledge that the Buildings are intended to be demolished, thus Tenant is not required to surrender the Premises in any specific condition and may surrender the Premises "as is" provided Tenant has not created any situation that would constitute a threat to public health or safety nor introduced any hazardous materials to the site during the Term.

7. **Tenant Improvements and Alterations**

- 7.1 Term and Conditions. Tenant will undertake any alteration or modification of the Premises Tenant believes necessary with the prior approval of the City as set forth below (the "Tenant Improvements").
- 7.2 Approval. Prior to commencing any work to the Premises that will exceed \$10,000 or will affect the structural elements of the Building, Tenant must first obtain the written consent of the City to the proposed work, by submitting to the City for the City's approval: (i) complete plans and specifications for the proposed work (which consent will not be unreasonably withheld); (ii) the name of the proposed architect and/or contractor(s) for such alterations and/or improvements; (iii) the materials to be used in connection with such alterations, including, without limitation, paint, carpeting, wall or window coverings and the use of carpet glues and other chemicals for installation of such materials; and (iv) evidence of Tenant's financial ability to complete the construction.
 - a. Submissions to the City must be made at least ten (10) days prior to the commencement of any such construction in the Premises.
 - b. Following the completion of such Tenant Improvements, Tenant may place partitions and fixtures and may make improvements and other alterations to the interior of the Premises at Tenant's expense, but Tenant must never do any structural work or work that affects the structural integrity of the Building without the further written approval of the City.

- c. Approval by the City under this provision does not obviate the requirements for permits prior to contraction or for required inspections during the course of construction.

7.3 City Supervision. The City may require that any Tenant Improvements be subject to the supervision of the City or its designee and the City may require that the work be done by the City's own employees, its construction contractors, or under the City's direction, but at the expense of Tenant; and the City may, as a condition to consenting to such work, require that Tenant provide financial security adequate in the City's judgment so that the improvements or other alterations to the Premises will be completed in a good, workmanlike and lien free manner.

7.4 Tenant's Architect and Contractor

- a. In the event the City consents to the use by Tenant of its own architect or contractor for the installation of any such alterations or improvements, prior to the commencement of such work, Tenant must provide the City with evidence that Tenant's architect or contractor has procured worker's compensation, liability and property damage insurance (naming the City as an additional insured) in a form and in an amount approved by the City, and evidence that Tenant's architect or contractor has procured the necessary permits, certificates and approvals from the appropriate governmental authorities.
- b. Tenant acknowledges and agrees that any review by the City of Tenant's plans and specifications or right of approval exercised by the City with respect to Tenant's architect or contractor is for the City's benefit only and the City does, by virtue of such review or right of approval, make any representation, warranty or acknowledgment to Tenant or to any other person or entity as to the adequacy of Tenant's plans and specifications or as to the ability, capability or reputation of Tenant's architect or contractor.

7.5 Transfer of Ownership. All Tenant Improvements upon completion become the property of the City.

8. **Fixtures; Personal Property; and Surrender of Premises**

8.1 All fixtures and furniture remain the property of Tenant and may be removed by Tenant not later than ten (10) days following the Expiration Date or the earlier termination of the Lease Term or Tenant's right to possession. Tenant shall not be obligated to repair any damage to the Buildings caused by Tenant's removal of such property.

- a. If Tenant fails to remove its personal property, trade fixtures, and moveable furniture within ten (10) days following the Expiration Date or the earlier termination of the Lease Term or Tenant's right to possession, the same will be deemed abandoned and become the property of the City.
- b. Notwithstanding the foregoing, at any time during the Lease Term or thereafter the City may require Tenant to remove any personal property placed in the Premises by Tenant or by others at Tenant's direction or with Tenant's actual or implied consent, if the same is dangerous, illegal, or actually or potentially an environmental hazard, and repair any damage caused thereby.

8.2 Movements of Tenant's property into or out of the Building and within the Building are entirely at the risk and responsibility of Tenant and the City reserves the right to require permits before allowing any such property to be moved into or out of the Building.

9. **Liens**

9.1 Tenant must keep the Premises, the Building and the Land free from any liens arising out of work performed, material furnished, or obligations incurred due to Tenant's actions, the actions of Tenant's Permittees or contractors, or the failure of Tenant to comply with any law excluding, however, security interests in Tenant's personal property.

9.2 In the event any such lien does attach against the Premises, Building, or Land, and Tenant does not discharge the lien or post bond (which under law would prevent foreclosure or execution under the lien) within 10 business days after demand by the City, such event will be a default by Tenant under this Lease and, in addition to the City's other rights and remedies, the City may take any action necessary to discharge the lien.

9.3 Tenant must pay the City upon demand all costs or expenses (including reasonable attorney's fees and costs, whether or not suit be instituted) incurred by the City by reason of attachment or discharge of such lien and indemnify, defend and hold the City harmless for, from and against any and all liability, claims, or losses arising out of attachment of such lien.

10. **Use of Premises; Rules and Regulations**

10.1 Designated Use. Tenant may use and occupy the Premises for retail banking, lending, and attendant services.

10.2 Requirements. Tenant agrees to:

- a. Comply with all statutes, ordinances, rules, regulations, and orders of all municipal, state, and federal authorities now in force or which may hereafter be in force to the extent applicable to Tenant's particular manner of use of the Premises, and to not use or permit the Premises to be used in whole or in part for any purpose or use in violation of any of said laws, ordinances, rules and regulations;
- b. Keep the Premises in a neat, sanitary, and orderly condition, free of debris, and not deposit or allow its permittees to deposit trash, waste, or debris within Common Areas except within designated areas; provided that upon termination of the Lease, Tenant shall not be obligated to clean the Premises (except for the removal of any Hazardous Materials brought into the Premises by Tenant or its permittees);
- c. Not engage, or allow its permittees to engage, in any activity that has the likelihood of causing a cancellation of any insurance policy or permit to remain in or about any such area any item that may be prohibited by standard form fire insurance policies;
- d. Not use, or allow its permittees to use, the Premises or Buildings for any offensive, noisy, or dangerous trade, business, or occupation, or anything against public policy, or interfere with the business of or disturb the quiet enjoyment of any other tenant in the Building or Land;
- e. Not use, or allow its permittees to use, the exterior of the roof or walls of the Premises or the Building for any purpose;

- f. Not display anything in any windows without prior written consent of the City;
- g. Not use, generate, manufacture, transport to or from, store, or dispose of, in, under, or about the Premises, the Building, or the Land any Hazardous Materials. For purposes of this Lease, “Hazardous Materials” includes, but is not limited to: (i) flammable, explosive, or radioactive materials, hazardous wastes, toxic substances, or related materials; (ii) all substances defined as “hazardous substances,” “hazardous materials,” “toxic substances,” or “hazardous chemical substances or mixtures” in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., as amended by Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; (iii) those substances listed as hazardous substances in the United States Department of Transportation Table (49 CFR 172. 10 and amendments thereto) or by the Environmental Protection Agency (or any successor agent) (40 CFR Part 302 and amendments thereto); and (iv) any material, waste, or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a “hazardous substance” pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to the Clean Water Act (33 U.S.C. § 1317).

10.3 Indemnification. Except when caused or contributed to (whether directly or indirectly) by the acts, omissions or negligence of the City or its agents, contractors, subcontractors, employees or invitees, Tenant is solely responsible for, and must indemnify, defend and hold harmless the City, its elected officials, directors, officers, employees, agents, successors, and assigns for, from and against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to Tenant’s and Tenant’s Permittees use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Premises, the Building or the Land, including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repairs, cleanup or detoxification of the Premises, the Building, or the Land, and the preparation and implementation of any closure, remedial, or other required plans; and (iii) all reasonable costs and expenses incurred by the City in connection with clauses (i) and (ii) of this section, including but not limited to reasonable attorneys’ fees. Notwithstanding the foregoing, Tenant may use in the Premises those Hazardous Materials that are customarily used for general office purposes (i.e., copier toner, liquid paper, glue, ink, and the City approved cleaning solvents)

10.4 Survival. Tenant’s obligations hereunder survive the termination or earlier expiration of this Lease.

11. **Signs.** With the exception of existing signage, Tenant may not erect or place any sign, lettering, design, banner, decoration, exterior lighting or other advertising device or material either outside the Premise, or inside the Premises if visible from outside the Premises, without the prior written approval of the City. Any signs of Tenant not in conformity with this Lease and any signs remaining at the end of the Lease Term must, upon the City’s demand, be immediately removed by Tenant at its expense, and Tenant must promptly repair any damage to the Premises resulting from such removal.

12. **Quiet Enjoyment.** The City agrees that, upon Tenant’s paying Rent and other charges, and keeping and performing all of the terms, conditions, covenants, and provisions of this Lease, the City will do nothing that will prevent Tenant from peaceably and quietly enjoying, holding, and occupying the Premises during the Lease Term. This covenant does not extend to any disturbance, act, or condition

brought about by any other tenant or occupant in the Building and is subject to the rights of the City set forth in this Lease.

13. **Maintenance and Repair**

13.1 City's Obligation. The City has no obligation to repair, maintain, alter, remodel, improve, renovate, decorate, or paint the Premises at any time during the Lease Term. Tenant waives all rights to make repairs at the expense of the City.

13.2 Tenant's Obligations. Tenant must perform all maintenance or make all repairs necessary to assure that the Premises meet the needs of Tenant to continue operations in the Premise. Tenant's obligation to pay rent is separate from the condition or available use of the Premises and Tenant hereby waives all claims against the City or setoff of rent related in any way to the condition of the Premises.

14. **Entry and Inspection**

14.1 Upon no less than 24 hours' prior written notice, the City and the City's agents will have the right to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same; posting notices of non-liability for alterations, additions, or repairs, or of the availability of the Premises for lease or sale; or showing the Premises to potential tenants or purchasers.

14.2 The City actions under this section will create no claim of actual or constructive eviction, abatement of rent, and will create no liability on the part of the City for any claim related to the loss of occupation or quiet enjoyment of the Premises, except to the extent of the City's negligence or willful misconduct.

15. **Insurance and Indemnification of City**

15.1 Tenant's Required Insurance. Tenant will maintain in full force and effect during the entire term of this Lease, at its own cost and expense, the following policies of insurance:

- a. Commercial General Liability Insurance and Umbrella Liability Insurance in an amount not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. This policy will provide coverage for bodily injury, property damage, advertising, personal injury, premises, operations, independent contractors, products completed operations, fire legal, and liability assumed under an insured contract both oral and written.
- b. Commercial Automobile Insurance and Umbrella Liability Insurance in an amount equal to that currently maintained by Tenant, but not less than \$1,000,000 per accident. Such insurance will cover liability arising out of any auto (including owned, hired and non-owned autos) used in connection with Tenant's use of the Premises.
- c. Workers' Compensation Insurance and Employers' Liability Insurance as required by law and in full compliance with the provisions of the Tennessee Worker's Compensation Law as amended, and Employer's Liability Insurance in an amount not less than \$500,000.
- d. Commercial Property Insurance covering the Premises including fixtures, inventory, equipment, Tenant improvements and betterments and all other content of the Premises and (if any, such as installed by or for Tenant) all mechanical, plumbing,

heating, ventilating, air conditioning, and electrical. The policy must include coverage for the following: vandalism, malicious mischief, sprinkler leakage. Such insurance will provide for 100% of the full replacement cost. Any coinsurance requirement in the policy will be eliminated through the attachment of an agreed amount endorsement, or as is otherwise appropriate under the particular policy form. The proceeds of such insurance, so long as this Lease remains in effect, will be used to repair and/or replace the Premises, and the Leasehold Improvements, fixtures, glass, equipment, mechanical, plumbing, heating, ventilating, air conditioning, electrical, telecommunication and other equipment, systems and facilities so insured.

- e. Any other forms of insurance the City may reasonably require from time to time, in form and amounts and for insurance risks against which a prudent Tenant of comparable size in a comparable business would protect itself.

15.2 Review of Insurance. Intentionally Omitted.

15.3 Waiver of Subrogation. The City and Tenant and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or covered by insurance required to be maintained, respectively, by the parties under this Lease, regardless of the cause of the damage or loss. Each party must secure from its insurer proof that its respective insurer honors this provision.

15.4 Form of Insurance. All insurance required to be carried by Tenant hereunder must: (i) be issued by insurance carriers authorized to conduct business in the State of Tennessee and with an A.M. Best's guide rating of no less than A; (ii) be written as primary insurance and non-contributory over any insurance purchased by the City; (iii) contain a provision whereby each insurer agrees to give the City at least 30-day prior written notice of any cancellation; (iv) be written on an Occurrence basis; any policies underwritten as claims-made basis will not satisfy the insurance requirements outlined above; (v) not be modified to reduce the extent of coverage or limits required herein without prior written notice to the City; (vi) with respect to Commercial General Liability, Commercial Automobile Liability and Umbrella Liability policies, ensure that the City be added by endorsement as additional insureds to the policies; (vii) provide evidence of Commercial Property Insurance and of all other insurance as well as certificates and appropriate endorsements to the City five days prior to occupancy, and evidence of renewal will be provided to the City no less than fifteen business days prior to expiration.

15.5 Failure to Maintain, Failure to Provide. If Tenant fails to acquire and maintain the insurance required pursuant to this section, the City may but is not obligated to, and in addition to any other rights and remedies available to the City, acquire such insurance and pay the requisite premiums, which premiums will be payable by Tenant to the City immediately upon demand. The City's failure, at any time, to object to Tenant's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance) will not be deemed a waiver of Tenant's obligations under this section.

15.6 Blanket Insurance. Tenant may, at its option, satisfy its insurance obligations hereunder by obtaining insurance commonly known as blanket insurance coverage, provided that the same will, in all respects, comply with the provision hereof; and, in such event, Tenant will not have complied with its obligation hereunder until Tenant obtains and delivers to the City a certificate of insurance with appropriate endorsements, or upon the City's request, a copy of the required policy with appropriate endorsement.

16. **Indemnification and Waiver**

16.1 Except to the extent of the City's negligence or willful misconduct, Tenant will indemnify, defend and hold the City harmless from and against any and all claims, suits, actions, proceedings, liability, damages, costs or expenses, including reasonable attorneys' and experts' fees and court costs arising (i) from any act, omission, or negligence of Tenant or its officers, contractors, licensees, agents, employees, guests, invitees, or visitors in or about the Premises, (ii) from Tenant's particular use, maintenance, and repair of the Premises; (iii) from any breach or default under this Lease by Tenant, or (iv) from or relating to the enforcement by the City of the provision of this Lease as against Tenant.

16.2 Except when caused or contributed to (whether directly or indirectly) by the acts, omissions or negligence of Tenant, its agents, contractors, subcontractors, employees or invitees, the City will indemnify, protect and hold Tenant harmless within the limitation of the City's liability under Tennessee law, for, from and against any liens, damages, losses, or liability claims or expenses (including reasonable attorneys' fees) which result from any activities of the City, its agents, employees, or invitees on the Premises or which arise out of any breach of the City's obligations, warranties and representations to Tenant as contained in this Lease.

16.3 The provisions of this section will survive the expiration or termination of this Lease.

17. **City's Insurance.** As secondary to Tenant's required insurance, the City will maintain, at its discretion, a self-insured retention or comprehensive general public liability insurance against claims for personal injury, death, or property damage occurring on the Common Areas, fire and extended coverage (all risk) insurance on the Building and Parking Garage, and such other insurance as the City deems reasonably necessary.

18. **Damage and Destruction of Premises**

18.1 Obligation to Repair. In the event of (i) fire or other casualty damage to the Premises or the Building during the Lease Term which requires repairs to either the Premises or the Building, or (ii) the Premises or Building being declared unsafe or unfit for occupancy by any authorized public authority for any reason, which declaration requires repairs to either the Premises or the Building, this Lease will terminate.

18.2 Waiver of Cancellation. With respect to any destruction (including any destruction necessary in order to make repairs) which the City is obligated to repair or may elect to repair under the terms of this section, Tenant waives any statutory right Tenant may have to cancel this Lease as a result of such destruction and no such destruction will annul or void this Lease and the provisions of this section supersede the City's obligations under this Agreement to make repairs.

18.3 Restoration of Rent. Unless the Lease is terminated under this section, upon substantial completion of the City's restoration obligations, the Base Rent will be restored to the amounts that would have been in effect but for the damage or destruction.

19. **Eminent Domain.** The City, as a municipal corporation and owner of the Building and Premises, and in addition to any remedy provided for in this Lease, hereby reserves its powers under eminent domain as they might relate to any of the property interests granted Tenant herein.

20. **Assignment and Subletting**

- 20.1 City Approval. Tenant may not to transfer or assign this Lease, or any interest therein, and will not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, without the City's prior written consent, which will not be unreasonably withheld.
- 20.2 Assignments Defined. For the purposes of this section, the City's consent will not be required for Tenant to assign or sublet all or any portion of this Lease or the Premises to an affiliate, parent, or subsidiary, or to any successor by merger, acquisition or consolidation.
- 20.3 Additional Documents. If the City consents to an assignment, sublease or other transfer by Tenant of all or any portion of Tenant's interest under this Lease, Tenant will execute and deliver to the City, and cause the transferee to execute and deliver to the City, an instrument in the form and substance acceptable to the City in which: (i) the transferee adopts this Lease and assumes and agrees to perform, jointly and severally with Tenant, all of the obligations of Tenant hereunder, (ii) Tenant acknowledges that it remains primarily liable for the payment of Rent and other obligations under this Lease, and (iii) the transferee agrees to use and occupy the Premises solely for the purposes specified herein and otherwise in strict accordance with this Lease.
- 20.4 Non-merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, will not work a merger, and will, at the option of the City, terminate all or any existing subleases, or may, at the option of the City, operate as an assignment to the City of any or all such subleases.

21. **Sale of Premises**. In the event of any sale of the Building or the Land or any assignment of this Lease by the City (or a successor in title), if the assignee or purchaser assumes the obligations of the City herein in writing, the City (or such successor) will automatically be entirely freed and relieved of all liability under any and all of the City's covenants and obligations contained in or derived from this Lease or arising out of any act, occurrence, or omission occurring after such sale or assignment; and the assignee or purchaser will be deemed, without any further agreement between the parties, to have assumed and agreed to carry out any and all of the covenants and obligations of the City under this Lease, and will be substituted as the City for all purposes from and after the sale or assignment.

22. **Subordination; Recognition and Attornment**

- 22.1 Subordination. Tenant's interest under this Lease is subordinate to all terms of, and all liens and interests arising under, any deed of trust, or mortgage or bond covenants now or hereafter placed on the City's interest in the Premises, the Building, or the Land; provided that the holder of such indebtedness enters into a subordination, nondisturbance and attornment agreement with Tenant that is acceptable to Tenant, in its reasonable discretion..
- 22.2 Required Amendments. Tenant agrees to reasonable amendments to this Lease as may be required by a lender, bond trustee, or agent who proposes to fund construction or permanent financing provided the amendment does not increase Tenant's monetary obligations under this Lease.
- 22.3 Assignment for Financing. Tenant further consents to an assignment of the City's interest in this Lease to the City's lender as required under such financing.
- 22.4 Further Documents. This section is self-operative; however, Tenant agrees to execute and deliver, if the City or any mortgagee, bonding agent, purchaser, or ground lessor should so

request, such further instruments necessary to subordinate this Lease to a lien of any mortgage, deed of trust, or ground lease to acknowledge the consent to assignment and to affirm the attornment provisions set forth herein.

23. **City's Default and Right to Cure**

- 23.1 Notice of Claim of Default. In the event of breach, default, or noncompliance hereunder by the City, Tenant must, before exercising any right or remedy available to it, to give the City written notice of the claimed breach, default, or noncompliance which sets forth facts in sufficient detail for the City to assess and evaluate such claim.
- 23.2 Additional Notices. If prior to giving notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise) of the address of a lender which has furnished financing that is secured by realty mortgage or deed of trust on the Premises or the Building or of a ground lessor, concurrently with giving the notice to the City, Tenant agrees to also give notice by certified or registered mail to such lender and/or ground lessor.
- 23.3 City's Right to Cure. For the 30 days following such notice (or such longer period of time as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be remedied within 30 days), the City will have the right to cure the breach, default, or noncompliance involved. If the City has failed to cure a default within said period, any such lender and/or ground lessor will have an additional 30 days within which to cure the same or, if such default cannot be cured within that period, such additional time as may be necessary if within such 30-day period said lender and/or ground lessor has commenced and is diligently pursuing the actions or remedies necessary to cure the breach, default, or noncompliance involved (including, but not limited to, commencement and prosecution of proceedings to foreclosure or otherwise exercise its rights under its mortgage or other security instrument or ground lease, if necessary to effect such cure), in which event this Lease will not be terminated by Tenant so long as such actions or remedies are being diligently pursued by said lender and/or ground lessor.

24. **Estoppel Certificates**

- 24.1 Tenant agrees at any time and upon request by the City, to execute, acknowledge, and deliver to the City within 15 calendar days of demand by the City a statement in writing certifying: (i) Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications); (ii) Dates to which Rent and other charges have been paid in advance, if any; (iii) Tenant's acceptance and possession of the Premises; (iv) Commencement and Expiration Dates; (v) Base Rent provided under the Lease; (vi) the City is not in default under this Lease (or if Tenant claims such default, the nature thereof); (vii) Tenant claims no offsets against the Rent, and (viii) Such other information as may be requested with respect to the provisions of this Lease or the tenancy created by this Lease.
- 24.2 Tenant acknowledges that any such statement delivered pursuant to this section may be relied upon by third parties with regard to the sale or financing of the Premises or the Building.

25. **Tenant's Default and City's Remedies**

- 25.1 Events of Default. Any of the following individually or in combination will constitute a default by Tenant under this Lease ("Event of Default"):

- a. Tenant's failure to pay any amount due and payable hereunder within 10 days after written notice of failure to pay on its due date has been received by Tenant;
- b. Tenant's failure to perform any other covenants or obligations to be performed by Tenant under this Lease and such failure will continue for 30 days after notice thereof from the City to Tenant, or such longer period of time as may reasonably be required to cure a matter which due to its nature cannot reasonably be cured within 30 days;
- c. A petition or proceeding under the Federal Bankruptcy Act or any other applicable state or federal law relating to bankruptcy or reorganization or other relief for debtors is filed or commenced by or against Tenant and, if against Tenant, said proceedings will not be dismissed within 10 days following commencement thereof;
- d. Tenant is adjudged insolvent, makes an assignment for the benefit of its creditors or enters into an arrangement with its creditors;
- e. A writ of attachment or execution is levied on the leasehold estate hereby created and is not released or satisfied within 10 days thereafter; or
- f. A receiver is appointed in any proceeding or action to which Tenant is a party with authority to take possession or control of the Premises or the business conducted thereon by Tenant and such receiver is not discharged within a period of ten (10) days after his appointment; or
- g. Tenant abandons the Premises (abandonment will be presumed if the Premises are not occupied by at least two employees of Tenant four days a week, six hours a day.

25.2 City Rights. Upon the occurrence of an Event of Default, the City will have the right and option to:

- a. Prosecute and maintain an action or actions, as often as the City deems advisable, for collection of Rent, other charges, and damages as the same accrue, without entering into possession and without terminating this Lease; however, any judgment obtained will constitute a merger or otherwise bar prosecution of subsequent actions for Rent, other charges, and damages as they accrue.
- b. Immediately or at any time thereafter reenter and take possession of the Premises and remove Tenant or Tenant's Permittees and any or all of their property from the Premises. Reentry and removal may be effected by summary proceedings or any other action or proceedings at law, by force or otherwise. No action taken, commenced, or prosecuted by the City, no execution on any judgment and no act or forbearance on the part of the City in taking or accepting possession of the Premises will be construed as an election to terminate this Lease unless the City expressly exercises this option. Upon taking possession of the Premises, the City will without termination of this Lease, exercise commercially reasonable efforts to relet the Premises or any part thereof as agent for Tenant for such rental terms and conditions (which may be for a term extending beyond the Lease Term) as the City, in its reasonable discretion, may deem advisable, with the right to make alterations and repairs to said Premises required for reletting. The rents received by the City from such reletting will be applied first to the payment of any costs of reletting, second to the payment of Rent and other charges due and unpaid hereunder, and then any residue amounts will be held by the City and applied in payment of future Rent and other charges as the same

may become due and payable hereunder. If the rents received from such reletting during any month are insufficient to reimburse the City for any costs of reletting or Rent and other charges due and payable hereunder, Tenant will pay any deficiency to the City, with the deficiency calculated and paid monthly. Notwithstanding any such reletting without termination, the City may at any time thereafter elect to terminate this Lease for such previous breach.

- c. Elect to terminate this Lease by written notice to Tenant. In the event of such termination, Tenant will immediately surrender possession of the Premises. If Tenant fails or refuses to surrender the Premises, the City may take possession thereof. Should the City terminate this Lease, Tenant will have no further interest in this Lease or in the Premises, and the City may recover from Tenant all damages it may incur by reason of Tenant's default, including the cost of reletting the Premises, and the value at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to rent reserved in this Lease for the remainder of the Lease Term over the then reasonable rental value of the Premises for the remainder of the Lease Term, all of which amounts will be immediately due and payable at the City's election from Tenant to the City.

- 25.3 Non-Surrender; Non-Termination. No act or conduct of the City, whether consisting of reentry, taking possession, or reletting the Premises or accepting the keys to the Premises, or otherwise, prior to the expiration of the Lease Term will be or constitute an acceptance of the surrender of the Premises by the City or an election to terminate this Lease unless the City exercises its option to do so and such acceptance or election by the City will only be effected, and must be evidenced, by written acknowledgement of acceptance of surrender or notice of election to terminate signed by the City.
- 25.4 City's Self-help. In the event Tenant is due to render performance in accordance with any term, condition, covenant, or provision of this Lease and Tenant fails to render that performance within 10 days after written notification from the City that the performance is past due, in accordance with the notice provision hereof or immediately if required for protection of the Premises, the City will have the right, but not the obligation, to render such performance and to charge all costs and expense incurred in connection therewith to Tenant. All amounts so charged together with interest thereon at the Delinquency Interest Rate will be considered Additional Rent and will be due and payable immediately to The City within 10 business days after presentation of a statement to Tenant indicating the amount and nature of such cost or expense. This right is in addition to all of the City's other rights and remedies.
- 25.5 Non-exclusivity. No remedy herein conferred upon the City will be considered exclusive of any other remedy, but the same will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The City may exercise its remedies in any order or combination selected by the City in its sole discretion. No delay or omission of the City to exercise any right or power arising from any default will impair any such right or power, or will be construed to be a waiver of any such default or acquiescence therein.

covenants, and provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated.

- 29.3 Time is of the essence of this Lease.
- 29.4 In the event either party initiates legal proceedings (including arbitration or alternative dispute resolution) or retains an attorney to enforce any right or obligation under this Lease or to obtain relief for the breach of any covenant hereof, the party ultimately prevailing in such proceedings or the non-defaulting party will be entitled to recover all costs and reasonable attorney fees, and in the event of legal proceedings the same will be determined by the court and not by a jury and will be included in any judgment or award obtained.
- 29.5 If the City is involuntarily made a party defendant to any litigation concerning this Lease or the Premises by reason of any act or omission of Tenant, Tenant will indemnify, defend and hold the City harmless for, from and against all liability by reason thereof, including the City's reasonable costs and attorney fees.
- 29.6 This Lease sets forth all the terms, conditions, covenants, provisions, promises, agreements, and undertakings, either oral or written, between the City and Tenant.
- 29.7 No subsequent alteration, amendment, change, or addition to this Lease is binding upon the City or Tenant unless reduced to writing and signed by both parties.
- 29.8 Subject to the Assignment and Subletting section, the covenants herein contained will apply to and bind the heirs, successors, executors, personal representatives, legal representatives, administrators, and assigns of all the parties hereto.
- 29.9 No term, condition, covenant, or provision of this Lease will be waived except by written waiver of the City, and the forbearance or indulgence by the City in any regard whatsoever will not constitute a waiver of the term, condition, covenant, or provision to be performed by Tenant to which the same will apply. Until complete performance by Tenant of such term, condition, covenant, or provision, the City will be entitled to invoke any remedy available under this Lease or by law despite such forbearance or indulgence. The waiver by the City of any breach or term, condition, covenant, or provision hereof will apply to and be limited to the specific instance involved and will not apply to any other instance or to any subsequent breach of the same or any other term, condition, covenant, or provision hereof. Acceptance of Rent by the City during a period in which Tenant is in default in any respect other than payment of Rent will not be a waiver of the other default. Any payment made in arrears will be credited to the oldest amount outstanding and no contrary application will waive this right.
- 29.10 Every term, condition, covenant, and provision of this Lease, having been negotiated in detail and at length by both parties, will be construed simply according to its fair meaning and not strictly for or against the City or Tenant.
- 29.11 All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of this Lease will survive the expiration or earlier termination of this Lease, including, without limitation, all payment obligations with respect to Rent and other charges, and all obligations concerning the condition of the Premises.

[signatures appear on the following page]

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

TENANT:

Franklin Synergy Bank

By: _____
Its: _____

CITY:

City of Murfreesboro

Shane McFarland, Mayor

Approved as to form:

David Ives, City Attorney



... creating a better quality of life

March 15, 2016

Honorable Mayor and Members of City Council:

RE: Recommendation to hire Bell Constructors

As an item for the agenda of March 24, 2016, it is recommended that City Council approve a contract with Bell Constructors to serve as Construction Manager at Risk (CMAR) for the Police Department Headquarters renovation.

Background

The Murfreesboro Police Department (MPD) is currently located at 302 South Church Street, which is approximately 27,000 square feet. In addition, the City rents 8,576 square feet at 1734 South Rutherford Boulevard for the Criminal Investigations Division. The City acquired the former Murfreesboro Medical Clinic, located at 1004 North Highland Avenue, for \$4.7 million.

The acquisition of the MMC building represents a very unique opportunity. It could result in substantial cost savings and accelerate the relocation of the HQ, which is needed. The relocation of the Police Department to Highland Avenue will interject new life to the area, which has seen the hospital and medical clinic relocate to the Gateway. Finally, after the Police Department vacates 302 South Church Street, it opens up almost 30,000 square feet of office space for other city departments that need additional office space.

Design Team

In 2014, the City hired a design team, led by Kennon Calhoun Workshop that also includes:

- Architectural Services: Kennon Calhoun Workshop
- Consulting Architect: McClaren, Wilson and Lawrie (MWL)
- Mechanical Engineering: Envision Advantage
- Structural Engineering: EMC
- Cost Estimating: DF Chase
- Civil Engineering: SEC

Since acquisition, the City has completed a space needs analysis, demolished the interior and designed the building. The plans for the building were reviewed by City Council at a workshop. The security wall at the staff parking lot was modified following council input.

Administration Department

Competitive Sealed Proposals

The City issued a Request for Competitive Sealed Proposals and received three responses. A cross-functional team interviewed each firm and selected Bell Construction as the top ranked firm. The City negotiated the attached contract with Bell.

CMAR

The Construction Manager at Risk (CMAR) is a delivery method which provides the benefit of early, close coordination between the project designer, the City as the project's owner, and a Construction Manager (CM). This method of construction delivery usually leads to a commitment by the CM to deliver the project within a Guaranteed Maximum Price (GMP) for project construction. In addition to acting in the owner's interest, the CMAR must manage and control construction costs in order not to exceed the GMP. Any cost overruns, except for changes to the project that are ordered by the City, are ultimately the responsibility of the CM.

The City and the CM will contract during the design phase and prior to the GMP being set. This allows the CM to perform preconstruction work and often results in significant time and costs savings. When design has reached an appropriate point for the CM to estimate the project, the GMP amount will be finalized. While the GMP will include contingencies that are available to address situations that may arise during construction, if the project is ultimately delivered for less than the GM the savings will accrue to the City.

Owner Benefits

This delivery method has several unique benefits to the Owner, including:

- A higher level of cost control from the start. A successful CMAR project would involve hiring the CMAR prior to the architect and having the CMAR help select the architect.
- During the design process, the CMAR provides cost estimates at contractually established points. If these cost estimates are in line with the established budget, the architect then moves on to the next phase of design. If not, the CMAR, Owner and Architect assess the cost estimate and make design changes to bring the design back into budget alignment.
- This process offer a high degree of budget success.
- The CMAR is an Owner advocate and manages the project with the Owner's best interest in mind at all times.
- The Owner's risk is limited by the CMAR process providing the construction documents are complete and proper allowances and contingencies are built into the GMP.
- Constructability and value to the Owner are afforded by the Value Engineering expertise brought to the process by the CMAR.
- Since the CMAR is at risk and gives the GMP prior to bid, he does not have to select the low bid. Generally the thorough prequalification process minimizes the number of low.

Bell Construction

Founded in 1970 by the late Ray Bell, Ray Bell Construction provided more than 45 years of construction expertise and leadership in Tennessee. In 1997, Bell & Associates Construction, L.P. was formed by Bell principals in 1997 to serve the next generation of construction clients. Bell has built a superior reputation based on its building expertise and strong tradition of client service, safety, excellent project delivery.

While leading over 800 constructions projects across the southeast has made Bell & Associates a renowned construction firm, its landmark projects across the city of Nashville creates its greatest recognition. Bell served as the construction manager and general contractor on the BellSouth Building, an icon popularly known as the Batman building; the Tennessee Performing Arts Center; and the Gateway Boulevard Bridge and the Shelby Pedestrian bridges, and most recently the historic Music City Center. Bell is also currently serving as the CMAR for the County's Judicial Building.

Proposed Contract

Attached is a construction contract between the City and Bell for the construction of the Police HQ substantial final draft form. The contract is a modification of an industry standard form construction contract for construction manager at risk project. As is traditional in construction contracting, the construction agreement is composed of an underlying agreement (entitled the AIA A133) and a set of General Conditions, which are modified by a set of Supplementary Conditions.

In order to maintain the project's schedule, Bell is current engaged in preconstruction work with the project architect, Kennon | Calhoun Workshop. Preconstruction services are set at a not-to-exceed amount of \$75,000. It is anticipated that an amendment setting the GMP will be brought to Council in April or May as design documents are completed.

Recommendation

It is recommended that City Council approve a contract between the City and Bell Construction for the construction of the Police HQ.

Robert J. Lyons
City Manager

C: Interim Chief Mike Bowen
Lt Mike Taylor
Jim Crumley
Jennifer Moody
Craig Tindall
James Kennon



Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

City of Murfreesboro, Tennessee 111 W. Vine Street
Murfreesboro, TN 37130 - 3732

and the Construction Manager:
(Name, legal status and address)

Bell and Associates Construction, L.P. PO Box 363
Brentwood, TN 37204

for the following Project:
(Name and address or location)

City of Murfreesboro Police
1004 North Highland Avenue
Murfreesboro, Tennessee

The Architect:
(Name, legal status and address)

Kennon Calhoun Workshop 700 Melpark Drive
Nashville, TN 37204

The Owner's Designated Representative:
(Name, address and other information)

Robert Lyons
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37133
615-849-2629
rlyons@murfreesborotn.gov

The Construction Manager's Designated Representative:
(Name, address and other information)

John D. Goolesby
Bell and Associates Construction
PO Box 363
Brentwood, TN 37024
615-371-5562

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

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

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

| jdgoolesby@balp.com

The Architect's Designated Representative:
(Name, address and other information)

| James Kennon
Kennon Calhoun Workshop
700 Melpark Drive
Nashville, Tennessee 37204
615-750-3137
james@thearchitectworkshop.net

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions will be prepared by the Owner with the assistance of the Architect as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The parties will endeavor to promote harmony, cooperation and mutual respect among the Project Team to the fullest extent possible in order to further the success of the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents, the Contract Time, and the GMP.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

§ 1.3.1 The General Conditions are amended and supplement by the Supplementary Conditions to AIA Document A201–2007 General Conditions of the Contract dated _____, which are incorporated herein by Reference.

§ 1.4 The Construction Manager shall perform the Preconstruction Services, shall be responsible for construction during the Construction Phase if the GMP Amendment is signed, shall be fully responsible for discharging all of the Construction Manager's obligations under the Contract Documents, and, during the Preconstruction and Construction Phases, shall advise and work with the Project Team to make recommendations for alternate or substitute technologies, construction technologies, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies. The Owner will be responsible for coordinating the activities of the Project Team during the Preconstruction Phase.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; value engineering; availability of materials and labor; time requirements for procurement, installation and construction; requirements; phasing and site work planning; sequencing and scheduling for procurement; installation and construction; traffic planning; factors related to construction quality, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, value engineering, and possible cost reductions.

§ 2.1.2.1 The Construction Manager shall schedule and conduct meetings with the Architect and the Owner **on a weekly basis during the Schematic Design Phase, the Design Development Phase and the Construction Document Phase** to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall actively and cooperatively advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; constructability, **value engineering**; availability of materials and labor; time requirements for procurement, installation, and construction; **requirements; phasing and site work planning; sequencing and scheduling for procurement. Installation, and construction; traffic planning; factors related to construction quality, maintainability and durability**; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, **value engineering**, and possible cost reductions.

§ 2.1.2.2 **Design Review.** The Construction Manager shall review the Schematic Design Documents, Design Development Documents, Construction Documents, Drawings, Specifications, and other Contract

Init.

Documents as they are developed and completed. These documents may be developed at different rates for different components of the Project. The Construction Manager shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Construction Manager has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues, and shall recommend changes and alternatives. Design review activities are to be a cooperative and collaborative effort with the Architect and its consultants. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional.

§ 2.1.2.3 Constructability. The Construction Manager shall work with the Owner and Architect to prepare a constructability plan for the Project to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. Key objectives of the constructability plan will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. A primary objective of these efforts will be to assist the Owner to ensure that the final GMP does not exceed the Owner's budget and the Project is completed on time. The Construction Manager shall perform actions designed to minimize adverse effects of labor or material shortages or delays; time requirements for procurement, installation, and construction completion; and factors related to construction cost. As part of this effort, the Construction Manager shall participate in formal constructability reviews following completion of the Design Development Documents and when the Construction Documents are 90% complete. The Construction Manager shall confirm that a formal constructability review has been completed prior to solicitation of the first Subcontractor bid package.

§ 2.1.2.4 Value Engineering. The Construction Manager will participate in value engineering the design documents at 50% of the Design Development Phase and on a continuing basis with the Architect in subsequent phases up to 90% Construction Documents. At the completion of each of its reviews, the Construction Manager will provide the Owner and Architect with a formal record of its findings and recommendations. The Architect and the Construction Manager will brief the Owner and any value engineers and answer their questions to determine the advisability of changes. Value engineering will include selecting building systems, with final selection of systems to occur prior to the start of the Construction Documents Phase.

§ 2.1.2.5 Site Inspections. The Construction Manager shall perform site investigations to assist in development of the design and planning for construction.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, and within thirty (30) days of the completion of the Architect's Schematic Design Phase, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect and the Owner's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal no later than thirty (30) days after the Construction Manager's receipt of what the Owner designates as the "GMP set" of Construction Documents; submission and acceptance of the Construction Schedule prior to commencement of the Construction Phase; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The Construction Manager will be responsible for the Project schedule and Construction Schedule.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration occupancy needs, cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect and the Owner's review and Owner's approval.

If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 The Construction Manager will collaborate with the Architect and the Owner on cost estimates throughout the Preconstruction Phase, and will prepare detailed cost estimates following completion of the Design Development Phase, when Construction Documents are 90% complete (the "GMP estimate"), and following completion of the Construction Documents Phase. As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect and the Owner's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action, including participation in preparing a list of proposed cost savings equal to or greater than the overage.

(Paragraphs deleted)

§ 2.1.5.3 The Construction Manager shall expeditiously review Design development Documents during their development and provide advice on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project deliver. The Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but no limited to costs of alternative designs or materials, preliminary budgets, and possible cost savings. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect, including participation in preparing a list of proposed cost savings equal to or greater than any overage, and the Architect will, if requested by the Owner, modify the design to meet the Owner's budget.

§ 2.1.6.1

The Construction Manager shall prepare and submit a Subcontracting Plan to the Owner and the Architect for review and approval prior to conclusion of the Design Development Phase. The Subcontracting Plan shall identify all Subcontractor bid packages, scopes of work, timing of solicitation of bid packages to meet the Construction Schedule, major coordination issues, and means to enhance the opportunity for local businesses to participate in performing the work (e.g., through development of multiple work packages).

§ 2.1.6.2 The Construction Manager shall use its best efforts to develop Subcontractor interest in the Project. The Construction Manager shall consider pre-bid determinations of Subcontractor eligibility to the extent permitted by statute and shall furnish to the Owner and Architect for their information a list of possible eligible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner will promptly reply in writing to the Construction Manager if the Architect or the Owner know of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers' nor shall it or the lack of any objection waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.

§ 2.1.7 Long Lead-Time Procurement

§ 2.1.7.1 The Construction Manager shall prepare, for the Architect and the Owner's review and the Owner's acceptance and update at least monthly, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.7.2 The Construction Manager shall identify and estimate the value of any items that require off-site storage, together with proposed locations for storage acceptable to the Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.

§ 2.1.7.3 If authorized by the Owner, an Application for Payment may include a request for payment for material delivered to the Project site and suitably stored, for completed preparatory Work and, provided the Construction Manager complies with or furnishes satisfactory evidence of the following, for material stored off the Project site:

§ 2.1.7.3.1 The material will be placed in a bonded warehouse that is structurally sound, dry, lighted, secure and suitable for the materials to be stored .

§ 2.1.7.3.2 The warehouse is approved in writing by the Owner. The Owner generally will not approve locations beyond a 10-mile radius of the Project absent special circumstances.

§ 2.1.7.3.3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project.)

§ 2.1.7.3.4 The Construction Manager furnishes the Owner a certificate of insurance extending the Construction Manager's insurance coverage for damage, fire and theft to cover the full value of all materials stored, or in transit.

§ 2.1.7.3.5 The Owner shall at all times have the right of access to stored materials in the possession of the Construction-Manager.

§ 2.1.7.3.6 The Construction Manager assumes total responsibility for the stored materials.

§ 2.1.7.3.7 The Construction Manager furnishes to the Owner proofs of title, satisfactory evidence that the Construction Manager has paid for the materials in question, certified lists of materials stored, bills of lading, invoices and other information as may be required, and shall also furnish notice to the Owner when materials are moved from storage to the Project site.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, Manager, and when the Drawings and Specifications are at least 90% complete, the Owner will submit the "GMP set" of Construction Documents to the Construction Manager. Within 30 days of receipt, and in consultation with the Architect and Owner, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. **The Construction Manager shall promptly notify the Owner if it does not consider the Drawings to be at least 90% complete and shall not propose a GMP until the Drawings are at least 90% complete.**

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom **market conditions at the time of bidding and possible estimating inaccuracies**. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. **A Change in the Work will not be warranted if the relevant portion of the Work was reasonably inferable from or contemplated by the "GMP set" of Construction Documents.**

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, divided into the proposed Subcontractor bid packages and including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and other items, and the Construction Manager's Fee (any Allowances must be limited and pre-approved by the Owner);
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. All contingencies are uncommitted, mutually agreed upon sums of money allocated within the Guaranteed Maximum Price for the purpose of defraying expenses due to unforeseen circumstances relating the Project's construction except for the Owner's Contingency, which may also be used to pay for the Owner changes. The Owner retains expenditure authority over all contingencies, including the Construction Manager's contingency amounts. Any unused contingency and allowances remain the sole property of the Owner at all times during and after completion of the Project.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§2.2.6.1 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment. Guaranteed Maximum Price Amendment will establish the GMP, Contract Time, and liquidated damages associated with the Construction Manager's failure to substantially complete the Work by the Date of Substantial Completion, as adjusted in accordance with the Contract Documents. Performance and Payment Bonds on the Owner's standard forms will be executed simultaneously with the Guaranteed Maximum Price Amendment, The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.6.2 If the Guaranteed Maximum Price proposal is not accepted by the Owner, the Owner shall notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through a reasonable, viable value engineering process or cost savings process. The Construction Manager and the Owner, with assistance of the Architect, will discuss and negotiate these recommendations for no longer than 30 calendar days, unless an extension is mutually agreed upon. If an acceptable Guaranteed Maximum Price is not developed, negotiated, and agreed upon, negotiations may be terminated and the Owner may initiate negotiations with another construction management firm. **§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.2.10 In the event the Owner desires to accelerate the schedule for any portion of the Work, the Owner shall notify the Construction Manager in writing. Within 14 days, the Construction Manager shall give the Owner a revised Guaranteed Maximum Price for the acceleration which shall be reduced to a Change Order upon acceptance. The Owner may then direct the Construction Manager to increase its staff and require its Subcontractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required acceleration in accordance with the approved Change Order. In such event the Owner shall reimburse the Construction Manager for the costs of such acceleration subject to the revised Guaranteed Maximum Price. In no event shall the Construction Manager be entitled to compensation in excess of the revised Guaranteed Maximum Price. The Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure the Owner's approval of such records. The Construction Manager shall monitor the actual Cost of the Work. The Construction Manager shall be prepared to show to the Owner and the Architect a comparison of the actual Cost of the Work to estimated Cost of the Work. The Construction Manager shall monitor the actual Cost of the Work. The Construction Manager shall be prepared to show to the Owner and the Architect a comparison of the actual Cost of the Work to the estimated Cost of the Work.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal by executing the Guaranteed Maximum Price Amendment or the Owner's issuance of a Notice to Proceed, whichever occurs earlier. Although it will not cause the Construction Phase to commence, the Owner may at any time approve the construction Manger's (a) award of a subcontract, (b) undertaking construction Work with its own forces, or (c) issuance of a purchase order for materials or equipment required for the Work. Any such effort so approved and undertaking shall comply with and be subject to the revised AIA A201 – 2007 General Conditions.

§ 2.3.2 Administration

§ 2.3.2.1 Unless otherwise authorized by the Owner, all Work shall be performed under subcontracts held by the Construction Manager. The Owner is not a party to the Subcontracts, but is a third party beneficiary of the Subcontracts, and the Construction Manager agrees to include a provision to such effect in each subcontract. The Construction Manager agrees that any Subcontract with a Subcontractor shall permit termination of the subcontract as one remedy for a material breach of the Subcontract.

§ 2.3.2.1.1 the Construction Manager shall not bid on any of the Work, (except the portion of the Work identified as the Construction Manager's responsibility by this Agreement) or perform any such Work with its own forces without the prior written consent of the Owner. If the Owner provides its prior written consent (which may be conditioned), the Construction Manager shall participate as a bidder on a trade package in

accordance with the provisions of this Section 2.3.2.1 and the obligations imposed on potential Subcontractors. Any contract between the Construction Manager and the Owner arising as the result of the Construction Manager being the successful bidder on a trade package shall be a direct contract between the Construction Manager and the Owner, but the Construction Manager shall otherwise be considered a Subcontractor for purposes of the Contract Documents.

§ 2.3.2.1.2 The Construction Manager may organize and solicit bids for the subcontract work in whatever combinations or packages it chooses, provided however, the Construction Manager may not use alternates without the Owner approval.

§ 2.3.2.1.3 The Construction Manager shall bid out Subcontractor bid packages in accordance with its approved Subcontracting Plan. The Construction Manager shall document and report monthly to the Owner on its procurement process. The Owner's written approval is required for changes to the Subcontracting Plan.

§ 2.3.2.1.4 Before initially soliciting bids for the first Subcontractor bid package, the Construction Manager shall submit, and the Owner shall approve, final bid package estimates for all Subcontractor bid packages in the Subcontracting Plan.

§ 2.3.2.1.5 When in the best interests of the Project and critical to the successful completion of a Subcontractor bid package, the Owner and the Construction Manager may make a pre-bid determination of Subcontractor eligibility.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007 and other contract documents. Construction Manager shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as the Work progresses.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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- § 2.3.2.7.1 Include information concerning both the entire Project and each Subcontractor bid package;
- § 2.3.2.7.2 Identify variances between scheduled and probable completion dates and recommend action required to meet scheduled completion dates;
- § 2.3.2.7.3 Review the Construction Schedule for portions of the Project not started or incomplete and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates.
- § 2.3.2.7.4 Provide summary reports for each Construction Schedule update;
- § 2.3.2.7.5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change, and the reasons therefor;
- § 2.3.2.7.6 Record in writing and by photographs the progress of the Project;
- § 2.3.2.7.7 Identify significant problems in scheduling together with recommended corrective action;
- § 2.3.2.7.8 Maintain and report a QC log;
- § 2.3.2.7.9 Document any outstanding RFIs and any and risks associated with delayed responses;
- § 2.3.2.7.10 List outstanding submittals and risks associated with delayed responses;
- § 2.3.2.7.11 Document any outstanding Change Orders and any risks associated with delayed responses;
- § 2.3.2.7.12 Report status of permits that the Construction Manager is required to obtain or assist in obtaining.

The Construction Manager shall also keep, and make available to the Owner and, Architect with its monthly Application for Payment or more often as requested by the Owner, a daily log containing a record for each day of weather, Subcontractors working at the site, deliveries, Work accomplished, portions of the Work in progress, number and company of workers on site, specific identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The information on this log does not constitute notice of a potential or actual Claim to the Owner but shall be provided to the Owner for its information upon request.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. The Construction Manager shall include a Project status report in a format acceptable to the Owner, listing (i) all pending and/or approved Change Orders and Construction Change Directives (including amounts), (ii) projected cash flow of construction costs, (iii) an allocation by Subcontractor bid package and schedule-of-values line item, (iv) expenditures to date, (v) estimates to complete, (vi) forecast at completion, and (viii) variances with budget and commitment.

§ 2.3.2.9 The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any major defects or deficiencies and recommend remedial action. The Construction Manager shall take the lead role in negotiating and resolving any dispute with Subcontractors.

§ 2.3.2.10 The Construction Manager shall maintain, in good order and on a current basis, a record copy of all Subcontracts, purchase orders, Drawings marked to record all changes made during construction. Specifications, addenda, Change Orders, and other Modifications; shop drawings; product data; samples; submittals; inspection reports; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and

instructions; other related documents and revisions which arise out of subcontracts or Work. These records shall be available to the Owner, and, at completion of the Project, delivered to the Owner.

§ 2.3.2.11 Construction Manger shall review the safety programs developed by each Subcontractor for purposes of coordinating the safety programs on-site. The Construction Manager's responsibilities for coordinating of safety programs shall not exceed to direct control over or charge of the acts or omission of the Subcontractors, agents, or employees of Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 2.3.2.12 The Construction Manager will maintain exclusively for the Project the level of staff as agreed upon in the approved Guaranteed Maximum Price proposal at the Project site to coordinate and direct the progress of the Work. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the interview presentation made to the Owner by the Construction Manager and shall not be removed or replaced without the Owner's prior written consent. The Owner shall have the right to direct the Construction Manager to remove or replace any on site personnel whose performance becomes unsatisfactory to the Owner. In such event the Construction Manager shall promptly replace such personnel without additional compensation.

§ 2.3.2.13 The Construction Manager shall arrange for the delivery, storage, protection and security of the Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated in to the Project. Whenever the Owner-Furnished-Contractor-Installed ("OFICI") materials or equipment are shipped to a sub-Project site, the Construction Manager shall notify the Owner and shall be responsible for their acceptance, proper storage, and incorporation into the Work so long as the scope of the OFCI work is included within the Guaranteed Maximum Price.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the

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Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Any decisions and approval involving a change in the scope of the Work, in the Guaranteed Maximum Price, or the Contract Time, or involving modification or waiver of the terms of the Contract document must be approved in writing and by a duly authorized the Owner representative and, unless specifically so stated in the written approval, the approval of the City Council. Any delay in obtaining such approval of the City shall be deemed an excusable delay to the Construction Manager, subject to the terms of Section 8.3 of the revised A201 General Conditions.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Construction Manager's standard hourly rates not to exceed \$75,000

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within one hundred and twenty (120) days of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. The Construction Manager is solely responsible for paying any social security premiums, taxes, and other associated costs over the compensation received pursuant to the Agreement, and shall indemnify, hold harmless and defend the Owner against any claim or action with regard to such expenses.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee is to be determined and shall be a percentage of the total estimated cost of Work. This Fee shall convert to a lump sum upon acceptance of the Construction Manager's Guaranteed Maximum Price.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Negotiated at the time of adjustment, if any.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See Section 7.3.13, Supplementary Conditions of the A201

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the rates set forth in Section 6.5.2.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the

Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

All cost savings for the not-to-exceed value of the Guaranteed Maximum Price shall be returned to the Owner as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work, or at such earlier time as agreed to by Owner and the Construction Manager. "Cost savings" are the net difference obtained by deducting from the Guaranteed Maximum Price, the documented the Construction Manager's Fee, the expended portions of the Construction Manager's contingency allowance and the actual expenditures representing the Cost of the Work. Liquidated damages, if any, are different from, and are not a part of, this calculation.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. Costs paid or incurred by the Construction Manager for vacations, bonuses, travel, stock, options, deferred compensation, or discretionary payments to employees are not directly reimbursable. As part of the Guaranteed Maximum Price Amendment, the parties may agree to a wage burden rate for all workers under Section 6.2.1, which will be deemed fully burdened, including all wage-based costs, and be fixed for the duration of the Contract Time or extension thereof. Burden rates, including any agreed-upon burden rates, are subject to audit to confirm that the burden has been correctly calculated and applied in accordance with the Contract Documents.

(Paragraph deleted)

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall maintain a procedure for the review, processing, and payment of applications by the Subcontractors for progress and final payments, all in accord with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and assemble and check all supporting documentation required by the Contract Document or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold or returned by the Construction Manager. Any amounts realized from such sales or returns shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Except as other provided herein, costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the local fair market rental cost or 75% of the purchase price of any comparable item. Rates of

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Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. Rentals from the Construction Manager or any entity in which the Construction Manager or one or more of its owners has a direct or indirect ownership interest ("Owned Equipment") shall be separately accounted for and the rental costs shall not exceed Rental Rate Blue Book by Data Quest, San Jose, California, or local fair market rental costs, whichever are lower. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for Owned Equipment necessarily standing by for future use on the Work shall be 50% of the rate established above. If Owned Equipment is required for which a rental rate is not established by the Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 The actual net costs of premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, after taking into consideration cost adjustments including, for example, experience modifiers, premium discounts, policy dividends, rebates and refunds, retrospective rating plan premium adjustments, and assigned risk pool rebates. Such premiums, as adjusted, are Cost of Work.. Self-insurance for either full or partial amounts of the coverages required is permitted only with the Owner's prior approval. The Owner acknowledges that in lieu of subcontract performance and payment bonds, the Construction Manager may use a Subcontractor Default Insurance Program ("SDI") for some or all Subcontractors. The Construction Manager will be paid by the Owner an amount equal to 1.25% of the value of subcontracts entered into by the Construction Manager as payment for such SDI and/or bond coverage, plus any applicable taxes. The Construction Manager shall be responsible for the payment of any deductibles that arise out of the use of the SDI Program.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the

last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work, provided the legal or mediation costs are not the result of the Construction Manager’s negligence, willful misconduct, breach of contract, or malfeasance.

§ 6.6.9 Subject to the Owner’s prior approval, expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors of any tier, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Direct payments by the owner (if any) for the building permit and related permit, reserve capacity fees, and plan-check fees, including SEPA, design review, and land use fees are not a part of the Cost of the Work of the GMP;
- .10 Overtime wages, unless pre-approved by the Owner;
- .11 Data processing, software, hardware or computer-related costs incurred at off-site locations or otherwise not included in the Specified General Conditions;
- .12 Penalties and fines imposed by a governmental entity; except to the extent caused by the Owner or

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anyone for whom the Owner may be responsible

- .13 Safety costs not included in the Negotiated Support Services or Specified General Conditions;
- .14 Liquidated damages;
- .15 Except as included within the Specified General Conditions, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office;
- .16 Legal, consultant, or Claims-related expenses except as specifically provided in Section 6.6.8;
- .17 Warehousing in the Construction Manager's facility; and
- .18 Business licenses

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall notify the Owner in a timely manner of the opportunity for any cash discounts, and of any trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1, together with unexpended contingencies and allowances, shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Pursuant to the foregoing general right to audit and copy, the Owner, at its option, may conduct a complete post-construction audit to ascertain the accuracy of all sums invoiced by the construction Manager for the Work. If any such audit reveals that the Owner has overpaid or paid improperly for any portion of the Work, the Construction Manager will immediately reimburse the Owner for any such overpayment or improper payment.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and

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Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. Application for Payment must be submitted in compliance with the Contract Documents and constitutes a certification that the Work is current based on the Construction Schedule unless specifically noted on the Application. § 7.1.2

No more frequently than once a month, the Construction Manager shall submit an Application for Payment to the Architect requesting payment for labor and services rendered during the preceding thirty (30) calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or Architect requests. The Architect will review the Construction Manager's Applications for Payment, including such accompanying data, information and schedules required under the Contract Documents, or as the Architect requires, to determine the amounts due to the Construction Manager and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Construction Manager in writing.

(Paragraphs deleted)

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last business day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last business day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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

(Paragraph deleted)

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. The Architect will, within seven days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, or notify the Construction Manager and the Owner in writing of the Architect's reason for withholding certification in whole or in part as provided in Section 9.5.1 of the A201-2007.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, which portion shall be an amount that bears the same ratio to the fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon completion;

(Paragraph deleted)

- .5 Subtract the aggregate of previous payments made by the Owner;

- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .8 Subtract the statutory retainage of 5% of the completed Cost of the Work as a fund for the protection and payment of claims of any person or entity arising out of the Work.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect and the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect and the Owner have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect and the Owner have made exhaustive or continuous on-site inspections; or that the Architect and the Owner have made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner. Payment by the Owner shall not constitute final approval of the Work done or the amount due.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 Final Completion has been achieved and a final Certificate for Payment has been issued by the Architect; and
- .4 The requirements for Final Acceptance in the revised A-201-2007 General Conditions are met.

The Owner's final payment to the Construction manager shall be made in accordance with the Contract Documents.

The requirements for Final Acceptance in the revised A201-2007 General Conditions are met.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect and the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and the Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting. **The Owner's final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of this Contract.**

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to without seeking an initial decision pursuant to Section 15.2 of A201-2007, provided the Construction Manager

commences to proceed within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to commence proceeding within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

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

See Addendum B of the
Supplementary Conditions of the
A201.

(Row deleted)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to proceeding in accordance with this Article 9 and Article 15 of A201-2007, and Section 9.3 of this Agreement shall not apply.

(Paragraphs deleted)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may terminate this Agreement in accordance with and for the reasons set forth in Section 14.1.1 of the A201-2007 made part hereof.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed and prorated based on the Cost of the Work to the date of termination at the rate state in Section 5.1.
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services, and
- .4 Adjust for retainage.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in the revised A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of the revised A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of the revised A201–2007 shall apply to both the Preconstruction and Construction Phases.

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§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

 **AIA[®] Document A201[™] – 2007****General Conditions of the Contract for Construction****for the following PROJECT:***(Name and location or address)*

City of Murfreesboro Police
1004 North Highland Avenue
Murfreesboro, Tennessee

THE OWNER:*(Name, legal status and address)*

City of Murfreesboro
111 W Vine Street Murfreesboro, TN 37130-3732

THE ARCHITECT:*(Name, legal status and address)*

kennon | calhoun WORKSHOPllc
700 Melpark Drive Nashville, TN 37204

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ADDITIONS AND DELETIONS:

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

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§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and

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completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

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Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount

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for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

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encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

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

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

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

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§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

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§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

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property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 MEDIATION

(Paragraphs deleted)

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§ 15.4 ARBITRATION

(Paragraphs deleted)

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§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

Additions and Deletions Report for AIA[®] Document A201[™] – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:37:28 on 04/22/2014.

PAGE 1

City of Murfreesboro Police
1004 North Highland Avenue
Murfreesboro, Tennessee

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City of Murfreesboro
111 W Vine Street Murfreesboro, TN 37130-3732

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kennon | calhoun WORKSHOPpllc
700 Melpark Drive Nashville, TN 37204

PAGE 37

~~§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.~~

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

~~§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

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~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree~~

otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, J. E. Kennon, jr., hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:37:28 on 04/22/2014 under Order No. 5482530859_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

SUPPLEMENTARY CONDITIONS

Project: Murfreesboro Police Headquarters Building Renovation

- A. **General Conditions.** The *General Conditions of the Contract for Construction*, AIA Document A201, 2007 edition, Articles 1 through 15 inclusive, is a part of this Contract and is incorporated as fully as if herein set forth. For brevity, AIA Document A201 is also referred to in the Contract Documents as the “General Conditions.”
- B. **Supplements.** The following supplements modify, change, delete from, and add to the General Conditions. Where any portion of the General Conditions is modified or any paragraph, subparagraph, or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of the General Conditions shall remain in effect.
1. § 1.1.2 After “Sub-subcontractor,” in number (2) of the listings in this section, the following is inserted:
“except as set forth in Section 5.3 and Section 5.4,”
 2. § 1.1.9 The following new section is added:

§ 1.1.9 **Knowledge.** The terms “knowledge,” “recognize,” and “discover,” their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes, and discovers, or could reasonably infer in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.
 3. § 1.1.10 The following new subsection is added:

§ 1.1.10 **Owner Warranty.** The Owner has requested that the Architect prepare documents for the Project, including the Drawings and the Specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. The Owner represents and warrants to the contractor that such documents are accurate, correct and suited for their intended purpose.
 4. § 1.1.11 The following new subsection is added:

§1.1.11 **Inconsistencies in Contract Documents.** In the event of any conflict, inconsistency or other discrepancy between any of the Contract Documents, the Contract Documents shall be given priority in the following order: (1) executed Change Orders; (2) addenda issued by the Architect; (3) the Agreement; (4) the Conditions of the Contract; (5) the Drawings; (6) the Specifications. 11.

5. § 1.2.1 The following is added at the end of this section:

In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.1 shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7; provided, however, notwithstanding anything to the contrary above, the Contractor shall not be precluded from submitting pursuant to Sections 7.1 and 7.2 for a Change Order with respect any of the items referenced in this Section.

6. §1.2.2 The following is added at the end of this section:

Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

7. § 1.2.3 The following is added at the end of this section:

Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall request from the manufacturer or provider of the product when requested by the Architect or required in the Specifications, information that allows for a adequate assessment that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

8. § 1.2.3.1 The following new subsection is added:

§1.2.3.1 Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) of other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date bids are opened by the Owner, unless otherwise expressly provided in the technical specifications.

9. § 1.2.4 The following new subsection is added:

§1.2.4 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control: as between figures given on plans and scaled measurements, the figures shall govern; as between large-scale plans and small-scale plans,

the large-scale plans shall govern; and as between plans and specifications, the requirements of the specifications shall govern.

10. § 1.5.1 The first sentence of this section is deleted and replaced with the following:

“The Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner.”
11. § 1.5.1 The last sentence of this section is deleted and replaced with the following:

“Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner’s ownership interest.”
12. § 1.5.2 The second sentence of this section is deleted and replaced with the following:

All copies made under this authorization shall bear the following notice: *“Copyrighted [Date]. City of Murfreesboro. All rights reserved. No portion of these materials may be reproduced by electronic or mechanical means without permission in writing from the City Council of the City of Murfreesboro, Tennessee.”* Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.
13. 1.7.1 The following new subsection is added:

§ 1.7.1 Confidentiality The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner’s particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.
14. § 1.7.2 The following new subsection is added:

§ 1.7.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda,

recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

15. § 1.7.3 The following new subsection is added:

§ 1.7.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

16. § 1.7.4 The following new subsection is added:

§ 1.7.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

17. § 1.7.4 The following new subsection is added:

§ 1.7.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

18. § 2.1.1 The last sentence of this section is replaced with the following:

The term "Owner" refers to the City of Murfreesboro, a Tennessee municipal corporation. Rob Lyons, City Manager is hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner.

19. § 2.1.2 This section is deleted in its entirety.

20. § 2.2.3 This section is deleted in its entirety and restated as follows:

Owner shall furnish required surveys, legal limitation, and utility locations for the Project Site and may supply these through the Architect. Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all such information in the Contract Documents as provided by the Owner. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect in writing in order that proper adjustments can be made.

21. § 2.2.5 This section is deleted in its entirety and restated as follows:

Unless otherwise provided in the Contract Documents, the Contractor will be furnished,

free of charge, up to ten (10) copies of Drawings for execution of the Work.

22. § 2.2.6 The following new section is added:
- § 2.2.6 If the Work involves the renovation or modification of existing construction, it is the obligation of the Contractor to avoid disposal of any and all equipment, fixtures, furnishings, appurtenances and other items the Owner desires to keep. The Drawings or Specifications may identify items the Owner desires to keep, but the Contractor shall not rely exclusively upon the Drawings and Specifications for its determination. Accordingly, the Owner, at the request of the Contractor, shall provide to the Contractor a list of any and all such items.
23. § 2.4 The term “ten-day” is replaced with “five business days”
24. § 2.5 The following new section is added:
- § 2.5 **Extent of Owner Rights.** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.
25. § 3.2.1 The following is added at the end of section:
- Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for safety of the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.
26. § 3.2.2 After the words “inconsistencies in” in the second sentence, the following is inserted: “the design information contained in”.
27. § 3.2.2 The following clauses are added to this section:
- .1 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor’s failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.
28. § 3.3.1 This section is modified as follows:
- a. In the second sentence, delete “unless the Contract Documents give other specific

instructions concerning these matters.”

- b. Delete the last sentence of this section.

29. § 3.4.2 The following is added at the end of this section:

If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

- .1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor’s submittal of complete substantiating data and information as stated hereinbefore.
- .2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner’s best interests, in terms of cost, time, or other considerations.
- .3 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

30. § 3.4.4 The following new section is added:

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

- .1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.
- .2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

31. § 3.5 This section is modified as follows:

- a. Replace “may” with “shall” at the end of the third sentence of this section.
- b. Add the following at the end of this section:

The Contractor agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer’s warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer’s warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Contractor may retain the right or the Owner may require Contractor to exercise the right to enforce directly any such manufacturers’ warranties during the one-year period following the date of Substantial Completion.

32. § 3.7.1 This section is deleted and restated as follows:

3.7.1 Except as set forth in Section 2.2.2, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, licenses, inspection, observation, and testing reports and other similar items. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor’s responsibility.

33. § 3.7.2 This section is modified as follows:

- a. The words “and all other requirements” is inserted between the words “orders” and “of” in the second line of this section.
- b. The following language is added at the end of Section 3.7.2:

The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all

applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

34. § 3.8.2.4 The following new section is added:

.4 the Contractor shall solicit from information provided by the Architect at least three bids or acceptable pricing from existing subcontractor for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect. The Architect shall review the bids/pricing and recommend to the Owner the acceptance or rejection of the lowest bid/pricing . If accepted the Architect shall issue a Change Order to the Contractor as provided in Section 3.8.2.3.

35. § 3.10.1 This section is deleted in its entirety and restated as follows:

Within thirty (30) days after the date of the Owner's issuance of a notice to proceed with performance of the Work, the Contractor shall prepare and submit to the Architect a construction schedule that does not exceed time limits current under the Contract Documents. This schedule shall graphically depict the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. Following development and submittal of the construction schedule, the Contractor shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect is submitted.

36. § 3.10 The following new sections are added:

§ 3.10.4 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the

Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as “progress reports”) as set forth in Section 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents due to the fault of the Contractor, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner’s right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor’s compliance with the construction schedule.

- .1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.
- .2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor’s performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner’s premises or any tenants or invitees thereof. The Contractor shall, upon the Owner’s request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

37. § 3.12.4 The following is added after the second sentence of this section:

“Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications.”

38. § 3.12.5 The following are added to this section:

- .1 Shop Drawings shall be fully identified by Project name, location, supplier's name, date, drawing number and specifications section reference. The Contractor shall make no deviation from the approved drawings, and the changes made by the Architect, if any.
- .2 Contractor shall properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawing, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.
- .3 Contractor shall coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer, but are designed to interface when installed.
- .4 If and when required by the Architect, the Contractor shall prepare and submit to the Architect a completely itemized schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:
 - .1 Identification as to pertinent Specification Division
 - .2 Item(s) involved.
 - .3 Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.
 - .4 Scheduled date of delivery of pertinent item to the Project.
- .5 The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.
- .6 A list of all materials and equipment, together with manufacturers' drawings and catalog information shall be submitted to the Architect for approval prior to ordering material or equipment, but not later than 90 days after the date of the award of the applicable subcontracts. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect's approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.
- .7 Nothing in Section 3.12 shall be construed to require the Contractor to assume any responsibility or duty of a consultant hired by Owner so long as such responsibility or duty is not the express responsibility or duty of the Contractor under the Contract Documents.

39. § 3.12.6 The following are added to this section:

- .1 Shop Drawings submitted to the Architect for approval shall first be checked and approved by the Contractor, the evidence of which shall be a "checked" stamp

marked “Approved”, or “Approved as Noted” on each copy of each Shop Drawing, placed thereon by the Contractor. Submitting a Shop Drawing without the Contractor’s “checked” stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect and marked “Reviewed,” “Reviewed as Noted” or “Not Approved”.

- .2 Resubmittals necessitated by required corrections due to Contractor’s errors or omissions shall not constitute cause for an extension of Contract Time, provided the submittals or Shop Drawings are timely reviewed and returned by the Owner.
- .3 All Shop Drawings and submittals will be maintained on site for record purposes, but at no time shall Shop Drawings which have not been approved by the Architect be allowed in the field.

40. § 3.12.10 This section is modified as follows:

- a. Delete the third sentence from the end of the section and restate as follows:

The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of services, certifications, and approvals performed or provided by such design professionals.

- b. Add the following at the end of this section:

Any design professional the Contractor shall cause to provide services or certifications under this Section shall comply with reasonable requirements of the Owner regarding qualifications and insurance.

41. § 3.13 The following new sections are added:

3.13.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

3.13.3 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas

other than those designated by the Owner.

- .1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.
- .2 The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the Building.

42. § 3.14.1 The following is added is the end of this section:

Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor's Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and pay for such work.

43. § 3.16 This section is deleted in its entirety and restated as follows:

The Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Contractor shall afford the Architect and Owner's own forces, and the Architect's or Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

44. § 3.18.1 After "(other than the Work itself)," in first sentence of this section, the following is added:
 "including loss of use resulting therefrom,"

- 44a. § 3.18.1 In the first sentence, the words "Architect, Architect's consultants," are deleted.

45. § 3.18.3 The following new section is added:

3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically

include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

46. § 3.18.4 The following new section is added:

3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

47. § 4.1.1 The following is added to the end of this section:

The term Architect refers to the firm of [insert name of Architect]. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 4.1.2 The word "Contractor" is deleted from this section.

48. § 4.2.1 This section is deleted and restated as follows:

The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until payment is due, and (with the owner's concurrence), from time to time during the one year warranty period for correction of Work as set forth in Section 12.2."

49. § 4.2.5 The following is added to the end of this section:

The authorized representatives and agents of the Architect, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records for the Project wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

50. § 4.2.13 This section is deleted and restated as follows:

The Architect's decisions on matter relating to aesthetic effect in connection with administration of the Contract will be final if consistent with the intent expressed in the Contract Documents.

51. § 5.2.1 This section is deleted and restated as follows:

No later than __ days after the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount

for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed persons or entities; or (2) that the Owner has granted Architect additional time for review. Failure of the Owner or Architect to reply with the 14-day period shall constitute notice of no reasonable objection.

52. § 5.3.1 This section is modified as follows:

5.3.1 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as Addendum A, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

53. § 5.4.2 This section is deleted and restated as follows:

5.4.2 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

54. § 5.4.4 The following new section is added:

5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

55. § 6.1.5 [Intentionally left blank]

56. § 7.1.2 The word "alone" is deleted from the end of this section and replaced with "as provided in Section 7.4."

57. § 7.1.3 The following is added at the end of this section:

Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

58. § 7.2.2 The following new section is added:

§7.2.2 All Change Orders must be on the form designated by Owner.

59. § 7.2.3 The following new section is added:

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not

limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

60. § 7.3.1 The following is added to the end of this section: “All Construction Change Directives must be on the form designated by Owner.”
61. § 7.3.3.2 This section is deleted in its entirety and restated as follows:
 .2 a not-to-exceed amount based on unit prices stated in the Contract Documents or subsequently agreed upon;
62. § 7.3.3.3 This section is deleted in its entirety and restated as follows:
 .3 cost to be determined in a manner agreed upon by the parties and a percentage fee as provided in Section 7.3.13; or
63. § 7.3.7 The first sentence of this section is deleted and replaced it with the following:
 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the stipulated allowance for overhead and profit as stated in Section 7.3.13.”
64. § 7.3.7.2 The words “, and including sales tax” are added to the end of this section.
65. § 7.3 The following new sections are added:
- §7.3.11 The cost of the change in the Work shall not include any cost not to be reimbursed as provided in the Agreement.
- §7.3.12 The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract for Construction, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor’s records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.
- §7.3.13 The percentage fee for overhead and profit combined, to be added to the cost of the change in the Work in determining the total cost to the Owner, shall be based upon the following schedule:
- .1 For any Work performed by the Contractor’s own forces, 15% of the cost of the change;
 - .2 For any Work performed by a Subcontractor or forces under the Subcontractor including any Sub-subcontractors or other persons not in the direct employ of the Subcontractor, a total of 22-1/2% of the cost of the change, with 15% to be assigned to the Subcontractor and any forces under him and 7-1/2% to be assigned to the Contractor.
- §7.3.14 If a change in the Work results in a credit to the Owner, the credit shall be the net cost of the change as defined in Sections 7.3.7 and 7.3.11 and shall not include any allowance for the Contractor’s or Subcontractors’ overhead and profit.

66. § 7.4 The following is added at the end of this section: “Such authority may be executed only after receiving the Owner’s approval.”
67. § 8.1.2 The word “Agreement” is deleted in this section and replaced with the words “notice to proceed.”
68. [Intentionally left blank]
69. [Intentionally left blank]
70. § 9.2 The language “, before the first Application for Payment,” is changed to “, within 10 days of full execution of this agreement.”
71. § 9.2.1 The following new section is added:
 § 9.2.1 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits “front-loading” of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.
72. § 9.3.1.3 The following new section is added:
 § 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor’s lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly executed waivers of mechanics’ and material suppliers’ liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner’s title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.
73. § 9.3.2 The following is added at the end of this section:
 The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.

74. [Intentionally left blank]

75. § 9.4.3 The following new section is added:

§ 9.4.3 If, subsequent to issuing any certificate pursuant to this Section 9.4, Architect should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Architect shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

76. § 9.5.2 The following is added to the end of this section:

The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

77. § 9.6.4 The following is added to the end of this section:

The Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment, unless the Contractor has any reasonable objection based upon an event of default under the Subcontract Agreement. Payment by the Owner to the Contractor and Subcontractor jointly shall not create a contractual relationship between the Owner and the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract for Construction in the Subcontractor against the Owner.

78. § 9.7.1 The following new section is added:

9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or

pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

79. § 9.8.1 The following is added at the end of this section:

; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

80. § 9.8 The following new sections are added:

§9.8.6 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§9.8.7 The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver the finished document to the Architect to verify completeness. The Architect will deliver three copies of the following to the Owner:

§9.8.7.1 Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§9.8.8 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and

the data supplied.

81. § 9.10.2 The word “Claim” is substituted for the word “lien” in the last two sentences of this section.
82. § 9.10.1 The following is added at the end of this section:
- All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment. The Contractor’s final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Contract Documents not previously submitted shall accompany the final Application for Payment.
83. § 9.10.4.4 The following new section is added:
- .4 damages including attorney’s fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.
84. § 10.1.1 The following is added the following to the end of this section:
- The Contractor shall require all of its employees and the employees of Subcontractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and MIOSHA Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperated with all safety audits and recommendations with regard to improving worker’s safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.
85. § 10.2.3 The following is added at the end of this section:
- The Contractor shall also be responsible, at the Contractor’s sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.
86. § 10.2.4 The following is added at the end of this section:
- When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect

reasonable advance notice.

87. § 10.2.9 The following new section is added:

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

88. § 10.2.10 The following new section is added:

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

89. § 10.3.1 The words “material or substance” in the second sentence of this section is replaced with the following: “concealed and undisclosed hazardous material or substance (as defined in *[insert appropriate cross-reference]*)”

90. § 10.3.2 The following is added at the end of this section:

The term “rendered harmless” shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

91. § 10.3.3 This section is modified as follows:

- a. The following is added to the beginning of the first sentence of this section, with the appropriate change in capitalization and the remaining portion of the original paragraph remaining unaltered:

Subject to the provisions of the Tennessee Governmental Tort Liability Act, . . .

- b. § 10.3.3 The following is added to the end of this section:

Owner reserves all rights, privileges, and immunities under the Tennessee Governmental Tort Liability Act and other applicable laws, and nothing herein shall be construed as a waiver of Owner’s sovereign immunity in whole or in part.

92. § 11.1.1.7 The following language is added to the end of his section: “, which coverage shall be maintained for no less than four (4) years following final payment.”

93. § 11.1.2 This section is deleted and restated with the following:

§ 11.1.2 The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor’s efforts to satisfy the obligations set forth in Section 11.1.1, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as

required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in the Schedule of Insurance, attached to the Supplementary Conditions as Addendum A and made a part of this Agreement. All such insurance shall be written on an occurrence basis. Information concerning reduction of coverage shall be furnished by the Contractor promptly.

94. § 11.1.3 This section is replaced with the following:

§ 11.1.3.1 The Contractor hereby agrees to deliver to the Owner, within ten days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project site, certified copies of all insurance policies procured by the Contractor under or pursuant to this Section 11.1 or, with consent of the Owner, Certificates of Insurance in form and substance satisfactory to the Owner evidencing the required coverages with limits not less than those specified in Addendum B to these Supplementary Conditions. The coverage afforded under any insurance policy obtained under or pursuant to this Section 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than 30 days' prior written notice shall be given the Owner in the event of material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance.

§ 11.1.3.2 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under Section 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner or the Architect of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

§ 11.1.3.3 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Section 11.1, the Owner may, but shall not be obligated to, upon five days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 11.1.3.4 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the

Owner.

§ 11.1.3.5 Any aggregate limit under the Contractor’s liability insurance shall, by endorsement, apply to this project separately.

95. § 11.1.4 This section is modified as follows:

- a. All language after the word “claims” in this section is replaced with “made under the Contractor’s completed operations coverage.”
- b. The following is add to the end of 11.1.4:

The Contractor shall also cause each Subcontractor to (i) procure insurance reasonably satisfactory to the Owner and (ii) name the Indemnitees as additional insureds under the Subcontractor’s comprehensive general liability policy. The additional insured endorsement included on the Subcontractor’s comprehensive general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer’s liability under this insurance policy shall not be reduced by the existence of such other insurance.

96. § 11.1.5 The following new section is added:

§ 11.1.5 The Owner is exempt from and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of any deductible shall be the sole responsibility of the Contractor or Subcontractor providing the insurance.

97. § 11.2 This section is deleted and restated as follows:

The Owner shall be responsible for purchasing and maintain the Owner’s usual liability insurance, which may be provided in whole or in part by a self-insurance retention or through the purchase of coverages in the open market or through the Tennessee Municipal League Risk Management Pool.

98. § 11.3 All reference to the words “as fiduciary” in this section are replaced with the words “in good faith.”

99. § 11.3.1.1 The following is added at the end of this section:

Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this Section 11.3.1 shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7.

100. § 11.3.1.3 The following is added at the end of this section:

Notwithstanding, if the cause of any loss payment under such insurance is the fault of the Contractor, then the Contractor shall pay such deductible.

101. § 11.3.5 This provision is deleted in its entirety.
102. § 11.3.6 The words “copy of each policy that includes” beginning in the first line of this section is replaced with the words “certificate of insurance evidencing such.”
103. § 11.3.7 This first sentence of this section is deleted in its entirety and restated as follows:
 The Owner and Contractor waive all rights against (each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent of actual recovery of insurance proceeds under any property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to process of such insurance held by the Owner as fiduciary.
104. § 11.3.11 The following new section is added:
 § 11.3.11 Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the provisions of this Contract for Construction. Indemnity obligations specified elsewhere in this Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.
105. § 11.4.1 This section is deleted and replaced with the following:
 11.4.1 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond (1) meeting all statutory requirements for a public project bond in the State of Tennessee; (2) in form and substance satisfactory to the Owner; (3) in an amount equal to 100% of the Contract Amount; and (3) without limitation, complying with the following specific requirements:
- .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner’s sole judgment.
 - .2 Bonds shall be executed by a responsible surety licensed in Tennessee, with a Best’s rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
 - .3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
 - .4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
 - .5 Every Bond under this Section 11.4.1 must display the Surety’s Bond Number. A rider including the following provisions shall be attached to each Bond:

- .1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
- .2 The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

106. § 11.4.3 The following new section is added:

§ 11.4.3 The Contractor shall deliver the required bonds to the Owner prior to commencement of the Work. Each Bond shall provide either in the body of the Bond or by appropriate endorsement (Rider) to the Bond that: This obligation shall remain in full force and effect for any and all duly authorized modifications of said Contract and that may hereinafter be made, except that no change will be made which will increase the total Contract Sum more than 20% in excess of the original Contract Sum without notice to the Surety.

107. § 11.4.4 The following new section is added:

11.4.4 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the Surety. The Owner shall be notified by the Contractor, in writing, of all communications with the Surety. The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

108. § 11.5 The following new section is added:

11.5 General Requirements

11.5.1 All insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings no lower than "A" and financial ratings not lower than "XII" in the *Best's Insurance Guide*, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

11.5.2 If the Owner or the Contractor is damaged by the failure of the other party to purchase or maintain insurance required under Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable thereto.

109. § 12.2.1 The following is added at the end of section:

If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without

limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to “like new” condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

110. § 12.2.2.1 This section is modified as follows:
- a. After the first sentence of this section the following sentence is added: “For purposes of the preceding sentence, Contractor shall correct such Work promptly if Contractor commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion.”
 - b. All language beginning with the words “and to” in the second to last sentence of this section and continuing through the word “warranty” are deleted.

111. § 12.2.2.3 This section is deleted in its entirety and restated as follows:
- 12.2.2.3** Upon completion of any Work under or pursuant to this Section 12.2, the correction period in connection with the Work requiring correction shall be renewed and recommence for a period of six (6) months. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

112. § 13.2.1 This section is modified as follows:
- a. The following is added after the phrase “Section 13.2.2” in this section: “or set forth elsewhere in the Contract Documents,”
 - b. The following is added to the end of this section:

In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.”

113. § 13.2.2 The first sentence of this section is replaced with the following:
- The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project.

114. § 13.4.1 The following is added at the beginning of this section: “Except as expressly provided in the Contract Documents,”

115. § 13.5.3 The following is added at the end of this section:
- The Contractor also agrees the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

116. § 13.8 The following new sections are added:

§ 13.8 GENERAL PROVISIONS

§ 13.8.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word “including,” when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as “without limitation,” or “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.8.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.8.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.8.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor’s responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

13.9 No Waiver

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written Change Order signed by a duly authorized representation of the Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor’s duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. Furthermore, no “constructive” changes shall be allowed and no actions, omissions, course of conduct, or practice shall be deemed a change, amendment, or waiver to the Contract Documents.

117. [Intentionally left blank]
118. [Intentionally left blank]
119. § 14.1.4 The word “repeatedly” in first sentence is replaced with “persistently.”
120. § 14.2.2 The words “Initial Decision Maker” is replaced with “Architect” in the first sentence of this section.
121. § 14.2.4 The words “Initial Decision Maker” is replaced with “Architect” in the last sentence of this section.
122. § 14.2.1.1 The word “repeatedly” is replaced with the word “persistently”.
- 122a. § 14.2.1.3 The word “repeatedly” is replaced with the word “persistently”.
- 122b. § 14.2.4 The first sentence of this section is deleted in its entirety and the last sentence is deleted and restated as follows:
- The amount to be paid to Owner shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.
- 122c. § 14.2.5 The following new section is added:
- § 14.2.5 If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 14.4.
123. [Intentionally left blank]
124. § 14.4.3 This section is deleted in its entirety and restated as follows:
- 14.4.3** Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner’s instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.
- .1 Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.
125. § 15.1.2 This section is modified as follows:
- a. The following is added at the end of the first sentence of this section:

; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim.

- b. The following is added at the end of this section:

Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

- 126. § 15.1.6 The last sentence of this section is deleted in its entirety and restated as follow:

In no event shall this mutual waiver be deemed to preclude (i) liquidated damages recoverable under the Agreement; (ii) an adjustment to the Contract Sum under Section 12.3; or (iii) the obligation to reimbursement the Owner for any fines from governmental entities or additional costs and expenses for the Architect, consultants, or separate contractors arising out of any act or omission of the Contractor.

- 127. § 15.2.1

- a. The language “initial decision” at the end of the first sentence is changed to “decision.”
- b. The language “an initial decision” is changed to “A decision by the Initial Decision Maker.”

- 128. § 15.2.9 The following new section is added:

§ 15.2.9. The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

- 129. § 15.3 This section is deleted in its entirety.

- 130. § 15.4 This section is deleted in its entirety and restated as follows:

§ 15.4 Arbitration. All disputes will be address consistent with Addendum C.

ADDENDUM A
Contractor's Standard Form Subcontract

[Cover page – See attached]

ADDENDUM B
Schedule of Insurance

CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor must, as a material obligation to the City and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

Contractor must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers compensation and employers liability insurance, providing the following coverages, limits and endorsements:

1. Commercial General Liability Insurance.

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than \$2,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$2,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
 - a. Include the per project aggregate endorsement;
 - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
 - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
 - d. Includes a severability of interest clause; and
 - e. Waive all rights of recovery against the Additional Insureds.

- 2. Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. **Auto Liability Insurance**
 - 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
 - 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
 - 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.
4. **Environmental Liability.** Contractor must secure, pay for, and maintain Contractor's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the City as an Additional Insured. Contractor must also provide to the City proof of Contractor's Pollution Legal Liability (PLL) for sites owned or operated by Contractors and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.
5. **Professional Liability.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the City and with tail coverage of not less than two years.
6. **Umbrella Coverage.** Contractor must secure, pay for, and maintain professional liability coverage in the amount of not less than \$5,000,000 on a form acceptable to the City. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.
7. **Equipment Property Insurance.** Contractor must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the City against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.
8. **Builder's Risk.** Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to City for the Project (not merely the Work), including appropriate, as determinate by the City, coverages, coverage amounts and limits, deductibles, and exclusions. The City must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.
9. **Waiver of Subrogation.** Contractor hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the City and other Additional Insureds for losses or damages covered by any policy of insurance. Contractor, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.
10. **Term of Coverage**
 - 10.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

- 10.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 10.3 Contractor will furnish certificates of insurance and other evidence that the City may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

11. Subcontractor and Lower-Tier Entities Insurance Requirements

- 11.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
 - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
 - b. Timely furnish to the City proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
 - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.
 - d. The City has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

12. Other Policy Provisions. Each policy to be furnished by Contractor and each Subcontractor must:

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 12.3 Include the Project per aggregate endorsement;
- 12.4 Waive all rights of subrogation against the City;
- 12.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the City; and

- 12.6 Be otherwise satisfactory to the City. The City agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the City is satisfied the insurance is not commercially available to the insured. In such event, the City has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the City be a loss-payee under the policy.

13. Certificates and Endorsements

- 13.1 Within 10 days after the execution of this Agreement, Contractor must provide the City with certificates and endorsements;
- 13.2 Upon the City request, Contractor must provide the City with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the City under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the City.
- 13.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

- 14. Reduction in Coverage.** Contractor must promptly inform the City of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The City has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

15. Suppliers and Materialmen Coverages

- 15.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 15.2 With respect to any equipment, machinery or other goods for which the City or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the City and Contractor as loss payee as their interests appear.

16. Condition Precedent to Starting Work

- 16.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the City certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other

proof satisfactory to the City that the required insurance is in place; together with the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the City to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

- 16.2 The City is under no obligation or duty to make any such inquiry and the City is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The City's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.
17. **Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the City with certified copies of all policies and endorsements obtained in compliance with this Agreement.
18. **Indemnity.** The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the City and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.
19. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

ADDENDUM C
DISPUTE RESOLUTION PROCEDURES

1. Disputes

- 1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) must be initiated and decided under the provisions of this Exhibit.
- 1.2 Contractor and the City will each designate in writing to the other Party, from time to time, a member of senior management who is authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.
- 1.3 A Party initiates a Dispute by delivery of written Notice to the members of management designated by the respective parties under Section 1.2 hereof.
- 1.4 The parties must:
 - a. Attempt to resolve all Disputes promptly, equitably and in a good faith manner, and
 - b. Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.
- 1.5 With respect to matters concerning Change Orders for modification of the Guaranteed Maximum Price or Project Schedule, Contractor must first follow the provisions of any Claim procedure established by the Contractor Agreement before seeking relief under these Procedures.

2. Emergency Arbitration

- 2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Construction Services (a “Time Sensitive Dispute”) within two days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before an emergency arbitrator (the “Emergency Arbitrator”) appointed as follows:
 - a. The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;
 - b. If the Emergency Arbitrator has not been selected at the time a Party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.
 - c. The Emergency Arbitrator must be an attorney with at least 10 years’ experience with commercial construction legal matters in Tennessee, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration Association (“AAA”)

Commercial Rules-Optional Rules for Emergency Protection Commercial Rules (“AAA Emergency Rules”)

- 2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.
- 2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either Party may upon three days additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.
- 2.5 All proceedings to arbitrate Time Sensitive Disputes will be conducted in Rutherford, Davidson, or Williamson counties, Tennessee.
- 2.6 Presentation, request for determination (i.e., a Party’s prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.5 hereof.
- 2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Construction Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.
- 2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.
 - a. Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;
 - b. The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a Party that fail to meet this obligation

3. Non-Emergency Arbitration

- 3.1 Except as provided in Section 5 hereof, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.
 - a. The parties each select an arbitrator within 15 days after Notice that a Party desire to resolve a dispute by arbitration.
 - b. The two arbitrators then each select a third arbitrator.
 - c. The arbitrator(s) must meet the qualifications of Emergency Arbitrators as provided in Section 2 hereof.
- 3.2 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.

- 3.3 In connection with such arbitration, each Party is entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each Party will deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.
- 3.4 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.5 At the arbitration hearing, each Party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").
- a. Each Party's Proposed Resolution must be fully dispositive of the dispute.
 - b. The arbitrators must select one of Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.
 - c. The parties must submit their Proposed Resolution of the matter to the arbitrators and the other Party 15 days prior to the date set for commencement of the arbitration proceeding.
 - d. The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.
 - e. The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.
 - f. All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing Party, must be paid by the Party whose position was not selected by the arbitrators.
4. **Continuing Work.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of the Work during any Dispute resolution or arbitration proceedings, and the City will continue to make payment to Contractor in accordance with the Contractor Agreement.
5. **Exceptions**
- 5.1 Neither the City nor Contractor are not be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the City and Contractor.
- 5.2 The City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.
- 5.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the City acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.
- 5.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Tennessee Rules of Civil Procedure.



... creating a better quality of life

March 21, 2016

Honorable Mayor and Members of City Council:

- 1. Approval of a Request for Competitive Sealed Proposals for a Solid Waste Consultant**
- 2. Memorandum of Understanding with Rutherford County on the sharing of costs for a Solid Waste Consultant**

It is recommended that City Council approve the issuance of a Competitive Sealed Proposal for a Solid Waste Consultant. In a companion piece, staff also recommends Council approve a Memorandum of Understanding with Rutherford County to share the costs of the preparation of a Solid Waste Strategic Plan.

1. Overview

Middle Point Landfill, which both the County and City utilize for disposal of waste, is projected to close in eight (8) years. Both the County and City currently pay zero (\$0.0) dollars for disposal. The closure of the landfill will require decisions to be made about garbage collection and disposal in Rutherford County.

A strategic plan is necessary to ensure that Rutherford County and Murfreesboro's solid waste services keep pace with the rapid growth of the area, are appropriate for current and future needs, contribute to a healthy and sanitary environment, takes advantage of unique opportunities or technologies and be cost effective.

The scope of work that the Solid Waste Consultant will undertake includes;

1. Defining a Baseline of the existing solid waste management operations
2. Identifying, Analyzing and Evaluating Options
3. Develop Strategy Recommendations
4. Prepare an Action Plan for the first two to five years

Rutherford County has four municipalities' within its borders; Eagleville, LaVergne, Murfreesboro and Smyrna. Only Murfreesboro provides curbside collection of solid waste to their residents. The other three communities have a variety of private collection companies on

[Administration Department](#)

a voluntary subscription basis for residents. Rutherford County provides 14 recycling stations and front loader service to public schools and facilities.

Rutherford County and the City of Murfreesboro will share the cost associated with the creation of the Solid Waste Strategic plan on a fifty / fifty basis.

Should any or all of the other three municipalities choose to participate in the consulting phase of the Solid Waste study, then those cities would contribute financially to the study cost based on their 2014 census population as a percentage of Rutherford County's population in the same census.

2. Funding

Because of the highly specialized nature of landfills and solid waste planning, the cost of a Solid Waste Strategic Plan is estimated between \$300,000 and \$400,000. The City's 50% share would be a budgeted item in the FY 2017 annual budget.

3. Recommendation

It is recommended that City Council approve the issuance of a Competitive Sealed Proposal for a Solid Waste Consultant. In a companion piece, staff also recommends Council approve a Memorandum of Understanding with Rutherford County to share the costs the preparation of a Solid Waste Strategic Plan.

Sincerely,

James H. Crumley
Assistant City Manager

Attachments

Request for Competitive Sealed Proposal

Memorandum of Understanding with Rutherford County

Memorandum of Understanding (MOU)

Between

The City Of Murfreesboro

And

Rutherford County Government

For

A Solid Waste Strategic Plan

Rutherford County, TN and the City of Murfreesboro, TN are seeking a qualified consultant in solid waste planning to facilitate a strategic plan for future solid waste disposal options.

Middle Point Landfill, which both the County and City utilize for disposal of waste, is projected to close in eight (8) years. Both the County and City currently pay zero (\$0.0) dollars for disposal. The closure of the landfill will require decisions to be made about garbage collection and disposal in Rutherford County.

Rutherford County has four municipalities' within its borders; Eagleville, LaVergne, Murfreesboro and Smyrna. Only Murfreesboro provides curbside collection of solid waste to their residents. The other three communities have a variety of private collection companies on a voluntary subscription basis for residents. Rutherford County provides 14 recycling stations and front loader service to public schools and facilities.

A strategic plan is necessary to ensure that Rutherford County and Murfreesboro's solid waste services keep pace with the rapid growth of the area, are appropriate for current and future needs, contribute to a healthy and sanitary environment, takes advantage of unique opportunities or technologies and be cost effective.

The scope of work that the Solid Waste Consultant will undertake includes;

1. Defining a Baseline of the existing solid waste management operations
2. Identifying, Analyzing and Evaluating Options
3. Develop Strategy Recommendations
4. Prepare an Action Plan for the first two to five years

Rutherford County and the City of Murfreesboro will share the cost associated with the creation of the Solid Waste Strategic plan on a fifty / fifty basis.

Should any or all of the other three municipalities choose to participate in the consulting phase of the Solid Waste study, then those cities would contribute financially to the study cost based on their 2014 census population as a percentage of Rutherford County's population in the same census.

The State of Tennessee Solid Waste regulations require that the County be the lead program manager for solid waste planning in the County. Therefore, Rutherford County will be the main contact for bill payments and also receive any monies due for payment of the solid waste consultant services from this MOU.

For City of Murfreesboro and Rutherford County Government:

Shane McFarland, City Mayor

Date

Ernest G. Burgess, County Mayor

Date

Rutherford County, Tennessee And The City of Murfreesboro



Request for Competitive Sealed Proposals (RFCSP)

For a

Solid Waste Disposal Feasibility Study

ISSUE DATE:

RESPONSE DUE DATE:

1. Introduction

Rutherford County, TN and the City of Murfreesboro, Tennessee (City), is issuing a Request for Competitive Sealed Proposals (RFCSP) from qualified professional services firms to plan and conduct a solid waste disposal feasibility study. This project requires the consultant to assist in identifying and evaluating available technologies to expand, supplement or replace the existing infrastructure to manage the community's solid waste management needs into the next 20-40 year horizon. The work may include Program Management for future project phases including the following: preliminary design, final design, permitting assistance, and construction administration services. This future phase work would be subject to a change order and subsequent negotiations for such services and required approvals.

2. Competitive Sealed Proposal Process and Schedule

The Competitive-Sealed-Proposal method is appropriate when qualifications and experience are of particular importance and price is one of several factors used to determine the best service provider. This method requires each participant to submit a proposal based on certain specified elements with knowledge of the factors used to evaluate the proposal and their relative weight. Those interested in participating in the selection process are afforded the opportunity to pose questions in writing about the RFCSP and services sought before submitting a proposal. After the sealed proposals have been submitted and reviewed, the County and City may obtain additional information or clarifications including additional "best and final offers" from participants, prior to making its final selection, provided that information from one proposer is not disclosed to another. The County and City will select a responsible and responsive proposer whose proposal is determined to be most advantageous taking into consideration the evaluation factors.

2.1 Schedule

The County and City intends to adhere to the schedule below for the selection process. Dates may be adjusted by the County and City as needed.

Activity	Target Date
RFCSP Issued	April 4, 2016
Submittal of questions	April 11, 2016
Answers to questions	April 19, 2016
Proposals submitted	May 4, 2016
Finalists notified	May 11, 2016
Finalist Presentations	May 19, 2016
Last Offer	May 26, 2016
Selection	June 3, 2016
Negotiation of contract	June 9, 2016
City Council action	June 19, 2016

2.2 Evaluation Criteria

Each proposal will be evaluated based on the criteria listed in Section 8.

2.3 Finalist Selection

The County and City intends to select two or more Proposers from the RFCSP responses to further evaluate as finalists through on-site presentations. Finalists then will be allowed to submit revisions to their proposal to make a last and best final offer. Additional discovery may be performed to assist in selecting the finalist.

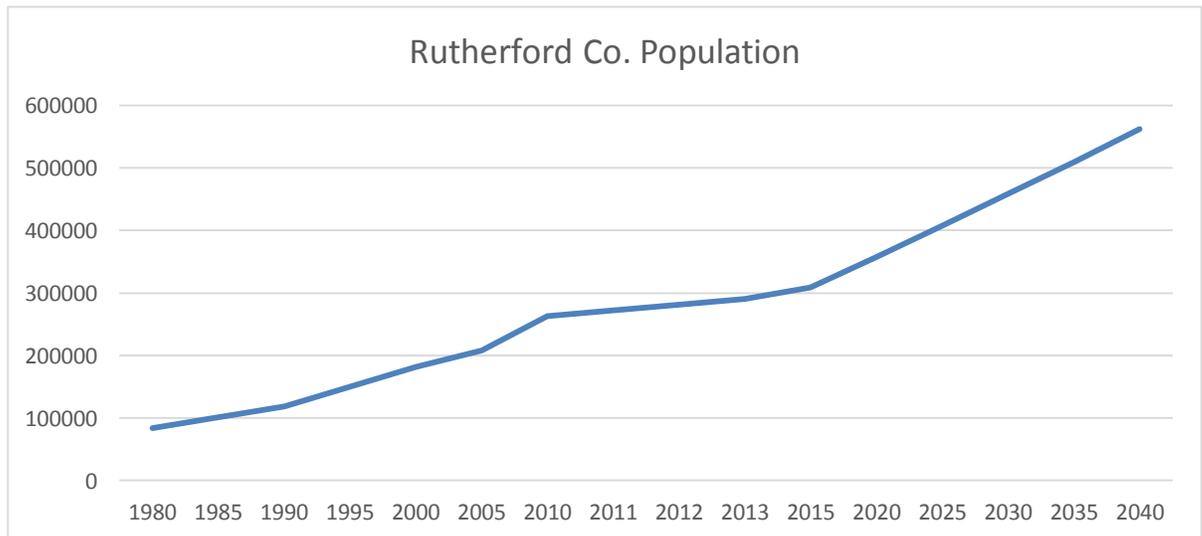
The finalist will be selected based on all of the evaluation criteria so that the County and City obtains the best professional services for it for an appropriate fee.

3. Contact Information

Please submit all questions and matters relating to this RFCSP in writing to Jim Crumley, Assistant City Manager, City of Murfreesboro. He may be reached at (615) 849-2629 or by email at: jcrumley@murfreesborotn.gov or by mail at City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130. Questions may be submitted either in writing or via email. Questions and answers, and any changes to this RFCSP or its Schedule will be posted on the City's and County's website.

4. Background

Only 15 miles southeast of Nashville and located at the geographic center of Tennessee, Rutherford County is the fifth largest and the fastest growing county in the state, and the 20th fastest growing county in the nation in terms of housing. Between 2000 and 2010 Rutherford County's population increased by an estimated 44.27 percent. In fact, Rutherford County has outpaced population projections for the last 20 years. The current estimated population for Rutherford County is over 290,000, with the rural population easily exceeding 80,000 (over 30 percent of total population). Current projections indicate that this trend will continue with Rutherford County's population potentially estimated to double again in approximately 30 years with a population of over 600,000 in the year 2045, Attachment 1. This growth is visually depicted in the graph below.



Municipal solid waste is collected by a combination of County, City and private haulers. Unincorporated areas are served by recycling centers operated by the County, and private haulers. Other than small commercial businesses inside the City, all businesses procure solid waste services from private haulers.

Rutherford County's solid waste is disposed at the Middle Point Landfill which is privately owned and operated by Allied Waste Services, a Republic Services Company. Information on the County, City and private haulers is included as Attachment 2. A host agreement was negotiated in 1995 providing that both the City and the County receive free disposal, and the County receives an annual host fee of \$1.20 per ton of out of county solid waste disposed of at the Middle Point Landfill.

Middle Point Landfill opened in 1987 after it was permitted and constructed by Romac. In 1988 it was sold to BFI. In 1989, in order to operate at a profit, BFI asked and the County approved accepting solid waste from outside Rutherford County. Nineteen (19) counties currently using Middle Point Landfill for disposal of some or all of their solid waste.

In 2014, Middle Point received 909,125 tons of waste from all sources. Rutherford County, including all municipalities, contributed 257,970 tons or 28.38% of the stream. The other 18 counties contributed 655,155 tons or 71.62%.

Rutherford County's contribution breaks down as:

	TONS	PER CENT OF LANDFILL TOTAL (909,125)
City of Murfreesboro	33,944	3.73
Rutherford County	45,729	5.03
3 rd Party Haulers	178,297	19.62

The Middle Point Landfill is projected to reach capacity no later than 2025. With current population projections the landfill could potentially reach capacity sooner. Additionally, the majority of landfills currently permitted and operating within the state of Tennessee are expected to be at or near capacity within a similar timeframe. See Attachment 3.

Rutherford County currently operates a Construction and Demolition landfill which is projected to reach capacity in less than four years. Additionally, the County owns and monitors a Class I Landfill that was closed in 1994

5. Services Requested/Specifications

This is a request for proposals and qualifications from consultants to conduct an economic and strategic study to assist in identifying and evaluating available technologies to expand, supplement or replace the existing infrastructure to manage the community's solid waste management needs into the next 20-40 year horizon.. The City and County are interested in solutions that are sited inside Rutherford County and sized sufficiently for the estimated population of the entire County.

This may be accomplished in many altering scenarios based on the technologies evaluated. These may include, but are not limited to, advanced thermal conversion, mass burn, "dirty MRF", single stream MRF, alternate collection strategies, and/or traditional disposal methods. In any event, the selected technology should complement and enhance the current integrated solid waste management system. The City and County are interested in any or all waste diversion or disposal technologies that:

1. Are sustainable ensuring the long term disposal of solid waste in an environmentally friendly manner.
2. Control long term costs to the maximum extent practicable thereby minimizing the impact on all tax or rate payers.
3. Comply with all Federal and state of Tennessee laws and regulations that govern solid waste disposal including hazardous waste and recycling.
4. Meet the service needs of all solid waste customers in a reliable and professional manner.

6. Terms and Conditions

It is important for each Proposer to become familiar with each paragraph within this section, as these paragraphs will prevail in the event of any discrepancies or differences between project related or contractual documents.

The Proposer must clearly and specifically detail all exceptions to the Terms and Conditions imposed in this section in the transmittal letter that will accompany its RFCSP response.

6.1 Standards

Proposer must affirm that under its employment policies, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to the individual's race, creed, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of the County and City not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Proposer will be required to certify and warrant that it will comply with this policy.

Proposer understands that it shall be a breach of the County and City ethical standards policies for any person to offer, give, or agree to give to any County or City employee or former employee, or for any County or City employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, evaluation, recommendation, preparation of any part of a requirement or request, influencing the content this RFCSP, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to this RFCSP or any contract or subcontract resulting therefrom.

A breach of these ethical standards may result in civil and/or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor for any County and City contract.

6.2 Warranties

Proposer warrants it will perform the services in a professional manner according to the standards established in the industry for the type of work to be performed and as outlined in Section 5.

6.3 Indemnification

The Proposer shall indemnify the County and City and hold it harmless against all claims, liability, demands, liens, taxes, loss or damages of any character suffered by the County and City arising from any operations, acts or omissions of Proposer related to the work. Proposer's indemnification shall also encompass any and all financial damages to County and City resulting from the activities and responsibilities of the Proposer, Proposer's employees, and subcontractors.

6.4 Terms for Payment

Payment for services delivered will be thirty (30) days from the date of the invoice following delivery of the final report.

6.5 Assignment

The successful Proposer shall not assign, transfer, convey, sublet or otherwise dispose of any contract award or any or all of its rights, title or interest therein, without prior written consent of the County and City. Such consent by the County and City shall not relieve the assignor of liability in the event of default by the assignee.

6.6 Insurance

The successful Proposer shall maintain at least the following commercial insurance policies for the duration of the Contract in the amounts specified:

- Workers' compensation and employer's liability insurance – Workers' compensation in compliance with the applicable state and federal laws; employer's liability with a limit of \$1,000,000 per occurrence.
- Comprehensive general liability insurance – insurance including blanket contractual, broad form property damage, completed operations, and independent contractor's liability, all applicable to personal injury, bodily injury, and property damage to a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.

The selected Proposer must provide County and City with the required insurance certificates and endorsements and name the County and City as an additional insured on the liability coverages prior to contract execution.

6.7 Scope of Insurance and Special Hazards

The insurance required under the preceding paragraphs shall provide adequate protection for the successful Proposer and any sub-contractors against damage claims that may arise from operations under this contract, whether such operations are by the insured or by anyone directly or indirectly employed by the successful Proposer.

6.8 Governing Law and Venue

The contract will be governed by the laws of the State of Tennessee. Venue for any action shall be in the applicable court for Rutherford County, Tennessee.

6.9 Compliance with Laws

The Proposer's contract shall comply with applicable Federal, State, and Local statutes, rules, and regulations. Proposers shall be approved by the appropriate regulatory authorities, if any, in the state of Tennessee to provide the services herein described.

7. Guidelines for this Request for Competitive Sealed Proposals Process

7.1 Basis for Proposals

Only information supplied by the County and City in writing should be used in the preparation of a proposal. Oral and other interpretations or clarifications shall not be binding. Proposers must acknowledge any subsequently issued addenda by signing and including such documents in the proposal.

7.2 Proposer Terms and Conditions

The Proposer must submit a complete set of any additional terms and conditions that it proposes to have included in contract negotiations with the County and City with its proposal. The County and City will not accept any contract term limiting Proposer's liability to the amount of the contract. Additionally, the Proposer must submit any and all documents/agreements the County and City must sign with its proposal.

7.3 Disclosure of Proposals

As a matter of state law, each Proposer's RFCSP response in its entirety will become a public record after completion of the selection process. The content of any proposal will not be disclosed to other Proposers during the selection process.

7.4 Late Proposals

Proposals must be received at the specified location on or before the published proposal due date and time. Any proposal received after the time and date set for receipt of proposals will be late and, at the discretion of County or City, may not be considered.

7.5 Signing of Proposals

The submission and signature of a proposal shall indicate the intention of the Proposer to adhere to the provisions described in this RFCSP and therefore must be signed by a representative with the authority to do so.

7.6 Cost of Proposal

This RFCSP does not commit the County and City to pay any costs incurred by any Proposer in preparation and/or submission of a proposal or for procuring or contracting for the items to be furnished under the RFCSP. All costs directly or indirectly related to responding to this RFCSP (including all costs incurred in supplementary documentation or on-site interviews) until contract execution shall be borne by the Proposer.

7.7 Conflict of Interest, Non-Collusion and Anti-Lobbying

The Proposer promises that its officers, employees or agents will not attempt to lobby or influence a vote or recommendation related to the firm's proposal, directly or indirectly, through any contact with County Commission or City Council members or any County and City employees between the release of this RFCSP and award of contract by County and City and that there will be no collusion and no conflict of interest.

7.8 Ownership of Proposals

All documents submitted in response to this RFCSP shall become the property of the County and City.

7.9 Disqualification or Rejection of Proposals

Proposers may be disqualified for any of the following reasons:

- There is reason to believe that collusion exists between or among two or more Proposers;
- The Proposer is in arrears on an existing County or City contract or has defaulted on a previous County or City contract;
- The Proposer lacks financial stability;
- The Proposer has failed to perform under a previous or current County or City contract;
- The Proposer has failed to adhere to one or more of the provisions established in this RFCSP;
- The Proposer has failed to submit its proposal in the format specified herein;
- The Proposer has failed to submit its proposal on or before the deadline established herein; or
- The Proposer has failed to adhere to generally accepted ethical and professional principles during the proposal process.

7.10 Right to Waive Irregularities

Proposals shall be considered irregular if they show any omissions, alterations of form, additions, conditions not called for, or irregularities of any kind.

The County and City reserves the right to waive irregularities. The County and City also reserves the right to waive any mandatory requirement provided that all proposals failed to meet the same mandatory requirement, and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the County and City.

7.11 Withdrawal of Proposals

Proposals may be withdrawn by written notice if received by the County and City prior to the exact hour and date specified for receipt of proposals. A proposal also may be withdrawn in person and the Proposer signs a receipt for the proposal, but only if the withdrawal is made by a person clearly authorized to do so prior to the exact hour and date set for the receipt of proposals.

7.12 Amendment of Proposals

A Proposer must submit any amended proposal before the deadline for receipt of proposals. Such amended proposal must be a complete replacement of a previously submitted response and must be clearly identified as such in the transmittal letter. The County and City will not merge, collate, or assemble proposal materials.

7.13 Proposal as Firm Offer

Responses to this RFCSP, including cost, will be considered firm for ninety (90) days after the due date for receipt of response or receipt of the last best and final offer submitted. All proposals must include a statement to that effect.

7.14 Exceptions to RFCSP Specifications

Although the specifications stated in the RFCSP represent the County and City's anticipated needs, there may be instances where it is the County and City's interest to permit exceptions to specifications and accept alternatives.

It is extremely important that the Proposer make very clear where exceptions are taken to the specifications and how the Proposer will provide alternatives. Therefore, exceptions, conditions, or qualifications to the provisions of County and City's specifications must be

clearly identified as such together with reasons for taking exception, and inserted into the proposal response. If the Proposer does not make clear that an exception is being taken, The County and City will assume the proposal response is responding to and will meet the specification as written.

Where the Proposer does not agree with County and City's terms and conditions, the proposal must enumerate the specific clauses that the Proposer wishes to amend or delete and suggest alternative wording. Any minimum terms that the County and City will have to agree to in order to enter into a contract with the Proposer and any item the Proposer considers to be a mandatory term must be submitted with the RFCSP response.

7.15 Consideration of Proposals

Discussions may be conducted with responsible Proposers for the purpose of clarification to assure full understanding of the proposal. In conducting discussions, there will be no disclosure of any information derived from proposals submitted by competing Proposers. Until the County and City awards the contract, it reserves the right to reject any or all proposals and waive technicalities, to re-advertise for new proposals, or to proceed with the work in any manner as may be considered in the best interest of County and City.

7.16 Termination

The County and City reserves the right to cancel this RFCSP at any time. County and City reserves the right to reject any or all proposals submitted in response to this RFCSP.

7.17 Taxes

Proposer is responsible for the payment of any applicable tax on the services it will provide. At the time of this RFCSP, neither the state of Tennessee nor the County and City impose a sales tax on consultant services of this type. Proposers will include in its fee proposal all applicable local, state, and federal taxes.

7.18 Award of Contract

The County and City reserves the right to withhold final action on the RFCSP for a reasonable time, not to exceed one hundred and twenty (120) days after the date of submitting proposals, and in no event will an award be made until further investigations have been made as to the responsibility of the proposed Proposer. The award of the contract, if an award is made, will be to the most responsible and responsive Proposer whose proposal meets the requirements and criteria set forth in the Request for Competitive Sealed Proposal and whose contract terms are acceptable to County and City. County and City reserves the right to abandon, without obligation to the Proposer, any part of the project, or the entire project, at any time before the successful Proposer begins any work authorized by County and City.

The award of the contract shall not become effective until the contract has been executed by the successful Proposer and County and City.

7.19 Appeal Process

Each Proposer shall be notified of the Proposer selected for recommendation to the County Commission and City Council before the proposed action. A protest by an aggrieved Proposer who is not selected will be heard by the City Council if filed with the City Council, through the City Recorder, within seven (7) days after the intended award is announced. Any issue raised by the protesting party after the seven day period shall not be considered as part of the protest. The City Council may stay an award due to a pending protest without financial or other obligation to the Proposer recommended to the Council. The City Council may, by resolution, adopt rules and procedures applicable to protests.

7.20 Execution of Contract

The County and City shall authorize award of the contract to the successful Proposer. County and City will require the successful Proposer to sign the necessary documents entering into the required contract within 10 days of receipt and to provide the necessary evidence of insurance as required under the contract.

No contract for this project may be signed by County and City without the authorization of the County Commission and City Council. No contract shall be binding on County and City until it has been approved and executed by the Mayors or designees, and approved as to form by the County and City Attorney.

8. Criteria Used To Evaluate Proposals

8.10 Evaluation Criteria

The County and City has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and/or Requirements which shall serve as a guide to the CONSULTANT in performing the professional services and work to be provided pursuant to this Agreement:

Those firms deemed to meet all minimum qualifications will be scored based upon established criteria, which have been weighted and will be assigned points that measured the responsiveness to each identified criterion. The total number of points earned will be tallied for each firm, and the firms will be rank ordered, based upon the firms submitted qualifications. Only the top three highest scoring firms will be short listed to move forward with interviews/presentations. The County and City reserves the right to invite firms outside the top three highest scoring to move forward should the selection committee see that doing so is in the best interest of the County and City.

The shortlisted firm(s) offering the best interview, in the opinion of the County and City, will be presented to the respective governmental bodies for consideration to enter into negotiations to enter into contract.

Firms may not exceed the 30 page maximum requirement stated above, under submission of letters of interest, to comply with the criterion listed herein.

In addition to the requested information listed under paragraph 10 RFCSP Requirements and Format, firms should address the following in their submittal:

CRITERION 1: Experience with Similar Projects (Maximum Points: 35)

Provide the firm's relevant experience in consulting services to governmental agencies for similar projects. Describe your firm's experience, expertise and qualifications in the following:

1. assessment and forecasting of solid waste management needs;
2. evaluation of available technologies for integrated solid waste management systems;
3. identification of financial impacts for proposed alternative system elements;

4. preparation of Basis of Design Reports; and
5. successful completion of projects expanding, supplementing or replacing solid waste management systems.

Highlight any particular benefits that clients realized as the result of the Consultant's efforts.

Provide a list of similar projects including locations, summary of scopes of services, dates when work was performed, client name, address and telephone number and name of contact person for reference. Only include services performed within the last seven (7) years.

CRITERION 2: Approach to Project (Maximum Points: 30)

Provide a summary narrative or list of information that explains how the Consultant can best provide Program Management for this type of project and assist the County and City in completing the project expeditiously while minimizing delays and cost overages. Explain how the Consultant will maintain time management and budget control for its own work (and its sub-consultants).

CRITERION 3: Key Personnel (Maximum Points: 35)

Provide a list of the personnel with organizational chart to be assigned on this project, their background, specific role, experience and workload. Concise resumes including education, experience, where the employee is based and any other pertinent information shall be included for each team member assigned to the project. Project resumes are to be no more than one (1) page in length. Describe in detail the proposer's policy on changing personnel assigned in the proposal to the project. Indicate if the firm intends to commit to a percentage of substitutions during the term of the project. Indicate proposed sub-consultants and their intended roles and office location.

The Criterion 3 response should include a discussion of how the Consultant's in-house staff has significant current experience with solid waste processing, recycling, construction and demolition, biosolids composting, and waste incinerator ash regulations and permitting.

8.20 Interview/Presentation

Upon short listing, the requirements for written materials and interview/presentation will be made known to the short listed firms.

Following Presentation the evaluation committee in their sole opinion will make a recommendation of award based upon the information provided from firm's presentations and evaluation committee discussion.

A recommendation of Award will be presented to the respective governmental bodies for approval, to enter into negotiations to provide Professional Consulting Services, which in the sole opinion of the County and City, would be in the best interest of the community.

9. RFCSP Requirements and Format

Please use the following format to structure your RFCSP response. Your response should include each section detailed below in the order presented. The detail represents the items that are to be covered in each section of your response. Failure to follow the directions or to address all items will impact the evaluation. Failure to address a significant portion of the items may classify the response as non-responsive and preclude it from further consideration. **The number of pages in the RFCSP response cannot exceed thirty (30) pages.** Appendices will not be counted as part of the 30 page limit. Resumes and marketing material may be included and will not be counted towards the 30 page limit; however this information must be in its own section at the back of the RFCSP response. All materials must fit into a single binder. Please supply eight hard copies of the proposal in binders, and two electronic copies.

9.10 Table of Contents

Responses shall include a table of contents properly indicating the section and page numbers of the information included.

9.20 Transmittal Letter

The transmittal letter will indicate the intention of the Proposer to adhere to the provisions described in the RFCSP without modification. The letter of transmittal should:

- 1) Identify the submitting organization;
- 2) Identify the person, by name and title, authorized to obligate the organization contractually;
- 3) Identify the contact person responsible for this response and specify phone, fax, and email address;
- 4) Explicitly state that Proposer has reviewed and accepted the County and City's Terms and Conditions;
- 5) State that it has included any additional terms or conditions or documents which it requires;
- 6) Identify any and all exceptions or "deal breakers" to the RFCSP requirements;
- 7) Acknowledge the proposal is considered firm for one hundred and twenty (120) days after the due date for receipt of proposals or receipt of the last best and final offer submitted. If partners are used, they must also guarantee their section of the proposal for 120 days;
- 8) Acknowledge completion of the Fee Proposal; and
- 9) Signed by a person authorized to contractually obligate the organization.

9.30 Qualifications and Background

Provide firm biography and history of the firm's services in the solid waste management business.

Firm Name
Business Address
Names and Titles of Two Contact People

Type of Firm
Federal Employer Identification Number
Year Firm was Established
Payment and Performance Bonding limits
How many years has the firm been doing business under its present name?
What projects has the firm completed and what projects is the firm currently engaged?

9.40 Firm Experience and References

Provide the owner's name, address, telephone number, and contact person for each project. References for Projects where the responding firm was not the prime contractor are not acceptable. Please list any projects completed in the Rutherford County area, as well as the state of Tennessee.

9.50 Capability of the Firm

Please list projects completed in Murfreesboro and/or the Rutherford County area, as well as the state.

10. Submittal of Proposals

All Proposals should be delivered to the City Manager, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130; Attn: Solid Waste Disposal Feasibility Study. Proposals must be delivered by 3:00p.m. local time on May 4, 2016.

The label provided below, with all appropriate information completed, should be used for the proper processing of the RFCSP submittal. The label will facilitate the City Manager's Office to properly handle the sealed envelope without revealing the contents until the solicitation is opened.



SEALED QUOTATIONS & PROPOSAL ENCLOSED

Company Name:

Company Address:

Company Telephone Number:

**City of Murfreesboro
Attn: City Managers' Office
111 West Vine Street
Murfreesboro, TN 37130**

Solicitation No: RFCSP -40-2016

Solicitation Title: Solid Waste Disposal Feasibility Study

Solicitation Due Date & Time (CST): May 4, 2016 by 3:00 pm

RESOLUTION 16-R-07 regarding amendment and restatement of the governmental money purchase (“401”) plan for City of Murfreesboro employees hired on or after July 1, 2010.

WHEREAS, the City of Murfreesboro (“City”) has employees, hired on or after July 1, 2010, who render valuable services to the City and the community; and,

WHEREAS, pursuant to Resolution 10-R-21, the City established a governmental money purchase plan (“401 Plan”) with ICMA Retirement Corporation for the benefit of City employees hired on or after July 1, 2010; and,

WHEREAS, pursuant to Resolution 10-R-22, the City also established a deferred compensation plan (“457 Plan”) with ICMA Retirement Corporation for the benefit of City employees hired on or after July 1, 2010; and,

WHEREAS, pursuant to Resolution 10-R-23, the City approved and adopted a contribution formula that enables the City to make contributions to the 401 Plan based on an employee’s contributions to the 457 Plan; and,

WHEREAS, the terms and conditions of the 401 Plan are set forth in the *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust*, adopted pursuant to Resolution 10-R-21 and amended by Resolution 10-R-23; and,

WHEREAS, pursuant to Resolution 10-R-21, the 401 Plan and 457 Plan together constitute the City’s Defined Contribution Retirement Plan; and,

WHEREAS, the City’s Defined Contribution Retirement Plan also serves the City’s interest by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system and by assisting in the retention of competent personnel; and,

WHEREAS, the City has determined that the continuance of the Defined Contribution Retirement Plan will serve these objectives; and,

WHEREAS, adoption of the proposed *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust* (attached hereto as Exhibit A) is necessary to ensure compliance with Internal Revenue Service regulations and continuation of the 401 Plan’s qualified status; and,

WHEREAS, the proposed Adoption Agreement between the City and ICMA Retirement Corporation (attached hereto as Exhibit B) appoints ICMA Retirement Corporation as the Plan Administrator and further specifies the terms and conditions of the 401 Plan; and,

WHEREAS, further amendments to the proposed *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust* and the Adoption Agreement are necessary to incorporate prior amendments made by the City to the 401 Plan with respect to: (a) matching contributions made by the City on behalf of employees, (b) the definitions of retirement age and earnings, and (c) the vesting schedule for eligible employees; and,

WHEREAS, Section 14.01 of the proposed *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust* permits the City to amend the 401 Plan and, implicitly, the Adoption Agreement under which the unique features of the 401 Plan are specified; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The City hereby amends and restates the 401 Plan in the form of *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust* (“Exhibit A”).

SECTION 2. Section 4.04 of the *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust* is amended to read as follows:

“Employer Matching contributions of Voluntary Participant Contributions to 457 Plan. If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee who has made a Participant Contribution to the 457 Plan for that Plan Year. The amount of such Employer Matching Contribution shall be based on the percentage of Earnings which the Participant has voluntarily contributed into the 457 Plan as specified in the Adoption Agreement. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.”

SECTION 3. The first sentence of Section IV of the Adoption Agreement (“Exhibit B”) is amended to read as follows:

“Normal Retirement Age shall be: (1) for Employees who are firefighters or police officers, Employee’s fifty-fifth (55th) birthday; (2) for Employees who are at least fifty-five (55) years of age, the date of completing thirty (30) years of full-time employment with Employer; and (3) for all other Employees, Employee’s sixty fifth (65th) birthday.”

SECTION 4. Section V.2 of the Adoption Agreement is amended to read as follows:

“2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. Employees hired between July 1, 2010 and October 31, 2014, became eligible to participate in the Plan on the first of the month following or coinciding with 90 days of employment. Employees hired on or after November 1, 2014, are eligible to participate in the Plan on the first of the month following or coinciding with 60 days of employment.”

SECTION 5. The Adoption Agreement shall be amended by adding a new subsection VI.2.C, which the City hereby elects:

“C. Variable Employer Match of Voluntary Participant Contributions to 457 Plan. The Employer shall contribute to the Plan a Matching Contribution which shall be allocated to the account of eligible Participants as set forth under Section 4.04 of the Plan. The amount of the Employer’s Matching Contribution shall equal the amount of the whole percentage of Earnings, between 1% and 5%, qualifying for the Matching Contribution.”

SECTION 6. The amendments set forth in Sections 2, 3, 4, and 5 are incorporated and memorialized in an Appendix A to the Adoption Agreement.

SECTION 7. The City declares that the assets of the 401 Plan shall be held in trust, with the City serving as trustee (“Trustee”), for the exclusive benefit of Plan participants and their beneficiaries, and the assets shall not be diverted to any other

purpose. The Trustee's beneficial ownership of the 401 Plan assets held in VantageTrust shall be held for the further exclusive benefit of 401 Plan participants and their beneficiaries.

SECTION 8. The City hereby agrees to serve as Trustee under the 401 Plan.

SECTION 7. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

Passed: _____

Shane McFarland, Mayor

ATTEST:

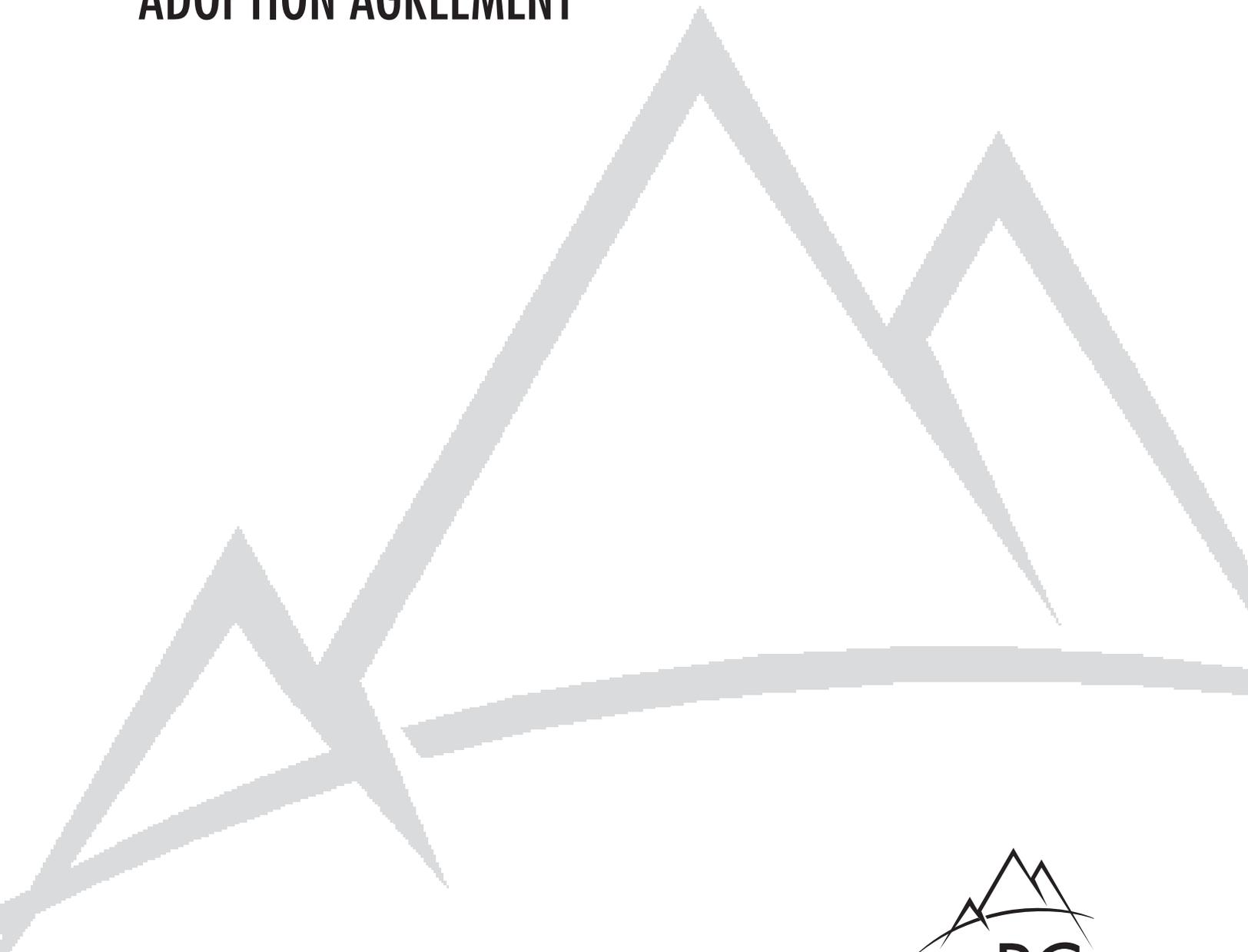
APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

David A. Ives
City Attorney

ICMA RETIREMENT CORPORATION

GOVERNMENTAL MONEY PURCHASE PLAN & TRUST ADOPTION AGREEMENT



**ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT**

Plan Number 106895 _____

The Employer hereby establishes a Money Purchase Plan and Trust to be known as CITY OF MURFREESBORO D.C.P.
(the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

CITY OF MURFREESBORO DEFINED CONTRIBUTION PLAN (D.C.P.)

I. Employer: CITY OF MURFREESBORO TENNESSEE

II. Effective Dates

1. **Effective Date of Restatement.** If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: 7/1/2010

(Note: An alternate effective date can be no earlier than January 1, 2007.)

2. **Effective Date of New Plan.** If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:

3. **Special Effective Dates.** Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1. or 2. above.

Pursuant to City of Murfreesboro Resolution 16-R-071, the City has amended Section 4.04 of the Plan and Sections IV, V, and VI of this Adoption Agreement. Such amendments are reflected in Appendix A hereto, and incorporated into the Plan and this Adoption Agreement as if set forth fully herein. The amendment to Section V is effective as of 11/1/2014; other amendments are effective as of 7/1/2010.

(Note provision and effective date.)

III. Plan Year will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(f) of the Plan.)

The twelve (12) consecutive month period commencing on 7/1/2010 and each anniversary thereof.

IV. Normal Retirement Age shall be age 65.0 (not to exceed age 65).

Important Note to Employers: Normal Retirement Age is significant for determining the earliest date at which the Plan may allow for in-service distributions. Normal Retirement Age also defines the latest date at which a Participant must have a fully vested right to his/her Account. There are IRS rules that limit the age that may be specified as the Plan's Normal Retirement Age. The Normal Retirement Age cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. An age under 55 is presumed not to satisfy this requirement, unless the Commissioner of Internal Revenue determines that the facts and circumstances show otherwise.

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good faith, reasonable determination will generally be given deference. A special rule, however, applies in the case of a plan where substantially all of the participants in the plan are qualified public safety employees within the meaning of section 72(t)(10)(B) of the Code, in which case an age of 50 or later is deemed not to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

V. ELIGIBILITY REQUIREMENTS

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full Time Employees
- Salaried Employees
- Non union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) All Full time employees hired after 6/30/2010

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. **Note:** As stated in Sections 4.07 and 4.08, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) See Appendix A.3.

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. **The Employer shall contribute as follows:** (Choose all that apply, but at least one of Options A or B. If Option A is not selected, Employer must pick up Participant Contributions under Option B.)

Fixed Employer Contributions With or Without Mandatory Participant Contributions. (If Option B is chosen, please complete section C.)

A. Employer Contributions. The Employer shall contribute on behalf of each Participant 3 % of Earnings or \$ N/A for the Plan Year (subject to the limitations of Article V of the Plan).
Mandatory Participant Contributions

are required are not required

to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

Yes No

Employee Opt-In Mandatory Contributions. Each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

Yes No

Contribution Schedule.

- (i) _____ 3% of Earnings,
(ii) \$ N/A , or
(iii) a whole percentage of Earnings between the range of N/A (insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%)), as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions¹ (pick up is required if Option A is not selected).

Yes No (**"Yes" is the default provision under the Plan if no selection is made.**)

- C. Election Window (Complete if Option B is selected):
Newly eligible Employees shall be provided an election window of _____ days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

2. The Employer may also elect to contribute as follows:

- A. Fixed Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant _____% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed _____% of Earnings or \$ _____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

- B. Variable Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):
_____ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding _____% of Earnings or \$ _____);

¹ Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked up" by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings; however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).

PLUS _____% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate _____% of Earnings or \$ _____).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____% of Earnings, whichever is _____ more or _____ less.

3. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan:

Yes No (***“No” is the default provision under the Plan if no selection is made.***)

4. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

5. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

6. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

- A. Plan contributions will be made based on differential wage payments:

Yes No (***“Yes” is the default provision under the Plan if no selection is made.***)

If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here:

7/1/2010

- B. Participants who die or become disabled will receive Plan contributions with respect to such service:

Yes No (***“No” is the default provision under the Plan if no selection is made.***)

If yes is selected, this is effective for participants who died or became disabled while performing qualified military service on or after January 1, 2007, unless another later effective date is filled in here:

VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

- 1. Overtime
 Yes No
- 2. Bonuses
 Yes No
- 3. Other Pay (specifically describe any other types of pay to be included below)
Contributions are based on W-2 earnings but exclude overtime, bonuses, longevity pay, clothing allowance, paid meal breaks, state training pay, and wellness or excess life premiums

VIII. ROLLOVER PROVISIONS

- 1. The Employer will permit rollover contributions in accordance with Section 4.12 of the Plan:
 Yes No (*“Yes” is the default provision under the Plan if no selection is made.*)
- 2. Direct rollovers by non-spouse beneficiaries are effective for distributions after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.
 Effective Date is 7/1/2010.
(Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)

IX. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.02 of the Plan).

- 1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (e) of the Plan will apply unless another method has been indicated below.
 Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)
- 2. The Limitation Year is the following 12 consecutive month period: _____
- 3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitations years beginning on or after July 1, 2007. _____
(The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. (For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)

Period of Service Completed	Percent Vested
Zero	0 %
One	0 %
Two	0 %
Three	0 %
Four	0 %
Five	100 %
Six	100 %
Seven	100 %
Eight	100 %
Nine	100 %
Ten	100 %

XI. WITHDRAWALS AND LOANS

1. In-service distributions are permitted under the Plan after a participant attains (select one of the below options):

- Normal Retirement Age
 Age 70½ (***“70½” is the default provision under the Plan if no selection is made.***)
 Alternate age (after Normal Retirement Age): _____
 Not permitted at any age

2. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days.

- Yes No (***“Yes” is the default provision under the plan if no selection is made.***)

3. Tax-free distributions of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.

- Yes No (***“No” is the default provision under the Plan if no selection is made.***)

4. In-service distributions of the Rollover Account are permitted under the Plan, as provided in Section 9.07.

- Yes No (***“No” is the default provision under the Plan if no selection is made.***)

5. Loans are permitted under the Plan, as provided in Article XIII of the Plan:

- Yes No (***“No” is the default provision under the Plan if no selection is made.***)

XII. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

- 1. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
- 2. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (***"Beneficiary Spousal Consent Election" is the default provision under the Plan if no selection is made.***)
- 3. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

XIII. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

- All Eligible Employees
- Other: None

Final Pay shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave*):

- 1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____ 0 % of Final Pay to the Plan (subject to the limitations of Article V of the Plan).
- 2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute ___ 0 % (insert fixed percentage of final pay to be contributed) or up to _____ 0 % (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XIV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

- All Eligible Employees
- Other: None

Accrued Leave shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (insert definition of accrued leave that is bona fide vacation and/or sick leave):

1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of _____ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).
- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant 0% of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute 0% (insert fixed percentage of accrued unpaid leave to be contributed) or up to 0% (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan). Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XV. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVI. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust. This ICMA Retirement Corporation Governmental Money Purchase Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

XVIII. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XIX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of _____, 20_____.

EMPLOYER

ICMA RETIREMENT CORPORATION
777 North Capitol St., NE Suite 600
Washington, DC 20002
800-326-7272

By: _____

By: _____

Print Name: Shane McFarland

Print Name: _____

Title: Mayor

Title: _____

Attest: Melissa B. Wright, City Recorder

Attest: _____



ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG
BRC000-214-21268-201405-W1303

**APPENDIX A
TO
THE ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT
PLAN NUMBER 106895**

(APPROVED PURSUANT TO MURFREESBORO CITY COUNCIL RESOLUTION 16-R-07)

Pursuant to City of Murfreesboro Resolution 16-R-071, passed on March __, 2016, the Murfreesboro City Council approved the following amendments the *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust* and Adoption Agreement:

A.1 Section 4.04 of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust is amended to read as follows:

“Employer Matching contributions of Voluntary Participant Contributions to 457 Plan. If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee who has made a Participant Contribution to the 457 Plan for that Plan Year. The amount of such Employer Matching Contribution shall be based on the percentage of Earnings which the Participant has voluntarily contributed into the 457 Plan as specified in the Adoption Agreement. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.”

A.2 The first sentence of Section IV of the Adoption Agreement is amended to read as follows:

“Normal Retirement Age shall be: (1) for Employees who are firefighters or police officers, Employee’s fifty-fifth (55th) birthday; (2) for Employees who are at least fifty-five (55) years of age, the date of completing thirty (30) years of full-time employment with Employer; and (3) for all other Employees, Employee’s sixty fifth (65th) birthday.”

A.3 Section V.2 of the Adoption Agreement is amended to read as follows:

“2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. An employee hired between July 1, 2010 and October 31, 2014, became eligible to participate in the Plan on the first of the month following or coinciding with 90 days of employment. An employee hired on or after November 1, 2014, is eligible to participate in the Plan on the first of the month following or coinciding with 60 days of employment.”

A.4 The Adoption Agreement shall be amended by adding a new subsection VI.2.C, which the City hereby elects to exercise:

“C. Variable Employer Match of Voluntary Participant Contributions to 457 Plan. The Employer shall contribute to the Plan a Matching Contribution which shall be allocated to

the account of eligible Participants as set forth under Section 4.04 of the Plan. The amount of the Employer's Matching Contribution shall equal the amount of the whole percentage of Earnings, between 1% and 5%, qualifying for the Matching Contribution."

In Witness Whereof, the City of Murfreesboro and ICMA Retirement Corporation acknowledge the above amendments to the *ICMA Retirement Corporation Governmental Money Purchase Plan and Trust* and Adoption Agreement on this _____ day of _____, 2016.

CITY OF MURFREESBORO

ICMA RETIREMENT CORPORATION

By: _____

By: _____

Name: Shane McFarland

Name: _____

Title: Mayor

Title: _____

Approved as to form:

David A. Ives, City Attorney