

MURFREESBORO CITY COUNCIL
AGENDA

July 28, 2016

7:00 p.m.

Council Chambers

PRAYER

VICE-MAYOR DOUG YOUNG

PLEDGE OF ALLEGIANCE

CEREMONIAL ITEMS

*STARS AWARD: 2ND SHIFT 911 DISPATCHERS LINDSAY CALLAHAN, CASSANDRA SCOTT, JAMES RAY, BRIANNA DUNN, TIM JUNEAU & MICHELLE ROWLAND

Consent Agenda

1. A. Consider recommendations of the Communications Director: Comcast Franchise Fee Review Settlement for 2012-2014.
- B. Consider recommendations of the City Recorder/Finance Director: Acknowledgement of Receipt of City **Manager's approved Budget Amendments for Fiscal Year 2016.**
- C. Consider recommendations of the Human Resources Director: Voluntary Employee-Paid Vision Insurance Benefit Renewal with VSP.
- D. Consider recommendations of the Senior Center Commission: Community Development Grant (CDBG) FY 2016-2017.
- E. Consider recommendations of the Transportation Director: Contract with Regional Transportation Authority (RTA) for Provision of Transit Services for FY 2017.
- F. Consider recommendations of the Golf Course Director:
 - a. Visage License and Service Agreement.
 - b. Purchase of (75) 2017 Electric Club Car Precedent Golf Cars; (3) 2017 Club Car Electric Carryall 500 Turf Utility Vehicles; (1) 2017 Gas Carryall 500 Turf Vehicle; & (1) 2017 Electric Carryall 300 Turf Utility Vehicle for Public Golf Department.
- G. Consider recommendations of the Parks & Recreation Director:
 - a. Purchase of Pickup Truck and 15-Passenger Van.
 - b. Richard Siegel Fence Installation-Change Order No. 1.
 - c. Purchase of Ball Field & Turf Maintenance Equipment.
 - d. Bids for Purchase of Wrist Bands.
- H. Consider recommendations of the Chief of Police:
 - a. Contract with St. Rose of Lima School for School Traffic Enforcement Employee.
 - b. Contract with Middle Tennessee Christian School for School Traffic Enforcement Employee.
 - c. Contract with Providence Christian Academy for School Traffic Enforcement Employee.
 - d. Contract Amendment with Strategic Edge, Inc. for Government/Police Firing Range Membership.
 - e. Payment of Trittech Invoice for Public Safety Software.

Minutes

2. July 20, 2016 – Special Joint Meeting (2035 Comprehensive Plan - Chapter 8).

Second Readings

3. Consider for passage on second and final reading ORDINANCE 16-OZ-28 to amend an area in the Planned Commercial Development (PCD) District located along West Northfield Boulevard and Sulphur Springs Road [2016-417].

First Readings

4. A. Letter from City Recorder/Finance Director: Fiscal Year 2017 Budget Amendment.
B. Consider for passage on first reading ORDINANCE 16-O-31 amending the 2016-2017 Budget (1st Amendment).
5. A. Letter from Assistant City Manager regarding ORDINANCE 16-O-32.
B. Consider for passage on first reading ORDINANCE 16-O-32 amending Chapter 13 - Food and Food Products, adding Sections 13-20 through 13-26, regarding mobile food vending.

New Business

6. Consider for approval a Certificate of Compliance for Wine in Retail Stores:
 - A. Aldi #41, 1640 Robert Rose Drive.
 - B. **Sprouts Farmer's Market #581.**
7. Consider recommendations of the Fire & Rescue Chief: Contract with The Parent Company to serve as Construction Manager at Risk (CMAR) for Fire Station No. 4 relocation.

MURFREESBORO CITY COUNCIL

A G E N D A

July 28, 2016

(Continued)

8. Consider recommendations of Assistant City Engineer:
 - A. Asbestos Abatement for former Franklin Heights Housing Complex.
 - B. Purchase of 3 Lots at Corner of SE Broad Street and South Church Street.
9. Consider recommendations of the Assistant City Manager: Budget Amendment to the Debt Service Fund.
10. Letter from the Mayor regarding City Council Retreat.

Beer Permits

Board & Commission Appointments

Payment of Statements

Other Business from Staff or City Council

Adjourn



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July 18, 2016

Honorable Mayor and Members of City Council:

RE: Comcast Franchise Fee Review Settlement for 2012 - 2014

As an item for the consent agenda, it is recommended that City Council approve a Settlement Agreement on a Franchise Fee Audit/Review with Comcast and authorize the Mayor to sign the agreement.

Background

The City of Murfreesboro entered into a fifteen (15) year franchise agreement with Comcast on June 1, 2003. The franchise agreement allows the City to conduct audits/reviews on franchise fee payments within three years from the date the City accepts payment.

Front Range Consulting was hired in 2015 to conduct a Comcast franchise fee audit/review for the years 2012 – 2014.

After completion of Front Range Consulting's audit/review, a Settlement Agreement has been reached with Comcast which includes:

- Comcast agrees to pay \$11,967.93 in underpayments to the City
- Comcast will correct their billing system going forward, within 6 months, allocating the discount of equipment and video portions of bundled packages accurately for franchise fee payments.

Concurrences

On July 11, 2016 the Murfreesboro Cable Television Communications heard from Front Range Consulting regarding their audit/review of Comcast franchise fee payments and recommends the Settlement Agreement be considered for approval by the City Council.

Fiscal Impact

\$11,967.93 were found in Comcast franchise fee underpayments to the City for the period 2012 – 2014 and corrects going forward the errors found which caused the underpayment.

Recommendation

It is recommended the City Council authorized the Mayor to sign the Settlement Agreement.

Attachments

1. Settlement Agreement

Respectfully submitted,

Alan Bozeman
Communications Director

**SETTLEMENT AGREEMENT
FRANCHISE FEE AUDIT/REVIEW**

This Settlement Agreement (the "Settlement Agreement") is dated this ____ day of _____ 2016, between Comcast of Nashville II, LLC ("Comcast"), and the City of Murfreesboro, TN (the "City"). Comcast and the City may be individually referred to hereafter as a "Party" or jointly as the "Parties."

RECITALS

WHEREAS, Section 7(a) of the City's Franchise Agreement requires Comcast to pay a franchise fee in the amount of five percent of Comcast's gross revenues (the "Franchise Fee");

WHEREAS, the City engaged the firm of Front Range Consulting, Inc. to conduct a review of Comcast's Franchise Fee payments for the period from January 1, 2012 through December 31, 2014 ("Audit Period");

WHEREAS, the City has provided Comcast with a copy of a report prepared by Front Range Consulting, Inc. dated March 25, 2016 ("Report"), which report concludes that Comcast owes additional franchise fees for the Audit Period;

WHEREAS, the Parties deem it to be to their mutual benefit to settle their differences for all Franchise Fee payment issues for the period of January 1, 2012 through December 31, 2014 (the "Settlement Period"), by this Settlement Agreement, resolve all such disputes and specify the terms under which Comcast will pay the City the sum of \$11,967.93 in full settlement of all Franchise Fee payment obligations for the Settlement Period.

NOW THEREFORE, in exchange for the mutual benefits and undertakings described herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PAYMENT AND SYSTEM CORRECTION BY COMCAST

(a) Within thirty (30) days of delivery to Comcast of a counterpart original of this Settlement Agreement executed by the City, Comcast shall deliver to the City a check made payable to the City of Murfreesboro in the amount of \$11,967.93. Comcast reserves the right to pass through to customers any such sums of this franchise fee payment which have not already been collected as franchise fees.

(b) The franchise agreement requires that franchise fees be calculated in accordance with GAAP. For bundles that include a mix of services some of which are not subject to franchise fees, GAAP currently requires a *pro rata* allocation of such revenues based on the rate card price for each element, with exceptions for certain items in the bundle that may not be subject to a discount for tax or other legal or regulatory reasons. In the past, the allocations for some bundled offerings by Comcast may not have been updated in a timely manner. Therefore, Comcast further agrees that within six months it will implement the necessary changes or updates to its system for calculating franchise fee payment owed to the City to allow for the *pro rata* allocation of revenue between cable and non-cable services in multi-service bundles sold to customers and will update its allocations each time a rate card and/or bundled package price are changed going forward.

(c) Comcast further agrees that to the extent revenues are received by Comcast for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Comcast shall calculate revenues to be included in Gross Revenues using a methodology

consistent with GAAP, which allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card., This calculation shall be applied to every bundled service package containing Cable Service from which Comcast derives revenues in the City. The City reserves its right to review and to challenge Comcast's calculations.

2. RELEASE OF ALL CLAIMS AND FINAL SATISFACTION AND RELEASE OF PAYMENT OBLIGATIONS

The Parties hereby release and discharge each other from all claims related to Franchise Fee payments for the Settlement Period. Payment by Comcast to the City pursuant to Section 1 hereof shall be deemed full and final satisfaction and release of Comcast's Franchise Fee payment obligations for the Settlement Period.

3. NO WAIVER OR CONCESSION OF THE METHOD OF CALCULATION OF GROSS REVENUES

The Parties mutually agree that this Settlement Agreement controls only the Settlement Period and is neither precedent nor waiver by either Party of any claim, methodology or interpretation of the Franchisee's gross revenues for any future audit of periods not within the Settlement Period.

4. GENERAL PROVISIONS

(a) Each Party covenants and agrees that it will not make, assert or maintain any claim, demand, action or cause of action that is discharged by this Settlement Agreement against the other Party; provided, however, that either Party may bring an action against the other Party to enforce this Settlement Agreement.

(b) Each Party represents that it has not conveyed or assigned any claims released by this Settlement Agreement to any third parties. Each Party represents and warrants that it has the power and authority to enter into this Settlement Agreement. Any breach of this Settlement Agreement shall be subject to all remedies available to the Parties at law or in equity. In addition, any breach of this Settlement Agreement shall be deemed a breach of the Franchise Agreement, and shall be subject to all of the remedies available under the Franchise Agreement.

(c) The Settlement Agreement sets forth the entire agreement of the Parties with respect to its subject matter, there being no other promise or inducement to or for the execution of this Settlement Agreement other than the consideration cited above. There are no contingencies, conditions precedent, representations, warranties, or other agreement, oral or otherwise, regarding settlement between the Parties not stated herein.

(d) The Parties acknowledge that this Settlement Agreement is the product of negotiations between the Parties and does not constitute, and shall not be construed as, an admission of liability on the part of any Party.

(e) This Settlement Agreement shall inure to the benefit of, and shall be binding on, the Parties' respective successors and assigns.

(f) This Settlement Agreement may not be modified or amended, nor any of its terms waived, except by an amendment signed by duly authorized representatives of the Parties.

(g) This Settlement Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee without regard to conflicts of law principles. All actions or suits brought hereunder or arising out of this Settlement Agreement shall be brought in the appropriate State or Federal courts in Tennessee, and in no other courts.

(h) This Settlement Agreement shall be effective upon the date when it is executed on behalf of the City.

(i) All time frames expressed in terms of days shall mean calendar days, and if the time allowed for action required hereunder shall expire on a Saturday, Sunday, or holiday as defined, and if the time allowed for action required hereunder shall expire on a Saturday, Sunday, or holiday as defined by the laws of the State of Tennessee, then the expiration shall automatically be the next calendar day that is not a Saturday, Sunday, or holiday. All time frames are agreed to be of the essence.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by duly authorized representatives of each Party on the dates written below.

CITY OF MURFREESBORO, TN

By: _____

Name: _____

Title: _____

Date: _____

COMCAST OF NASHVILLE II, LLC

By: _____

Name: _____

Title: _____

Date: _____



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CONSENT AGENDA

July 19, 2016

Honorable Mayor and Members of City Council:

RE: Fiscal Year 2016 Budget Amendment

Attached you will find a budget transfers as approved by the City Manager on June 30, 2016. This transfer consists of movement within two funds.

For the General Fund, it is a transfer from Other General Government-Adjustment and Allowance on Taxes, into the respective Salary Expenses roll up category of the Legislative Department, Judicial Department, and Planning Department (see attachment for detailed line item). This transfer will have no effect on Fund Balance.

For the Risk Management Fund, it is a transfer from the Operating Expenses roll up category into the Salary Expenses roll up category (see attachment for detailed line item). This transfer will have no effect on Fund Balance.

This is being placed on Consent Agenda as a proof of notification to Council as required by Ordinance 15-O-48.



Melissa B. Wright
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



Inter-Fund Budget Amendment Request

Mr. Lyons,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2016

Move funds from:

Org 10130008
 Object 599908
 Acct Name Adjustment & Allowance on Taxes
 Amount \$ 11,750.00

Move funds to:

Object 511100
 Acct Name Salary - Full-time-Regular
 Org 10110007 (Legislative)
 Amount \$ 2,000.00

Org 10115007 (Judicial)
 Amount \$ 3,500.00

Org 10119007 (Planning)
 Amount \$ 6,250.00

Move funds from:

Org 2128
 Object 520000
 Acct Name Contractual Services
 Amount \$ 1,250.00

Move funds to:

Org 2127 (Risk Management)
 Object 511100
 Acct Name Salary - Full-time-Regular
 Amount \$ 1,250.00

Explanation: A review of YTD budget showed that the above salary roll ups would not have sufficient budget to allow for required year-end salary accrual. This amendment funds the required accruals.

Maura Wright
 Director of Finance

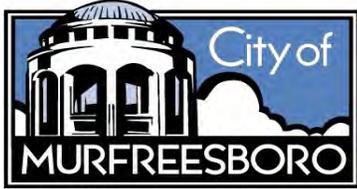
6-30-16
 Date

Ana Maria Stovall
 Reviewed by Finance

6-30-16
 Date

| | | |
|----------|-------------------------------------|------------------------------------|
| Approved | <input checked="" type="checkbox"/> | <u>[Signature]</u> City Manager |
| Declined | <input type="checkbox"/> | <u>6/30/16</u> Date |

Please return to Ana Maria Stovall, Finance & Tax Dept., once all signatures have been obtained.



T E N N E S S E E
"creating a better quality of life"

GLEN GODWIN, SHRM-SCP, IPMA-CP
HUMAN RESOURCES DIRECTOR

111 West Vine Street
P.O. Box 1139
Murfreesboro, TN 37133-1139
Phone 615-848-2553
FAX 615-904-6506

E-mail: ggodwin@murfreesborotn.gov

July 28, 2016

CONSENT AGENDA

HONORABLE MAYOR AND MEMBERS OF MURFREESBORO CITY COUNCIL

RE: Voluntary Employee-Paid Vision Insurance benefit renewal- VSP

Background

In 2012 the City of Murfreesboro contracted with VSP Vision Care (VSP) to provide Employee paid vision care coverage for eligible City of Murfreesboro employees and dependents. This addition to employee benefits has further enhanced the City of Murfreesboro Total Compensation package for City employees. 705 members are currently enrolled in the VSP plan.

There is no recommended change in the plan design of this benefit, which provides an eye examination and lens once every 12 months with a \$10 copayment and frame once every 24 months with a \$25 copayment.

All VSP Clients with similar size employee populations are seeing an identical rate increase in the VSP National book of business.

Fiscal Impact

This Renewal includes a 5.9% increase in premiums for each insurance tier for eligible City employees, guaranteed for a two year period, or until December 31, 2018. Since the coverage is employee-paid there is no fiscal impact to the City of Murfreesboro. This particular increase was previously submitted in the FY 17 Human Resources Health Insurance supplement.

Concurrences

Cowan Benefits Consultants of Franklin, Tennessee and the City Manager concur with this contract renewal.

P.2
VSP Renewal
7/28/16 Consent Agenda

Recommendation

By approving the Consent Agenda, City Council will approve a renewal agreement with VSP Vision Care (VSP) and the City of Murfreesboro to deduct Voluntary Employee-paid premiums for eligible City of Murfreesboro employees at the current level of coverage. City Council is also approving a rate increase effective from January 1, 2017 until December 31, 2018 of 5.9% for premium deductions in all respective tiers of coverage.

Sincerely,

Glen Godwin, SHRM-SCP, IPMA-SCP
Human Resources Director
Cc: Jake Davis, Cowan Benefits Consultants

Attachments

1. July 19, 2016 letter from VSP regarding renewal notification
2. VSP Renewal Agreement



July 19, 2016

GLEN GODWIN
CITY OF MURFREESBORO
111 W VINE ST
MURFREESBORO, TN 37130

Re: **City of Murfreesboro #30034962 / January 1, 2017 Renewal Notification**

Dear Glen:

Thank you for being a VSP® Vision Care customer.

Due to enrollment exceeding 500, it is now necessary to convert your plan from our commercial pool to an individually rated platform. After renewal is accepted, we will begin collecting your own experience and your next renewal will be based upon this utilization.

We put your employees first and guarantee their satisfaction. As the only national not-for-profit vision company, VSP gives you:

- Lowest Employee Out-of-Pocket
- Reduced Healthcare Costs
- 50% off Hearing Aids and Devices through our Partnership with TruHearing
- Primary Eyecare – Provides **medical and urgent eyecare** beyond the regular VSP vision care benefit with just a \$20 copayment – no limit on visits!

City of Murfreesboro has been a valued VSP client since 1/1/2013 and we currently cover 705 members. The plan offered is VSP's Choice Plan B which allows for an examination and lens once every 12 months with a \$10 copayment and frame once every 24 months with a \$25 copayment.

Rates include all applicable taxes and health assessment fees known as of the date of your renewal.

To continue VSP's program for this next policy, sign and return the Renewal Exhibit to me by e-mail at julie.wilson@vsp.com or fax to 916-463-3929 by December 1, 2016. Please consider VSP your long-term partner in helping you maximize your benefit dollars.

Cordially,

A handwritten signature in cursive script that reads 'Julie Wilson'.

Julie Wilson
Senior Client Manager

cc: Jay Brown
Cowan Benefit Services Inc.

RENEWAL AGREEMENT

Group Name/Number: **City of Murfreesboro / #30034962**

Current Plan Design

Plan Type: Choice - B
Frequency: 12/12/24
Copays: \$10 Exam/\$25 Materials
RFA & ECL Allowance: \$130 & 130
Current Rates: \$6.21/9.94/10.15/16.36
Renewal Rates: \$6.58/10.54/10.76/17.34

Open AccessSM Allowances: Examination up to \$45, Single Vision up to \$30, Lined Bifocal up to \$50, Lined Trifocal up to \$65, Lenticular up to \$100, Frame up to \$70, Elective Contact Lenses up to \$105 & Necessary Contact Lenses \$210.

Renewal Options

Renew with current plan design

Contract Period for all Options: January 1, 2017 through December 31, 2018

To renew your contract and maintain continuous service, please choose the option that best meets your needs, sign and return the Renewal Agreement by e-mail to: julie.wilson@vsp.com, or fax to: 916-463-3929 by December 1, 2016. VSP will produce your renewal contract when we have received the Signed Renewal Agreement. Please review the new contract carefully, since some of the provisions may have changed from your prior contract. Additionally, please keep a copy of this Renewal Agreement and accompanying letter, given that they serve as your Notice of Renewal.

By: _____

Title: _____

Date: _____



July 18, 2016

Honorable Mayor and Members of City Council:

CONSENT AGENDA

RE: Community Development Grant (CDBG) FY2016-2017

As an item for the consent agenda at the next scheduled meeting, it is the recommendation of the Senior Center Commission that City Council approve the CDBG funding FY2016-2017.

Background

The purpose of this contract is to provide funding for the Senior Centers' Adult Day Services Program.

Fiscal Impact

The contract specifies the terms and conditions of both parties to receive SIX THOUSAND DOLLARS (\$6,000.00).

Concurrences

This grant has been approved as to form by our Legal Department. The Senior Center Commission approved applying for these funds at its regular meeting on February 22, 2016.

Recommendation

It is the recommendation of the Senior Center Commission to approve the contract and authorize the mayor to sign on behalf of the City of Murfreesboro and the director to sign on behalf of the Senior Center.

Attachment

Community Development Block Grant FY2016-2017

Respectfully submitted,

A handwritten signature in blue ink that reads "Connie C. Rigsby". The signature is written in a cursive style.

Connie C. Rigsby
Senior Center Director

AGREEMENT BETWEEN THE CITY OF MURFREESBORO
AND
ST. CLAIR STREET SENIOR CENTER
FOR
ST. CLAIR STREET SENIOR CENTER ADULT DAY SERVICE

THIS AGREEMENT, entered this 1st day of July, 2016 by and between the City of Murfreesboro, Tennessee, (herein called the "Grantee") and St. Clair Street Senior Center (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG PY2016-17 project [St. Clair Street Senior Center Adult Day Service] in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program.

Program Delivery

St. Clair Adult Day Service provides high quality, cost effective services in a caring supervised setting for senior individuals who are experiencing cognitive decline by dementia, Alzheimer's disease, or stroke. The program includes social interaction, memory exercises, physical exercise, music, art and assistance with activities of daily living. The ADS staff is trained, experienced, and dedicated. Family caregivers have needed breaks while using ADS as a safe-haven for their loved ones.

General Administration

Adult Day Services services will begin July 1, 2016, ending June 30, 2017. Services will be delivered Monday – Friday, 8:00 a.m. to 4:30 p.m. to an estimated 30-35 senior individuals. Participants will receive staff lead services such as daily exercise, healthy meal, snacks and fluids, group cognitive games, puzzles, weekly music program, monthly cooking opportunities, day trips at least semi-annually, weekly craft projects to improve dexterity and hand-eye coordination, holiday and birthday celebrations.

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives as defined in 24 CFR 570.208. The Subrecipient certifies that the activity carried out under this Agreement will benefit low- and moderate-income persons.

C. Levels of Accomplishment – Goals and Performance Measures

The levels of accomplishment may include such measures as units rehabbed, persons or households assisted, or meals served and should also include time frames for performance.

The Subrecipient agrees to provide the following levels of program services:

| <u>Activity</u> | <u>Total Units/Year</u> |
|--|-------------------------|
| St. Clair Street Senior Center Adult Day Service | 30 |

Units of Service – Number of unduplicated persons receiving adult day services through the project.

D. Staffing

Adult Day Services supervisor

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of July, 2016 and end on the 30th day of June, 2017. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

| Funding Sources/Revenues | CDBG | Committed | Non-Committed |
|---------------------------------|-------------|------------------|----------------------|
| City of Murfreesboro | \$ 6,000.00 | | |
| Agency Cash - Salaries | \$ 0.00 | \$ 58,569.00 | |
| Match | | | |

| | | | |
|---------------------------------|--------------------|----------------------|---------------------|
| Fees for service | | \$ 45,000.00 | \$ 0.00 |
| Charity Circle (12/1/16) | | \$ 0.00 | \$ 2,000.00 |
| GNRC Options (7/1/16) | | \$ 0.00 | \$ 20,000.00 |
| Alzheimers Association (7/1/16) | | | \$ 1,200.00 |
| Total | \$ 6,000.00 | \$ 103,569.00 | \$ 23,200.00 |

| Funding Uses/Expenses | CDBG | Other | Total |
|------------------------------|--------------------|---------------------|---------------------|
| Salaries/Benefits | \$ 6,000.00 | \$ 52,569.00 | \$ 58,569.00 |
| Supplies | | \$ 6,500.00 | \$ 6,500.00 |
| Total | \$ 6,000.00 | \$ 59,069.00 | \$ 65,069.00 |

In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$6,000.00. Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee

Subrecipient

John Callow
Community Development Director
PO Box 1139
211 Bridge Avenue
Murfreesboro TN 37133-1139

615-890-4660
615-217-2260
jcallow@murfreesborotn.gov

Connie Rigsby
Executive Director
325 St. Clair Street

Murfreesboro, TN 37130

615-848-2550 -Telephone
615-904-6511 - Fax
crigsby@murfreesborotn.gov

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner as, creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200 - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements* except as provided for in 24 CFR 570.502 - *Applicability of uniform administrative requirements* and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR 200 Subpart E (200.400-475). These principles shall be applied for all costs incurred whether charged on a direct or indirect basis and agrees to adhere to the accounting principles and procedures required therein, utilize adequate

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required for determining the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28;
- and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until

completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State or Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR 200.300-309 and Subpart F of this part with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.

C. Reporting and Payment Procedures

1. Program Income

The project does not generate income as defined at 24 CFR 570.500(a).

2. Indirect Costs

Indirect costs are not a billable expense for this project.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. Payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.

3. Travel

Travel is not reimbursable with funds provided under this Agreement.

VIII. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil

Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs VIII. A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a

position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

X. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XI. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XII. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

July 1, 2016

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

CITY OF MURFREESBORO

ST. CLAIR STREET SENIOR CENTER

SHANE McFARLAND, Mayor

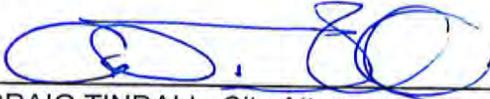
CONNIE RIGSBY, Executive Director

Attest:

Attest:

MELISSA WRIGHT, City Recorder

Approved as to form:



CRAIG TINDALL, City Attorney

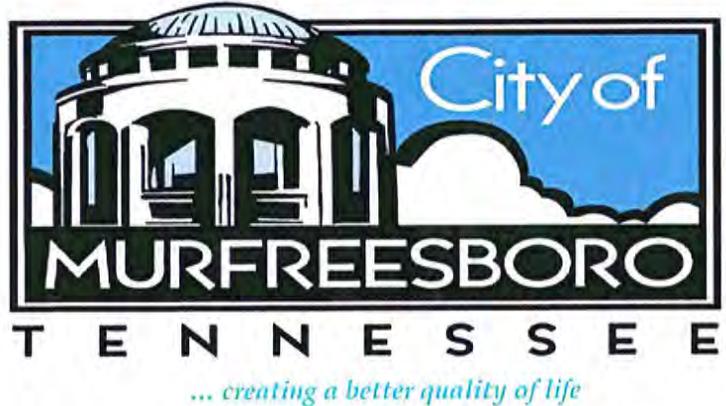


DAVID IVES, Assistant City Attorney

CITY of MURFREESBORO

Transportation Department

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POST OFFICE BOX 1139
MURFREESBORO, TENNESSEE 37133-1139
PHONE 615 893-6441
FAX 615 849-2606
www.murfreesborotn.gov



CONSENT AGENDA

July 28, 2016

Honorable Mayor and Members of City Council

**RE: Contract between City and Regional Transportation Authority (RTA) for
Provision of Transit Services for FY 2017**

Background

The Relax and Ride program that provides transit service between Murfreesboro, Smyrna, LaVergne and Nashville was originally created in FY 1996-97 and funded for three years under a federal demonstration grant. With the expiration of the three-year grant, various governmental entities have annually cooperated to continue funding of this program.

The service was expanded under a new three-year demonstration grant from 16 to 31 trips per day beginning October 1, 2012.

A three-year grant was awarded by TDOT in fiscal year 2015 to maintain the service under the same federal participation utilizing CMAQ funds through fiscal year 2018. Under the consideration of the RTA Board and individual funding partners in the southeast corridor, the service for these three years has been slightly reduced to provide 29 trips per day beginning October 1, 2015.

Fiscal Impact

The service funding partners including the City's financial participation in the service for FY 2016-17 consist of TDOT funds and matches to both federal Congestion Mitigation & Air Quality Improvement (CMAQ) funds as well Federal Transit Administration Section 5307 funds and is shown as follows:

| <u>Local Funding Entity</u> | <u>CMAQ Match</u> | <u>Route Subsidy / 5307 Match</u> | <u>Total Contribution</u> |
|-----------------------------|-------------------|-----------------------------------|---------------------------|
| Town of Smyrna | \$7,106 | \$5,365 | \$12,471 |
| City of Murfreesboro | 9,343 | 2,746 | 12,089 |
| City of LaVergne | 7,106 | 5,365 | 12,471 |
| Rutherford County | 16,449 | 8,112 | 24,561 |
| MTSU | 16,449 | 8,551 | 25,000 |
| Davidson County | <u>16,449</u> | <u>8,112</u> | <u>24,561</u> |
| TOTAL | \$72,902 | \$38,251 | \$111,153 |

The estimated total cost of this service for fiscal year 2017 is \$1,213,857 (routes 84X & 96L only) with the City's share as noted above budgeted in the Transportation Department's budget under "Contract Services".

Concurrences

Funding for provision of service is contained in the Metropolitan Planning Organization's (MPO's) 2014-17 Transportation Improvement Program (TIP) budget.

Recommendation

City Council is recommended to approval of the Contract between the City of Murfreesboro and Regional Transportation Authority for the provision of transit services for fiscal year 2017.

Attachments

Contract For Personal/Professional Services Between The City of Murfreesboro And The Regional Transportation Authority For The Provision of Transit Services.

Respectfully submitted,

Jim Kerr
Transportation Director

**CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND THE REGIONAL TRANSPORTATION AUTHORITY
FOR THE PROVISION OF TRANSIT SERVICES**

This Transit Services Contract, effective _____ hereinafter referred to as the "Contract", by and between the City of Murfreesboro, hereinafter referred to as the "City" and the Regional Transportation Authority, hereinafter referred to as the "Contractor" or "RTA," is for the provision of certain transit services as described herein, and as further defined in the "SCOPE OF SERVICES".

The Contractor is a governmental entity. The Contractor's address is:

RTA
430 Myatt Drive
Nashville, TN 37115

A. SCOPE OF SERVICES

- A.1. The RTA shall operate or cause to be operated a regularly scheduled transit service for the route and schedule of said project found in ATTACHMENT 2A & 2B, a bus route, between Nashville/Davidson County, Tennessee and Murfreesboro, Tennessee. The project to be undertaken by the RTA is further described in the City of Murfreesboro's Application for Federal Assistance for 5307 funds. This service shall operate from July 1, 2016, through its last scheduled run on June 30, 2017. This service shall service the City as a transit infrastructure.

Marketing of the project will be done through the collaborative regional transit program, RTA Relax and Ride, which is led by RTA. Any direct expenses related to marketing will be paid through the RTA Relax and Ride budgets. Promotion of said services may include, among other things, information requests, surveys and service identification on vehicles.

The City will designate an employee who shall be responsible for the approval or disapproval of RTA invoices and to respond to inquires and for approval of the RTA's final work product.

Other than responding to inquires and explanations of issues addressed in this Contract, the City will not control or instruct the work activities of RTA in fulfilling its requirements under this Contract. RTA shall be responsible for obtaining the end results of work product.

It is understood that RTA will provide sufficient prior written notification to the City when opportunities avail themselves to review possible service changes and schedule modifications to make more efficient use of available transit resources as pertaining to the services described in ATTACHMENT 2A & 2B.

- A.2. The City is a governmental entity and is the Designated Recipient for federal transit funding under the Federal Transit Authority Urbanized Formula Grant program, 49 U.S.C. § 5307.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2016 and ending on June 30, 2017. The City shall have no obligation for services rendered by the Contractor which are not performed within the specified period or between the specified route terminus.

B.2. Term Extension. The City reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the City notifies the Contractor in writing of its intention to do so prior to the Contract expiration date. An extension of the term of this Contract beyond June 30, 2017 will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the City's maximum liability shall only be affected through an amendment to the Contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Obligation for Payments. The RTA represents and acknowledges that the RTA has agreements with Rutherford County, Town of Smyrna, City of LaVergne, Middle Tennessee State University (MTSU) and Davidson County obligating these participating entities to provide local matching funds and other subsidies.

The RTA shall individually bill each participating entity directly for their individual share in accordance with agreements between the RTA and each participating entity.

The Operating Hours per Day x Cost per Hour x Number Days of Service per Year shall constitute the Total Cost per Year for the RTA service. The City of Murfreesboro shall be responsible for payment of its pro rata share of the actual overall service provided that is determined through application of this formula as exhibited in ATTACHMENT 1 & 2.

The RTA shall bill the City its local share, the state, and federal portion of the service. The City, as designated recipient, will be responsible for submission and receipt of any federally and state reimbursable portion of cost from the Federal Transit Administration (FTA) and Tennessee Department of Transportation (TDOT) respectively.

C.2. Maximum Liability. The Contract Budget, attached and incorporated herein as a part of this Contract as ATTACHMENT 2A & 2B, shall constitute the maximum amount due the Contractor for the services and all of the City's obligations hereunder. The Contract budget line items include, but are not limited to, all applicable taxes, fees, overhead, any new additional service and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Compensation Firm. The maximum charge per hour is denoted in ATTACHMENT 1 & 2 and is not subject to escalation for any reason unless amended.

C.4. Payment Methodology. The Contractor shall submit invoices, in form and substance acceptable to the City, with all of the necessary supporting documentation, prior to any reimbursement. Invoices shall be submitted that separately denote the federal, state, and local portion of the service cost for each individual route.

Such invoices and supporting documentation shall be submitted no more often than quarterly and indicate at a minimum the amount charged for the period invoiced, the amount charged to date, and the total number of hours charged for the period invoiced.

C.5. Disbursement Reconciliation and Close Out. The Contractor shall submit a final Contract disbursement reconciliation report within thirty (30) days of the end of the Contract. Said report shall be in form and substance acceptable to the City. The City will not be responsible for the payment of invoices that are submitted to the City after the final Contract disbursement reconciliation report.

If total disbursements by the City pursuant to this Contract exceed the amounts permitted by Section C, Payment Terms and Conditions of this Contract, the Contractor shall refund the difference to the City. The Contractor shall submit said refund with the final Contract disbursement reconciliation report.

The Contractor must close out its accounting records at the end of the Contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.

C.6. Payment of Invoice. The payment of the invoice by the City shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.

C.7. Deductions. The City reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the City any amounts which are or shall become due and payable to the City by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The City is not bound by this Contract until it is approved and executed by the appropriate City officials in accordance with applicable Murfreesboro City laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Murfreesboro City officials in accordance with applicable Murfreesboro City laws and regulations.

D.3. Termination for Convenience. The City or Contractor may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the City or Contractor. The party seeking the termination shall give the other party at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the City be liable to the Contractor for compensation for any service which has not been rendered. The final decision as to the amount, for which the City is liable, shall be determined by the City. Should the City exercise this provision, the Contractor shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. If the Contractor exercises this provision, the City shall not have any right to any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the City shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the Contractor.

If the City fails to properly perform its obligations under this Contract in a timely or proper manner, or if the City violates any terms of this Contract, the Contractor shall have the right to immediately terminate the Contract and withhold further services. Notwithstanding the above, the City shall not be relieved of liability to the Contractor for damages sustained by virtue of any breach of this Contract by the City.

D.5. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the City of Murfreesboro as wages, compensation, or gifts

in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

- D.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal Contract, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, Contract, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-Contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the City, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees that upon request by City it will display a sign displaying the necessary information to allow a citizen to file said grievance regarding the services.
- Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public enters in order to receive Contract supported services.
- D.9. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor shall include the statement, "This project is funded, in part, under an agreement with the City of Murfreesboro," Any such notices by the Contractor shall be approved by the City.
- D.10. Licensure. The Contractor and its employees and all sub-Contractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.11. Records. The Contractor shall maintain documentation for all charges against the City under this Contract.

The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State of Tennessee, the City of Murfreesboro, the Comptroller of the Treasury, or any of their duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting Manual for the Recipients of Contract Funds in the State of Tennessee*, published by the State Comptroller of the Treasury. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the City, or its duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the City as requested. These reports shall include per trip ridership figures and calculated performance based on collected data and performance measures as mutually agreed between the RTA and City.
- D.14. Procurement. If the other terms of this Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Contractor's compliance with applicable federal procurement requirements.

The Contractor shall obtain prior approval from the City before purchasing any equipment under this Contract.

- D. 15. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.16. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

Both the Contractor and the City, being political subdivisions of the State of Tennessee, are governed by the provisions of the Tennessee Governmental Tort Liability Act, **Tennessee Code Annotated**, Sections 29-20-101 et seq., for causes of action sounding in tort. Further, no contract provision requiring a State political entity to indemnify or hold harmless another party beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.17. City Liability. The City shall have no liability except as specifically provided in this Contract.
- D.18. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond

the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

- D.19. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.20. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Rutherford County in actions that may arise under this Contract.
- D.21. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.22. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.23. Headings. Section headings are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or, to such other party, facsimile number, or address as may be hereafter specified by written notice.

The City:

**Jim Kerr, Transportation Director
City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
Phone: (615) 893-6441**

The Contractor:

**Stephen G. Bland, CEO
Regional Transportation Authority
430 Myatt Drive
Nashville, TN 37115
Phone: (615) 862-6262**

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically

by the telefax machine at the receiving location and receipt is confirmed telephonically by the sender if prior to 4:30 p.m. local time. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of state and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the City. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
- E.4. Work Papers Subject to Review. The Contractor shall make all audit accounting, or financial analysis work papers, notes, and other documents available for review by the City, the Comptroller of the Treasury or his representatives, FTA, and TDOT, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.5 Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

IN WITNESS WHEREOF, the City and the RTA execute this Contract effective on the date first stated above as shown by the signatures of their authorized representatives herein below.

APPROVED AS TO FORM AND LEGALITY:

CITY OF MURFREESBORO

Craig Tindall, City Attorney

Shane McFarland, Mayor

Kelley Blevins Baker, Asst. City Attorney

REGIONAL TRANSPORTATION AUTHORITY

ATTEST TO THE AVAILABILITY OF FUNDS:

Stephen G. Bland, CEO

Jim Kerr, City of Murfreesboro Transportation Director



Relax & Ride

Murfreesboro (96L) Relax & Ride Budget July 1, 2015-June 30, 2018

| | FY2016 | | FY2017 | | FY2018 | |
|--|--------------|----------------|--------------|----------------|--------------|----------------|
| | Rutherford | Davidson | Rutherford | Davidson | Rutherford | Davidson |
| Number of Daily Trips | 5 | 12 | 5 | 12 | 5 | 14 |
| Days of Service [365 days - 104 days in weekends - 7 weekday holidays] | 254 | 254 | 254 | 254 | 254 | 254 |
| Riders (estimate - including additional service) | 13,404 | 38,196 | 14,363 | 32,315 | 14,650 | 32,961 |
| Operating Hours per Day (including deadhead) - QTR 1 service FY16 | 7.94 | 26.71 | | | | |
| Operating Hours per Day (including deadhead) - Since Oct-2015 | 7.11 | 24.36 | 8.42 | 23.05 | 8.42 | 23.05 |
| Cost per Hour | \$100.17 | \$100.17 | \$103.18 | \$103.18 | \$106.28 | \$106.28 |
| TOTAL Daily Cost of Service | \$795 | \$2,676 | \$869 | \$2,378 | \$895 | \$2,450 |
| Cost of Service | | | | | | |
| Cost of Runs [hrs/day X Cost/hr X 254 days] | 185,889 | 633,920 | 220,669 | 604,088 | 227,299 | 622,238 |
| Board-Initiated R&R RESERVE ³ ¹ | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Total Costs</i> | 185,889 | 633,920 | 220,669 | 604,088 | 227,299 | 622,238 |
| Estimated Revenues | | | | | | |
| Estimated Cash Fares - State Easy Ride | 7,990 | 20,830 | 9,007 | 20,263 | 9,097 | 20,466 |
| Estimated Cash Fares - Regular Riders | 34,800 | 87,190 | 36,466 | 82,044 | 36,831 | 82,864 |
| ADD: Subsidy from SIR Account | 0 | 0 | 0 | 0 | 0 | 0 |
| ADD: JARC for MID-DAY Service [4.10 hrs/day X Cost/hr X 254 days] | 0 | 104,317 | 0 | 107,452 | 0 | 110,680 |
| ADD: Bus Seat Guarantee (100% Funding) | | 0 | | 0 | | 0 |
| ADD: RTA §5307 Operating Funding | | | | | | |
| Federal (50%) | | | | | - | - |
| Local Match (50%) | | | | | - | - |
| ADD: CMAQ Funding for Additional Service | | | | | | |
| Federal | 106,333 | 304,066 | 126,170 | 284,230 | 125,380 | 285,020 |
| TDOT Match on CMAQ | 13,292 | 38,008 | 15,771 | 35,529 | 15,673 | 35,628 |
| Local Match | | | | | | |
| City of Murfreesboro | 3,323 | | 3,943 | | 3,918 | |
| Town of Smyrna | | 7,602 | | 7,106 | | 7,126 |
| City of LaVergne | | 7,602 | | 7,106 | | 7,126 |
| MTSU | 3,323 | 7,602 | 3,943 | 7,106 | 3,918 | 7,126 |
| Rutherford County | 3,323 | 7,602 | 3,943 | 7,106 | 3,918 | 7,126 |
| Davidson County | 3,323 | 7,602 | 3,943 | 7,106 | 3,918 | 7,126 |
| TDOT Operating Subsidy | 1,603 | 16,859 | 5,470 | 12,213 | 9,329 | 11,312 |
| <i>Total Estimated Revenues</i> | 177,310 | 609,280 | 208,656 | 577,261 | 211,982 | 581,600 |
| <i>Estimated Net Cost</i> | 8,579 | 24,640 | 12,013 | 26,827 | 15,317 | 40,638 |
| Local Subsidies | | | | | | |
| Murfreesboro UZA 5307 Funding 50.00% | 4,290 | | 6,007 | | 7,659 | |
| TDOT Match for 5307 Funding 25.00% | 2,145 | | 3,003 | | 3,829 | |
| City of Murfreesboro | 536 | | 751 | | 957 | |
| Town of Smyrna ¹ | | 4,928 | | 5,365 | | 8,128 |
| City of LaVergne ¹ | | 4,928 | | 5,365 | | 8,128 |
| MTSU ³ | 536 | 4,928 | 751 | 5,365 | 957 | 8,128 |
| Rutherford County ¹ | 536 | 4,928 | 751 | 5,366 | 957 | 8,127 |
| Davidson County ¹ | 536 | 4,928 | 750 | 5,366 | 958 | 8,127 |
| <i>Total Subsidy (100%)</i> | 8,579 | 24,640 | 12,013 | 26,827 | 15,317 | 40,638 |
| ¹ Reserves shown on 86X Budget; ³ Reserves shown on 84X Budget | | | | | | |
| Balance | 0 | 0 | 0 | 0 | 0 | 0 |



Relax & Ride

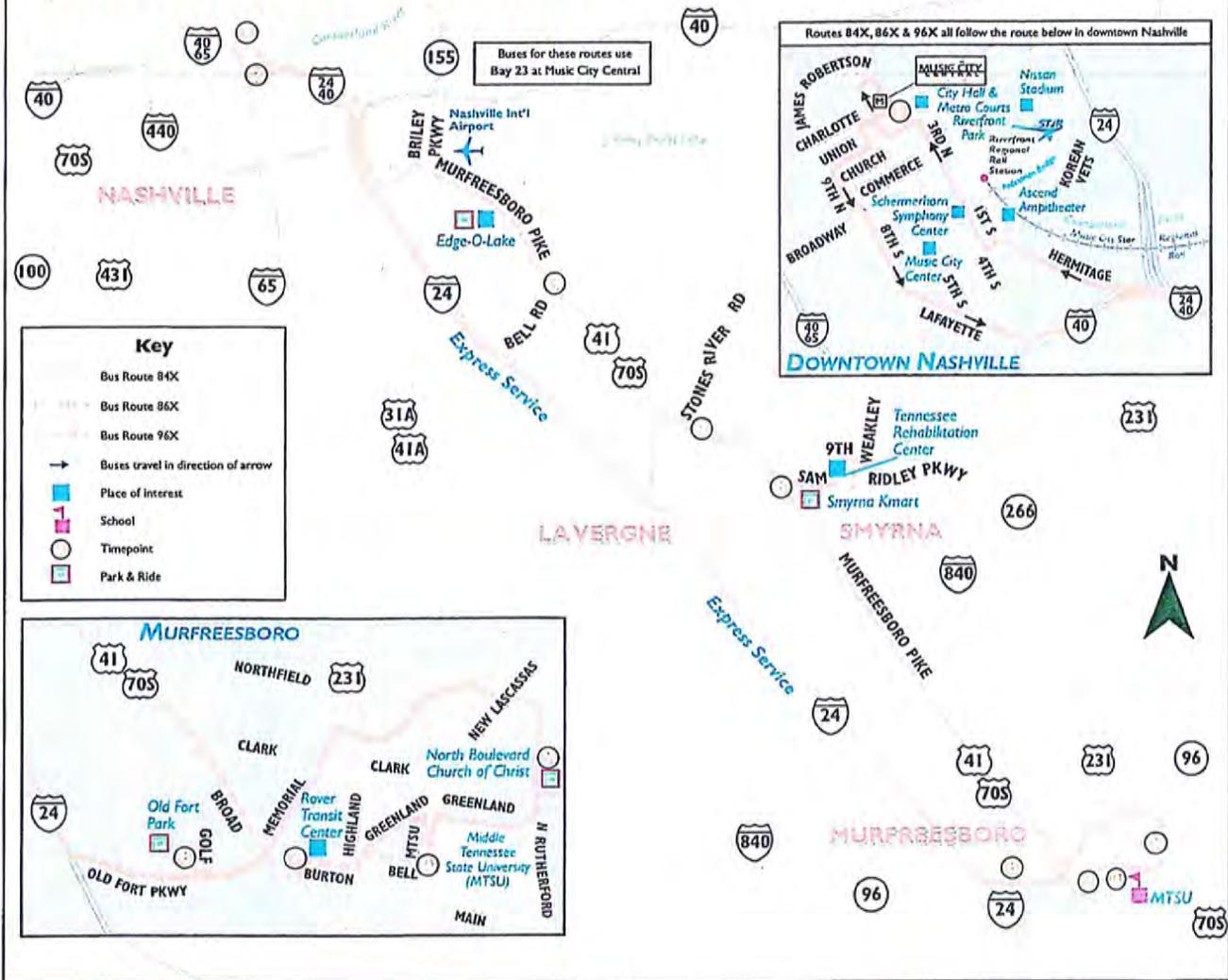
ATTACHMENT #2

Murfreesboro Express (84X) Relax & Ride Budget July 1, 2015-June 30, 2018

| | 2015-16 Budget | 2016-17 Budget | 2017-18 Budget |
|--|-------------------|-------------------|-------------------|
| Number of Daily Trips | 6 | 6 | 6 |
| Days of Service [365 days - 104 days in weekends - 7 weekday holidays] | 254 | 254 | 254 |
| Riders (estimate - including additional service) | 50,452 | 44,088 | 44,529 |
| Operating Hours per Day (including deadhead) - existing continuing service | 14.83 | 14.83 | 14.83 |
| Cost per Hour | \$100.17 | \$103.18 | \$106.28 |
| TOTAL Daily Cost of Service | \$1,485.52 | \$1,530.16 | \$1,576.13 |
| <u>Cost of Service</u> | | | |
| Cost of Runs [hrs/day X Cost/hr X 254 days] | 377,322 | 388,660 | 400,338 |
| Board-Initiated R&R RESERVE ¹ 3 | 1,752 | 440 | 0 |
| <i>Total Costs</i> | 379,074 | 389,100 | 400,338 |
| <u>Estimated Revenues</u> | | | |
| Estimated Cash Fares - <i>State Easy Ride</i> | 90,790 | 94,460 | 95,400 |
| Estimated Cash Fares/Pass Sales - Regular Riders | 41,870 | 31,740 | 32,060 |
| ADD: Subsidy from SIR Account | | | |
| ADD: RTA \$5307 Operating Funding | | | |
| Federal (50%) | | | |
| Local Match (50%) | | | |
| ADD: CMAQ Funding for Additional Service | | | |
| Federal | 172,800 | 172,800 | 172,800 |
| TDOT Match on CMAQ | 21,600 | 21,600 | 21,600 |
| Local Match | | | |
| City of Murfreesboro | 2.5% | 5,400 | 5,400 |
| MTSU | 2.5% | 5,400 | 5,400 |
| Rutherford County | 2.5% | 5,400 | 5,400 |
| Davidson County | 2.5% | 5,400 | 5,400 |
| TDOT Operating Subsidy | 5,324 | 14,534 | 12,385 |
| <i>Total Estimated Revenues</i> | 353,984 | 356,734 | 355,845 |
| <i>Estimated Net Cost</i> | 25,090 | 32,366 | 44,493 |
| <u>Local Subsidies</u> | | | |
| Murfreesboro UZA 5307 Funding | 50.00% | 11,669 | 15,963 |
| TDOT Match for 5307 Funding | 25.00% | 5,835 | 7,982 |
| City of Murfreesboro | 6.25% | 1,459 | 1,995 |
| MTSU ^x 3 | 6.25% | 3,211 | 2,435 |
| Rutherford County ¹ | 6.25% | 1,458 | 1,995 |
| Davidson County ¹ | 6.25% | 1,458 | 1,996 |
| Add'l Funds Needed in FY18 to Cover All Service Costs (\$3,310) | | | |
| <i>Total Subsidy (100%)</i> | 25,090 | 32,366 | 44,493 |
| ¹ Reserves shown on 86X Budget; ² Reserves shown on 84X Budget | | | |
| Balance | 0 | 0 | 0 |

84X, 86X, 96X Rutherford County

ATTACHMENT 2A & 2B



84X - Murfreesboro Express

WEEKDAYS to Nashville

| MTSU/James Union Building | North Blvd Church of Christ | Old Fort Park | Music City Central Bay 23 | Greyhound Bus Station |
|---------------------------|-----------------------------|---------------|---------------------------|-----------------------|
| 5:28 | 5:37 | 5:54 | 6:45 | 6:57 |
| 5:43 | 5:52 | 6:09 | 7:15 | 7:27 |
| 6:02 | 6:12 | 6:31 | 7:45 | 7:57 |

WEEKDAYS from Nashville

| Music City Central Bay 23 | Greyhound Bus Station | Old Fort Park | North Blvd Church of Christ | MTSU/James Union Building |
|---------------------------|-----------------------|---------------|-----------------------------|---------------------------|
| 3:43 | 3:54 | 4:34 | 4:52 | 5:00 |
| 4:08 | 4:20 | 5:02 | 5:20 | 5:28 |
| 4:43 | 4:55 | 5:39 | 5:58 | 6:07 |

NO SERVICE SATURDAYS, SUNDAYS OR HOLIDAYS

a.m. trips p.m. trips

96X - Nashville/Murfreesboro Relax & Ride

WEEKDAYS to Nashville

| MTSU/James Union Building | Rover Transit Center | Northfield & Broad | Smyrna Knart | Floyd Mayfield | Bell Road & Murfreesboro Pike | Music City Central Bay 23 | Greyhound Bus Station |
|---------------------------|----------------------|--------------------|--------------|----------------|-------------------------------|---------------------------|-----------------------|
| 5:18 | 5:24 | 5:33 | 5:52 | 5:58 | 6:12* | 6:53 | 7:04 |
| 8:05 | 8:14 | 8:23 | 8:42 | 8:48 | 9:02* | 9:35 | 9:50 |
| 9:05 | 9:14 | 9:23 | 9:42 | 9:48 | 10:01* | 10:33 | 10:44 |
| 11:20 | 11:29 | 11:38 | 11:58 | 12:04 | 12:18* | 12:50 | 1:02 |
| 2:18 | 2:27 | 2:36 | 2:56# | 3:18 | 3:32*† | 3:57 | 4:02 |
| 3:29 | 3:38 | 3:47 | 4:07 | 4:13 | 4:28*† | 5:02 | 5:22 |
| 5:10 | 5:19 | 5:28 | 5:48 | 5:54 | 6:09*† | 6:38 | 7:00 |
| 6:55 | 7:03 | 7:11 | 7:29 | 7:35 | 7:48* | 8:16 | 8:30 |
| 8:30 | 8:38 | 8:46 | 9:04 | 9:10 | 9:24* | 9:50 | 10:02 |

* From Bell Road to downtown Nashville, this bus operates as an express and only stops to drop off passengers.
 † This bus serves the Edge-O-Lake Park & Ride.
 # This bus serves the Tennessee Rehabilitation Center.

WEEKDAYS from Nashville

| Music City Central Bay 23 | Greyhound Bus Station | Bell Road & Murfreesboro Pike | Floyd Mayfield | Smyrna Knart | Northfield & Broad | Rover Transit Center | MTSU/James Union Building |
|---------------------------|-----------------------|-------------------------------|----------------|--------------|--------------------|----------------------|---------------------------|
| 6:18 | 6:26† | 6:49 | 7:02 | 7:10 | 7:30 | 7:38 | 7:46 |
| 7:20 | 7:30† | 7:53 | 8:06 | 8:14 | 8:33 | 8:41 | 8:51 |
| 9:40 | 9:50 | 10:12 | 10:24 | 10:32 | 10:51 | 11:01 | 11:11 |
| 12:10 | 12:20 | 12:42 | 12:54 | 1:02# | 1:38 | 1:48 | 1:55* |
| 1:50 | 2:00 | 2:22 | 2:36 | 2:44 | 3:04 | 3:14 | 3:24 |
| 3:20 | 3:32 | 3:57 | 4:12 | 4:22 | 4:42 | 4:51 | 5:01 |
| 5:10 | 5:22 | 5:53 | 6:08 | 6:17 | 6:36 | 6:42 | 6:52 |
| 6:50 | 7:00 | 7:22 | 7:34 | 7:42 | 8:01 | 8:07 | 8:17 |

* This bus continues to the North Boulevard Church of Christ Park & Ride and MTSU for passengers who rode a Route 84X - Murfreesboro Express bus in the...



July 28, 2016

CONSENT AGENDA

HONORABLE MAYOR AND MEMBERS OF MURFREESBORO CITY COUNCIL

RE: Visage License and Service Agreement

I respectfully request approval of Visage License and Service Agreement which has a four year term.

Background

Purpose

Visage is a GPS system that will be used in conjunction with the purchase of new Club Car golf carts. The Visage system is beneficial to the player and the facility. The Player Experience Module benefits the player through dynamic distance to hole locations and points of interest on the course, touch screen usage, hole locations and much more. The facility benefits through the Car Control Module with fleet lockdown, staging, speed control, action zone control and messaging during severe weather or emergencies and the Car Tracking Module that shows real-time position of the vehicles, drive history, pace-of-play tracking, player notification, rounds played reporting, real time messaging from the golf shop and much more. The modern day golf experience revolves around the GPS experience that helps players to view the golf holes from any area on the course and allows the facility to be in contact with the player at all times and the ability to communicate with the player to keep them safe and informed.

Fiscal Impact

This is a budgeted item for, Public Golf budget 2016-2017, Old Fort Repair and Maintenance - Software, \$348.00 x 75 golf carts for a total of \$26,100.00 annually. This will be an annual budgeted expense for the four years. As discussed during FY 2016 - 2017 reviews a \$1.00 rate increase in cart fees will offset this expense.

Selection Process

Visage Global golf Information System is a separate entity from Club Car LLC, and is the only system that is compatible with and used by Club Car LLC.

Recommendation

Accordingly, I respectfully request approval of the Visage License and Service Agreement.

Attachments

1. Visage License and Service Agreement between City of Murfreesboro and Visage LLC.

Sincerely,

Tracy Wilkins
Director of Golf



Date: July 15, 2016

Dear Customer:

In executing the enclosed documents, please carefully observe the following items:

1. Ensure that your company's legal name and billing address appears correctly on page 1 as well as company type (LLC, Corp, etc.) and company jurisdiction (the state/province/country in which your company is legally organized).
2. Provide your company's Tax ID number. This number is required in order to ship equipment. In the US, provide the 9-digit EIN.
3. For each signature block have an authorized party (corporate officer, partner, owner) sign and date the documents.
4. Please consult with your GPSI or Club Car representative prior to making any changes. Any authorized changes (line-outs, additions, etc.) must be initialed by both parties to the contract.
5. Payments. It is essential to review the payment terms to understand when Payments are due.
6. If you are claiming a sales tax exemption, a valid certificate must be completed, signed and returned to GPSI. We have enclosed a blanket certificate of resale, which can be used for most US states & certain Canadian provinces. Some states require a state specific form. If applicable, please provide your state specific form.

Please send an electronic copy of all documents to our fax at (480) 383-6799, or via email to pmg@gpsindustries.com.

Thank you,

GPSI



Visage License and Service Agreement

Issued Date: July 15, 2016

| Customer Information | | | | | | | |
|--|---|---------------------------|--|---|--|--|-------------------|
| Full Legal Name ("Customer") City of Murfreesboro | | | | Course Name (the "Golf Course") Old Fort Golf Course | | | |
| Equipment Location/ City/ County/ State/ Zip 1028 Golf Lane, Murfreesboro, TN 37129 | | | | | Type of Organization Municipal | | |
| Billing Address/ City/ County/ State/ Zip (if different) | | | | | Organization Jurisdiction Tennessee | | |
| Billing Contact Name Rob Lyons | | Title | | Billing Email: rlyons@murfreesborotn.gov Phone: 615.893.5210 | | Tax Identification Number 62-600374 | |
| Course/Golf Car Information | | | | | | | |
| # Holes 18 | Golf Car Make/Model (the "Golf Cars") Club Car Precedent – FACTORY | | Total Number Vehicles Installed: 75 | | Name of Golf Car Lessor : Golf Car Lease Term: 48 Golf Car Delivery Date: August, 2016 | | |
| Visage Software "Modules:" | | | | | | | |
| Selections | Module Descriptions | | | Number of Units | Price/Unit | Term (Months) | Total/Month |
| Standard i3 Bundle | Standard Connectivity™ Module (included with purchase or lease of Club Car Precedent i3 Golf Cars at no additional charge for Maximum License Term) | | | 75 | \$0.00 | 48 | \$0.00 |
| Selected for i3 Bundle | Connected™ Car Control Module | | | 75 | \$0.00 | 48 | \$0.00 |
| <input checked="" type="checkbox"/> | Connected™ Car Tracking Module | | | 75 | \$15.00 | 48 | \$1,125.00 |
| <input checked="" type="checkbox"/> | Golf Experience Module | | | 75 | \$14.00 | 48 | \$1,050.00 |
| <input type="checkbox"/> | Tournament Connect | | | | | | |
| <input type="checkbox"/> | Video Flyovers | | | | | | |
| <input type="checkbox"/> | AdMan Pro | | | | | | |
| Total Monthly Payment USD (plus tax): | | | | | | | \$2,175.00 |
| <input checked="" type="checkbox"/> Indicates additional Modules selected for subscription. | | | | | | | |
| TERMS AND CONDITIONS | | | | | | | |
| <p>1. Visage Software. Customer shall license the Visage Software (defined below), specifically the Modules(s) selected above, for the Minimum License Term (defined below). The Club Car Precedent i3 comes standard with the Visage GPS units (the "System"), the Connectivity™ Module and one Connected™ Car Module of Customer's choice ("the Standard i3 Module Bundle"); additional Modules are available for subscription. The Golf Experience Module may not be selected as part of the Standard i3 Module Bundle; the Golf Experience Module is only available as a paid Module.</p> <p>2. Term. The term of this Agreement shall commence on the Effective Date and run for a term of forty-eight (48) months (the "Minimum License Term") from the "Date of Delivery" (the date Customer's Club Car Precedent i3's are delivered to its golf course facility, or, in the event that the Visage GPS system (the "System") is delivered after delivery of the Precedent i3 golf cars, the date Customer accepts delivery of the System) and at the conclusion of the Minimum License Term will continue for additional one month terms unless terminated by either party (the Minimum License Term together with any extensions hereto shall be referred to as the "Term"). For the avoidance of doubt, at the conclusion of the Minimum License Term: (a) the license to the Modules other than the Standard Connectivity™ Module shall terminate and Customer shall have no rights to any of the Visage Software or the Modules other than the Standard Connectivity™ Module; and (b) the Service Terms and Conditions will expire and Customer will have an option to subscribe to a monthly service plan at then applicable rates or pay for service on a time and materials basis. Notwithstanding the foregoing, (x) in the event Customer elects to license additional Module(s) beyond the Minimum License Term, the Service Terms and Conditions will remain in full force and effect at no additional charge for so long as Customer is licensed under such additional Module(s); and (y) the license to the Standard Connectivity™ Module shall remain in place for up to 60 months (the "Maximum License Term") or for as long as the Golf Cars remain at the Golf Course.</p> <p style="text-align: center; font-size: small;">SEE THE FOLLOWING PAGES FOR ADDITIONAL TERMS AND CONDITIONS</p> | | | | | | | |
| <p>THIS AGREEMENT, EFFECTIVE AS OF THE DATE BELOW, IS BY AND BETWEEN GPSI AND CUSTOMER AND IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THIS AND THE FOLLOWING PAGES, WHICH PERTAIN TO THIS AGREEMENT AND WHICH CUSTOMER ACKNOWLEDGES HAVING READ. THIS AGREEMENT IS NON-BINDING UNTIL ACCEPTED BY GPSI. CUSTOMER CERTIFIES ALL ACTIONS REQUIRED TO AUTHORIZE THE EXECUTION OF THIS AGREEMENT, INCLUDING CUSTOMER'S AUTHORITY HAVE BEEN FULFILLED. ACCEPTANCE OF THIS AGREEMENT IS SUBJECT TO FINANCIAL QUALIFICATION AND CREDITWORTHINESS OF CUSTOMER. CUSTOMER SHALL PROVIDE A CREDIT APPLICATION AND FINANCIAL STATEMENTS AS REQUESTED BY GPSI. THIS AGREEMENT SHALL EXPIRE AND BE OF NO FORCE AND EFFECT IF NOT EXECUTED BY BOTH PARTIES WITHIN 30 DAYS AFTER THE ISSUED DATE ABOVE.</p> | | | | | | | |
| GPSI Leasing II- Accord, LLC ("GPSI") 1074 N. Orange Ave., Sarasota, Florida, 34236 | | | | CUSTOMER City of Murfreesboro | | | |
| Authorized Signatory <i>[Signature]</i> | | | | Authorized Signatory | | | |
| x | | | | x | | | |
| Print Name and Title ANDREW EVANS VP FINANCE | | Effective Date 7/18/16 | | Print Name and Title | | Date | |

(Visage License and Service Agreement Terms and Conditions continued)

3. **Payments.** Customer shall make all Payments stated in this Agreement according to the payment terms above beginning on the Date of Delivery. If the Date of Delivery is between the 1st and 15th day of the month, all Payments will be due on the 15th day of each month. If the Date of Delivery is between the 16th and the last day of the month, all Payments will be due on the 1st day of each month. All amounts payable under this Agreement are payable at GPSI's address below or at such other address as GPSI may specify in writing from time to time. Time is of the essence for all obligations arising hereunder.
4. **Taxes.** All Payments made under this Agreement shall be net to GPSI. Customer shall pay all taxes, tax pass along, assessments, and any sales, use, personal property, privilege, value-added taxes, import duties, excise taxes and import brokerage fees incurred in connection with the Visage Software, the Golf Cars or otherwise with respect to this Agreement. If tax-exempt, Customer agrees to provide satisfactory evidence of exemption.
5. **Maintenance Service.** GPSI shall provide service based on the Service Terms and Conditions, set forth in Exhibit B, for a period beginning with the Date of Delivery and ending at the conclusion of the Minimum License Term or the Term, as the case may be.
6. **Software License.** Customer understands that GPSI does not sell the Visage Software. For the Term, GPSI grants Customer a nontransferable, non-exclusive license to use the Visage Software only in conjunction with the System and only as expressly authorized in this Agreement. "Visage Software" means system software included with the System provided to Customer and the Modules selected by or provided to Customer hereunder. Customer shall (i) hold Visage Software in confidence and not disclose it to anyone other than its employees and consultants who require disclosure in connection with Customer's use of the Visage Software and who are subject to confidentiality obligations in substance at least as strict as these, (ii) not print, copy, modify, translate, alter, reverse compile, decompile or reverse engineer Visage Software, (iii) not remove any GPSI copyright, trademark or other proprietary notice from Visage Software and shall reproduce all such notices on copies made by Customer, and (iv) not transfer Visage Software or assign any license or rights regarding the Visage Software.
7. **Default/Delinquency Charges.** Payments not paid by 5 days after the Payment due date are subject to a late payment fee of five percent (5%) of the Payment amount, or the maximum percentage allowed under applicable laws, whichever is less. Should any fee paid by Customer under this Agreement result in interest in excess of the maximum lawful rate, then such excess shall be automatically credited to Customer.
8. **Assignment.** Customer acknowledges that GPSI may assign to a successor all or any part of its right, title and interest in this Agreement, and hereby consents to such assignments. In case of such assignment, Customer agrees to continue to perform all of its obligations under this Agreement.
9. **Notice.** All notices required, permitted or given in accordance with the provisions of this Agreement shall be in writing, and either hand-delivered or delivered by recognized overnight courier to the offices listed in the first paragraph of this Agreement or such other address as either party may designate by notice as specified in this section.
10. **General.** This Agreement, together with the exhibits and schedules referred to in it, constitutes the entire agreement between the parties pertaining to the within subject matter and supersedes any prior understandings oral or written. This Agreement may not be varied, modified, or amended except in writing signed by the parties. Waiver by either party of any breach or violation or default of any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation or any default. The failure or refusal of any party to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any right or remedy. If any term of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement remains fully valid and enforceable. The headings in the Agreement are for convenience of reference only and do not constitute a part of it. The headings do not affect its interpretation. This Agreement shall be governed by and construed in accordance with the procedural and substantive laws of the State of Delaware. This Agreement may be executed by facsimile and/or electronic signature. The parties agree that this Agreement was fully negotiated by the parties; therefore, no provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision. Customer shall allow GPSI to reference Customer in various marketing material or corporate literature, and to the use of approved photos of the Customer's facility for various marketing materials or media. Customer further agrees to allow GPSI to reference it in a press release or other media announcing it as a new location for its System. Any information and data arising out of or in connection with Customer's use of the System shall be owned jointly by GPSI and Customer. All work performed by GPSI in connection with the services to be performed under this Agreement shall be performed by GPSI as an independent contractor and not as the agent of Customer. GPSI may subcontract any or all of the work to be performed under this Agreement but shall retain full responsibility for the work so subcontracted.
11. **Arbitration.** The parties each hereby irrevocably consent to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), for the resolution of all disputes arising under or in connection with this Agreement. Any such arbitration shall be conducted by one arbitrator selected by the AAA. The parties waive any all rights to discovery, including without limitation the taking of depositions. The arbitrator shall not have subpoena power. The arbitrator shall use their best efforts to conclude such arbitration and issue a decision within 30 days after the selection of the arbitrator. The decision of the arbitrator shall be final and binding upon the parties, and judgment in accordance with the decision may be entered in any court having jurisdiction thereof.

EXHIBIT A

Visage Software Modules

The Precedent i3 comes standard with the Visage System, the Standard Connectivity™ Module and one Connected™ Car Module of Customer's choice as selection indicates on page one of this Agreement; additional modules available for subscription.

Standard Connectivity™ Module:

| | | |
|---|--|--|
| <ul style="list-style-type: none"> • Battery status indicator and vehicle "on charge" display, • Vehicle status – on-charge, • Service notifications – battery levels and faults, • Odometer (miles, hours & amp hours), • Serial number and model year, | <ul style="list-style-type: none"> • Overview display of each hole, • Broadcast messaging such as promotions, weather alerts, • Sponsorship and advertising display slots, • Electronic info holder with players' names and messaging, | <ul style="list-style-type: none"> • Electronic scorecard: Request email or mobile number prior to scoring, (1st green) and again at end-of-round, • Email address report. |
|---|--|--|

Connected™ Car Tracking Module:

| | | |
|---|---|--|
| <ul style="list-style-type: none"> • Real-time position of vehicles and equipment, • Find car – current or last known location (worldwide), • Vehicle drive history, • Pace-of-play tracking, | <ul style="list-style-type: none"> • Pace notifications, • Pace-of-play reporting, • Marshal car mode to include messaging to marshal, • Rounds played reporting. | <ul style="list-style-type: none"> • Pop-up notifications- pace-of-play, • Real-time messaging to and from clubhouse, • Message logs. |
|---|---|--|

Connected™ Car Control Module*:

| | | |
|---|---|---|
| <ul style="list-style-type: none"> • Fleet lockdown, • Vehicle staging, • Set vehicle speed limits (fleet, group, and individual vehicle), • Action zone speed control, | <ul style="list-style-type: none"> • Action zone messaging, • Geofence, • Anti-tamper, • Vehicle grouping by department, vehicle type, membership, marshal, etc., | <ul style="list-style-type: none"> • Pop-up notifications – action zone violation, • Car path only, • Visual notification – vehicle speed change or action zone violations. <p style="font-size: small;">* Vehicle control available on Club Car Precedent Excel model vehicles only</p> |
|---|---|---|

Golf Experience Module:

| | | |
|---|---|--|
| <ul style="list-style-type: none"> • Dynamic distances to pins and points of interest, • Touch screen for distance, | <ul style="list-style-type: none"> • Tee shot distance , • food and beverage ordering, • Blind tee shot, | <ul style="list-style-type: none"> • Pin placement manager, • Food and beverage reports. |
|---|---|--|

| | | |
|--|--|--|
| <p>Tournament Connect: Interface to leading Tournament Management providers for access to:</p> <ul style="list-style-type: none"> • Leaderboard, • Tournament Manager. | <p>Ad Event: (Included with purchase of Tournament Connect)</p> <ul style="list-style-type: none"> • Publish ads for multiple tournaments simultaneously. | <p>3D Flyovers:</p> <ul style="list-style-type: none"> • Audio description of hole, • 3D flyover graphics. |
|--|--|--|

VISAGE Ad Manager:

| | | |
|--|--|--|
| <p>AdMan: <i>Included with the VCC</i></p> <ul style="list-style-type: none"> • Image Gallery, • Scheduled & automatically published ads, • Green to Tee spots, • Fairway - Full and Insert spots. | <p>AdMan Pro:</p> <ul style="list-style-type: none"> • AdMan, <i>plus</i> access to and control over all advertising on the System and retaining all such revenues. | |
|--|--|--|

EXHIBIT B

Service Terms and Conditions

1. Scope of Service.

- 1.1. **Defective Components.** GPSI shall provide maintenance service as provided for in paragraph 2.3 and 2.4, at its expense, to repair, modify or replace the Visage GPS system (inclusive of the Software, the "System") components, as necessary that are defective in workmanship ("Service"). GPSI does not warrant that the operation of the System shall be uninterrupted or completely error-free.
- 1.2. **Exclusions.** Service shall not include, and GPSI shall not be liable for any interruption in service, delay in the delivery, or disruption of performance of the System resulting from: (1) maintenance, repair or replacement of parts damaged or failing to operate due to acts of God, including without limit storms, atmospheric disturbances, lightning, fire, hail, and flood; acts of government, including war; catastrophes, accident, neglect, misuse, failure of satellites, failure of electrical power, fault or negligence of Customer, causes external to the System or from any other cause beyond the control of GPSI; (2) service and repair of accessories, attachments, or any other devices that are not part of the System; (3) changes, modifications or alterations in or to the System required due to new construction or changes to the golf course or facilities; (4) graphical changes after acceptance of the System, (5) software damage caused by unauthorized use.

2. Customer Responsibilities

- 2.1. **Problem Notification.** Customer agrees to promptly notify Customer Support in the event of any System or component failure and provide diagnostic assistance to support GPSI's service efforts.
- 2.2. **To Contact Customer Support.** Customer shall have reasonable access to Customer Support during business hours. Customer Support provides user support, troubleshooting, and diagnostic assistance and is Customer's point of contact for reporting system problems or requesting service.
 - a. For all routine requests and status inquiries, contact Customer Support via email to support@gpsindustries.com.
 - b. To report emergency or critical system issues, contact Customer Support by calling the toll free Customer Support line at 888-575-2901.
- 2.3. **Component Replacement.** Customer agrees to perform the task of changing out replacement components provided by GPSI. Customer will be billed for repair or replacement of returned components that have been damaged.
- 2.4. **RMA request for defective components.** A Return Materials Authorization number (RMA) is required for the return of any defective component. To obtain an RMA, Customer must contact the Customer Support center at 888-575-2901. If Customer Support determines that the component must be returned for repair, Customer Support will issue an RMA. Customer is then responsible for properly following procedures for returning components as instructed by Customer Support. Any request for special handling such as expedited repair, overnight return delivery, or non-business day delivery may be subject to additional charges billable to Customer. Customer agrees to pay for shipment of components returned to GPSI. GPSI agrees to pay for return shipment to Customer.
- 2.5. An **unrestricted broadband internet connection at each location on the Golf Course that needs access to the Visage System (including F&B order fulfillment)** for the duration of this Agreement for System installation, monitoring and maintenance service. The internet connection must provide the following minimum speeds as measured by online testing tools found at sites such as www.speakeasy.net:

| | Minimum | 120 carts or more | 160 carts or more |
|----------------------------|---------|-------------------|-------------------|
| Download speed (Mbit/sec): | 1.5 | 2.25 | 3.0 |
| Upload speed (Mbit/sec): | 0.5 | 0.75 | 1.0 |

- 2.6. Battery power to the Golf Car-mounted units at all times, and Customer agrees to allow power to be drawn from the Golf Course irrigation system (or other power sources) to supply radio repeater stations as needed.

3. Definition of Service Elements

- 3.1. Remote Diagnostics. GPSI accesses the course System via the Internet to perform system diagnostics, remote health monitoring or specific troubleshooting procedures to detect, identify or correct failures.
- 3.2. Software Updates and Enhancements. GPSI shall provide software maintenance for the System Software. Software maintenance provides for bug fixes, patches, corrections, updates and enhancements as available. Software updates do not include new software features or hardware product offerings that are sold separately.
- 3.3. On-site Service. If a problem cannot be resolved through telephone support or by shipping a replacement component, GPSI may dispatch a technician to Customer's site to address the problem. On-site services including labor, materials, and reasonable travel expenses are chargeable for site visits that result from out-of-scope problems.
- 4. Force Majeure. GPSI shall not be liable for any interruption in service, delay in the delivery, or disruption of performance of the System resulting from any cause beyond its reasonable control or caused by acts of God, acts of Customer, acts of civil or military authorities, fires, strikes, floods, epidemics, governmental rules or regulations, war, riot, delays in transportation, or shortages.
- 5. Pricing of Additional Services. Services not covered under Service Terms and Conditions (Exhibit B) or that may be requested from time to time are available according to the prices and terms below. All prices and terms for additional services are subject to change. For orders up to US\$1,500, GPSI will provide services upon receipt and confirmation of the order. Payment will be due upon delivery of services. For orders of US\$1,500 or more, GPSI requires a signed purchase order or a deposit payment equal to 50% of the order price with the final payment due upon delivery of services. GPSI at its sole discretion reserves the right to hold orders for accounts that have outstanding payables beyond terms. Scheduling of services depends on material lead-times and the backlog of service orders at the time of order confirmation.

| <u>Description</u> | <u>Prices (USD)</u> |
|---|--|
| Graphical Changes | \$65 / half hour |
| Mapping Changes | \$65 / half hour plus travel and expenses at reasonable cost |
| Graphics Media (Raw data files for Customer's use) | 3D Video Flyovers: \$1,000/14 hole set; \$500/ additional 7 hole set 2D Hole Images: \$500/18 hole set; \$250/ additional 9 hole set 2D Tracker Course Map: \$200 |
| On-site service for items not covered under Service (due to external causes or at customer's request for additional services) | \$400 per half day on site plus \$40 per hour travel time to and from site plus travel and expenses at reasonable cost; plus any applicable material charges. |
| Repair of GPS unit for damage not covered under Service | Level 1: \$100 - Damage to exterior plastic housing. Does not include damage to the touch screen or LCD display, Level 2: \$200 - Broken or cracked touch screen or LCD display, Level 3: Complete loss including water damage or damage to internal components. Replace with refurbished VDU \$600 Replace with new VDU \$950 |
| Fleet Replacement Like-to-Like car changeover; (i.e. Club Car Precedent electric to Club Car Precedent electric which requires no additional or replacement mounting hardware), Customer may chose alternatives a or b (90 days advance notice required): | |
| a- By Customer (2-3 people) + 1 GPSI employee | \$20/unit plus travel and expenses at reasonable cost |
| b- By GPSI (2-3 people) on-site | \$42/unit plus travel and expenses at reasonable cost |
| Fleet Replacement different type cars (90 days advance notice required): | Quoted on case by case basis |

ADVERTISING AGREEMENT

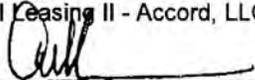
This Advertising Agreement is attached to and incorporated into the terms of that certain License and Service Agreement ("Agreement") between GPSI Leasing II - Accord, LLC ("GPSI") and City of Murfreesboro ("Customer").

Capitalized terms appearing herein shall have the same meaning ascribed to them herein as in the Agreement unless otherwise noted.

Ad Modules & Pricing

| Selection | Feature Description |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <p>AdMan: Standard package provides Fairway and Green-to-Tee spots. <i>Price: Included with the Visage Control Center (VCC)</i></p> <p>GPSI hereby grants Customer graphical exposure opportunities on the System that shall consist of Fairway (full page and insert spots) and available "Green to Tee" full screen graphics to be used for local advertising and promotions or for tournament sponsorships but not for national advertising campaigns which are administered by GPSI exclusively. Fairway spots are available on par 4 and par 5 holes (fairway spots are not available for par 3 holes.) Fairway spots include a full page "touch-to-make-go-away" and the quarter page insert. "Green to Tee" is defined as the area just after a green and prior to the next tee (a 200-yd distance between the green and next tee is required for a Green to Tee spot to work.) GPSI retains exclusive rights to all other advertising on the System and may sell ads for placement on the System. Customer retains right of approval, which shall not be unreasonably withheld, for such GPSI sold ads and where approved will receive revenues, if any, on a campaign-by-campaign basis. Customer agrees that it will allow no third party to place advertising on the System.</p> |
| <input type="checkbox"/> | <p>AdMan Pro: Ad Manager with access to all Ad Inventory. <i>Price: \$5.00 per unit per month</i></p> <p>Customer retains exclusive rights to all advertising on the System and may sell ads for placement on and in connection with the System and retain all such revenues.</p> |

GPSI Leasing II - Accord, LLC



 Authorized Signatory

ANDREW EVANS

 Name

VP Finance **7/18/16**
 _____ _____
 Title Date

City of Murfreesboro

 Authorized Signatory

 Name

 Title Date

BLANKET CERTIFICATE OF RESALE

Company Name: City of Murfreesboro
Address: 1028 Golf Ln., Murfreesboro, TN 37129
State of Sales Tax Registration: Tennessee

This is to certify that all, material, merchandise, or goods leased or rented by the undersigned from:

GPSI Leasing II - Accord, LLC (GPSI)
1074 N. Orange Ave.
Sarasota, Florida, 34236

After _____ Is rented for the following purpose:
(Date)

- _____ Resale as tangible personal property
- _____ Rental as tangible personal property
- _____ To be incorporated as a material part of other tangible personal property to be produced for sale by manufacturing, assembly, processing or refining.
- _____ To be exported for sale, use or consumption outside the continental limits of the United States.
- _____ Exemption under Federal, State, or local Governmental Laws.
- _____ Other:

This certificate shall be considered a part of each order, which we shall give unless otherwise stated. This certificate is to continue enforce until evoked.

Certificate Number: _____
By: _____
Title: _____

Instructions: (Please print or Type)

1. State of Registration: The State with which your certificate number is filed. Please complete one form for each State of registration.
2. Date: Fill in approximate date of first lease or rental with GPSI.
3. Check the most appropriate intended purpose of the leased equipment.
4. Certificate Number: Indicate your certificate number issued by the state in which you are registered.
5. By: Signature of person authorized by your Company.



July 28, 2016

CONSENT AGENDA

HONORABLE MAYOR AND MEMBERS OF MURFREESBORO CITY COUNCIL

RE: Purchase of (75) Seventy-Five 2017 Electric Club Car Precedent Golf Cars and (3) Three 2017 Club Car Electric Carryall 500 Turf Utility Vehicles and (1) One 2017 Gas Carryall 500 Turf Vehicle and (1) One 2017 Electric Carryall 300 Turf Utility Vehicle for the Public Golf Department

I respectfully request approval to purchase the above-referenced Club Car Precedent Golf Cars and Carryall Turf Utility Vehicles U.S. Communities Master Agreement with Club Car LLC.

Background

Purpose

The (75) Seventy-Five Club Car Golf Cars will be used mainly at Old Fort Golf Club for use by golfers during their round to serve as a way to carry their clubs and make their way around the golf course and will be used seven days week during the season. These golf cars serve as a revenue producer for the golf course. This equipment will be a replacement fleet for a fleet purchased in March of 2012. The current golf car fleet will be traded in to Club Car as part of this agreement.

The (5) Five Club Car Turf Utility Vehicles will be used mainly at Old Fort Golf Club and Bloomfield Links for daily work related activities seven days a week. This equipment will be replacement for Turf Vehicles purchased in March of 2012. The (5) Five Club Car Utility Turf Vehicle to be replaced will be transfers to other city departments. One will go to the Airport and four will go to the Water and Sewer Department to be used at the treatment plant.

Selection Process

Pursuant to T.C.A. § 12-3-1009(b)(1) and City of Murfreesboro Resolution 11-R-27, where any local or private act, charter or general law requires that a local government unit purchase by competitive bidding, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, the municipality may consider the price for an item or service under any contract or agreement pursuant to T.C.A. §12-3-1009(b)(1). Furthermore, Murfreesboro City Resolution 11-R-27 authorizes purchases without competitive bidding from the U.S. Communities Master Agreement.

The Club Car Golf Cars and Utility Vehicles are available for purchase pursuant to T.C.A. § 12-3-1009(b) (1) through the U.S. Communities Master Agreement, Contract Number EV2024-02, from Club Car LLC for \$338,789.36.

Fiscal Impact

This is a budgeted item for, Public Golf budget 2016-2017, Fixed Assets, \$345,421.00

The U.S. Communities contract price for the (75) 2017 Club Car Golf Cars (3) Three 2017 Club Car 500 Electric Utility Vehicles and (1) One 2017 Club Car 500 Gas Utility Turf Vehicle and (1) One 2017 Club Car 300 Electric Utility Turf Vehicle is \$6,631.64 UNDER the budgeted amount.

Recommendation

Accordingly, I respectfully request waiver of the competitive bid process and approval to purchase (75) Seventy-Five Club Car Golf Cars and (5) Five Utility Turf Vehicles from the U.S. Communities contract.

Attachments

1. Proposal between City of Murfreesboro and Club Car LLC.
2. Master Contract between U.S. Communities and Kansas City, Missouri.
3. Contract Amendment #3.

Sincerely,

Tracy Wilkins
Director of Golf



Old Fort Golf Club



FAST





PROPOSAL

7/21/2016

Mr. Tracy Wilkins
Old Fort Golf Club
Murfreesboro, TN

Dear Tracy:

On behalf of Club Car, thank you for the opportunity to present this proposal to Old Fort Golf Club. Club Car produces the highest quality golf car available and is recognized as the market leader. Our 2016 Precedent golf car, equipped with Visage, is our best yet. In addition to introducing Visage, over the last few years we have upgraded the battery pack, front suspension, rain cover design, windshield design, upgraded to the MCOR4, and introduced our new High-Efficiency charger. With this, our battery warranty has increased an additional 20% and now is the best in the industry at 25,000 AMP hours.

Club Car takes pride in not only our products, but also our commitment to customer service and satisfaction. It is this combination of uncompromising quality, reliability and service that has made Club Car one of the most respected companies in the golf industry for more than 50 years and a valued partner with thousands of facilities around the world.

If you have questions about any aspect of this agreement or if you would like to discuss additional ways we might meet your needs, please call me at (615) 670-6031 or send me an email at: Tim.Keller@irco.com. I look forward to serving you.

Sincerely,

Tim Keller
Territory Manager – Tennessee/Kentucky
www.clubcar.com



PROPOSAL

Company Profile

Club Car combines a quality-driven philosophy, an innovative spirit, and a solutions-oriented approach to business. Club Car has established itself as a leading global manufacturer of vehicles that serve the golf, rough terrain, private owner, and commercial markets.

Founded in 1958 in Houston, Texas,

Club Car, Inc. moved to Augusta in 1962. Ingersoll Rand (NYSE: IR, www.ingersollrand.com), a diversified multinational manufacturer of industrial and commercial equipment and components, acquired the company in 1995. Club Car employs more than 1,400 people worldwide and has a presence in more than 120 countries.

In addition to golf cars,

Club Car also manufactures a full line of turf maintenance and utility vehicles as well as hospitality and mobile merchandising vehicles to support the needs of golf course owners and operators. Off the course, Club Car has a growing presence in the rough terrain market, where its XRT vehicles are making jobs around the farm and lake easier and more enjoyable.

More and more Club Car vehicles

are showing up in communities where private owners are choosing the convenience and efficiency of a well-equipped golf car for short trips over the family automobile. One of the fastest growing segments of the Club Car business is its custom vehicles group, which combines imagination with decades of experience to meet the specific needs of a wide range of customers.

Club Car is the world's largest manufacturer

of small-wheel electric vehicles. Our worldwide distribution network of distributors, dealers, and factory branch locations also complements Club Car's direct sales operations and supports customers' needs wherever they might arise.

Club Car introduced the Solutions Network™ in 2002

to enhance its expertise and products in areas beyond vehicle sales. As an alliance of leading providers of complementary products and services, the Solutions Network is designed to help customers increase revenues and control costs.

Club Car is part of Ingersoll Rand Company Limited (NYSE: IR).

Ingersoll Rand is a diversified industrial company providing products, services, and integrated solutions to industries ranging from transportation and manufacturing to food retailing, construction, and agriculture. With a 100-year-old heritage of technological innovation, Ingersoll Rand helps companies worldwide to be more productive, efficient, and innovative. For more information, please visit www.ingersollrand.com.



PROPOSAL



21 July 2016

We are pleased to present the following equipment specifications for Old Fort Golf Club's fleet golf car.

(75) PRECEDENT I3 ELECTRIC GOLF CARS, EQUIPPED WITH VISAGE

| Item | Description |
|------|--|
| | Standard equipment includes |
| 1 | <i>E.R.I.C. High-Frequency Charger</i> |
| 2 | <i>Six (6) 8-volt Heavy-Duty Batteries</i> |
| 3 | <i>Body Color – White, Beige, Green, or Blue</i> |
| 4 | <i>Seats – Beige, White, or Grey</i> |
| 5 | <i>Canopy Top – Beige or White</i> |
| 6 | <i>Tires: Premium Tread 4-ply</i> |
| 7 | <i>Precedent Wheel Covers</i> |
| 8 | <i>Number decals – 2 per car</i> |
| 9 | <i>Deluxe Towing Package</i> |
| 10 | <i>Hinged Windshield</i> |
| 11 | <i>Single-Point Watering System w/Deionizer</i> |
| 12 | <i>Sand Bucket – Driver Side</i> |
| 13 | <i>Rain Cover – Green, Beige, or Black</i> |
| 14 | <i>Information Holders – 2 per car</i> |
| 15 | <i>Cooler – Passenger Side</i> |
| 16 | |
| 17 | |

[Handwritten signature]



PROPOSAL



FLEET VEHICLE PRICING (U.S. Communities) – based on July 2016 delivery

Purchase price - \$6,016.60

Trade-in Value for 2012 Club Car Precedent Electric – (\$2,100/car)

Net Price - \$3,916.60 car x 75 cars = \$293,745

FINANCING OPTIONS:

48 Month FMV Lease (trade-in value applied) - \$63.72/car/month

48 Month Municipal Lease Purchase (with \$1,450 balloon) - \$58.71/car/month

48 Month Municipal Lease Purchase (with \$1 out) - \$86.92/car/month

Customer: Old Fort Golf Club _____

Club Car: Tim Keller _____

Signature: _____

Signature: _____

Title: _____

Title: Territory Manager _____

Date: _____

Date: _____



PROPOSAL



Precedent i2 Electric

FEATURES & BENEFITS

- Industry-leading (6) 8-volt battery, 48-volt power plant.
- Innovative Excel™ Drive System reduces maintenance and improves uptime with features like low-speed motor braking, hill descent assist, regenerative braking, and top speed control / speed range programming.
- The industry's tightest clearance circle provides superior maneuverability
- SportDrive™ steering and suspension provide an invigorating, sports car-like driving experience.
- PowerShield™ protective battery housing safeguards electrical power systems from chemicals, water, and ground debris.
- Monsoon Top™ has built-in drain spouts to automatically channel water straight to the ground.
- 360 degree bumper system protects the frame and overall vehicle.
- Molded-in body color with no clear coat or paint to worry about.
- IQDM diagnostic tool: keep your entire fleet operating at peak capacity and profitability.
- Sleek, functional dash allows golfers to easily see items and is easy to clean.

| POWER SOURCE | |
|------------------------------|--|
| Batteries | (6) 8-volt batteries |
| Charger | ERIC High-Frequency Solid State Charger |
| Horsepower | 3.3 hp |
| STEERING / SUSPENSION | |
| Steering | Self-compensating double reduction helical rack and pinion |
| Front Suspension | Independent leaf spring with dual hydraulic shocks |
| Brakes | Self-adjusting rear mechanical drum |
| Park Brake | Foot-operated, multi-lock |
| BODY / CHASSIS | |

| | |
|--------------------|--------------------------------|
| Frame Chassis | Ladder-style aluminum box beam |
| Body / Body Color | Formion® / Molded in |
| Front / Rear Tires | 18 x 8.50-8 / 18 x 8.50-8 |
| Kickplate | Yes |
| Seating Capacity | 2 |

DIMENSIONS

| | |
|-----------------------------|--|
| Overall L x W x H | 91.5 in x 47.25 in x 68.5 in (232 cm x 120 cm x 174 cm) |
| Wheelbase | 65.5 in (166.4 cm) |
| Ground Clearance | 4.5 in (11.4 cm) |
| Floor Height | 12 in (30.5 cm) |
| Tread | 34.5 in / 38.5 in (87.6 cm / 97.8 cm) |
| Dry Weight (Less Batteries) | 495 lb (224.5 kg) |
| Speed Range | 7 speed settings: 5 to 19 mph; 2 acceleration settings: Aggressive or traditional; 3 pedal-up braking settings: None, mild and aggressive; Speed adjustment in 0.1 mph increments |
| Vehicle Warranty | 4-year: batteries (25,000 energy units or 1,000 rounds), canopy, electronics, pedal group, seats, suspension. 3-year: body panels, electric power train. 2-year: all remaining components. Limited lifetime: frame |

CLUB CAR® LIMITED LIFETIME WARRANTY FOR PRECEDENT® FLEET GOLF CARS

WARRANTY:

CLUB CAR, LLC, (CLUB CAR) hereby warrants its new Precedent golf car purchased from CLUB CAR or an authorized distributor, dealer, or agent shall be free from defects in material and workmanship under normal use and service for the period as stated in years below, as terms are defined herein, and subject to the provisions, limitations and exclusions contained in this warranty.

| | Precedent i2L | Precedent i2 | Villager 4 |
|---|---------------|--------------|------------|
| VEHICLE MAIN FRAME | LIFETIME* | | |
| SUSPENSION defined as Steering Gearbox, Steering Column, Shocks, and Leaf Springs. | 4 | 4 | 4 |
| MAJOR ELECTRONICS defined as Solid State Speed Controller, and Battery Charger. | 4 | 4 | 4 |
| DEEP CYCLE BATTERY Four Years or 1000 Rounds or 25,000 Energy Units (EU's) as recorded by the OBC, whichever first occurs. | 4 | 4 | 4 |
| PEDAL GROUP defined as Pedal Group Mechanical Assembly, Brake Cluster Assemblies, and Brake Cables | 4 | 4 | 4 |
| SEATS defined as Seat Bottom, Seat Back, and Armrests | 4 | 4 | 4 |

| | | | |
|--|---|---|---|
| CANOPY SYSTEM defined as Canopy, Rear Canopy Supports, Drainage System and Structural Accessory Module | 4 | 4 | 4 |
| POWERTRAIN defined as Gasoline Engine, Electric Motor, Gasoline and Electric Transaxle, Starter and Drive System, and Torque Converter (Drive and Driven). | 3 | 3 | 3 |
| CLUB CAR Beauty Panels, and Front and Rear Underbody. | 3 | 3 | 3 |
| COMPONENTS defined as Solenoid, MCOR, GCOR, Limit Switches, Voltage Regulator, F&R Switch, and Options, and Accessories supplied by CLUB CAR, including components not specified elsewhere. | 2 | 2 | 2 |

IF THE WARRANTY REGISTRATION FORM IS NOT COMPLETED AND RETURNED TO CLUB CAR AT THE TIME OF THE ORIGINAL RETAIL SALE, PURCHASER MUST PROVIDE PROOF OF DATE OF PURCHASE WITH ANY WARRANTY CLAIM.

EXCLUSIONS:

Excluded from any CLUB CAR warranty is damage to a golf car or component resulting from a cause other than a defect including poor maintenance, neglect, abuse, accident & collision, maintenance adjustments, unreasonable or unintended strain or use, improper installation of accessories, installation of parts or accessories that are not original equipment, nonapproved alteration, and acts of god. Also excluded from any CLUB CAR warranty are all fuses, filters, decals (except safety decals), lubricants, routine wear items such as the charger plug and receptacle, brake shoes, belts, brushes, bushings, drive buttons, cosmetic deterioration, and items which deteriorate, fade or fail due to exposure or ordinary wear and tear.

Specific to the deep cycle battery, the provisions of this limited warranty shall not apply to failure due to:

- 1) Abuse such as overcharging, undercharging, improper fluid levels, loose wiring, or rusted or corroded hardware;
- 2) Lack of proper maintenance as outlined in the vehicle owner's manual;
- 3) Damages caused by improper installation of the battery;
- 4) Neglect, breakage, freezing, fire, explosion, wreckage, the addition of any chemical, or the operation of the battery in an uncharged condition (below half charge 1.200 specific gravity); the installation of the batteries in reverse or recharging in reverse, breakage of containers, covers, or terminal post, or batteries used in applications for which they were not designed.
- 5) A battery damaged by a defective charger.

Transportation expenses for warranty services are also excluded from this warranty.

VOIDING OF WARRANTY:

THIS AND ANY OTHER WARRANTY SHALL BE VOID IF THE GOLF CAR IS ABUSED OR USED IN AN UNINTENDED MANNER OR SHOWS INDICATIONS THAT IT HAS BEEN ALTERED IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, MODIFICATION OF THE SPEED GOVERNOR, BRAKING SYSTEM, STEERING, TRANSAXLE, OR OTHER OPERATING SYSTEMS OF THE CAR TO CAUSE IT TO PERFORM OUTSIDE CLUB CAR SPECIFICATIONS. THE WARRANTY IS LIKEWISE VOID IF THE CAR INVOLVED SHOWS INDICATIONS THAT REASONABLE OR NECESSARY MAINTENANCE AS OUTLINED IN THE OWNER'S MANUAL AND MAINTENANCE AND SERVICE MANUAL WAS NOT PERFORMED AT THE TIME AND IN THE MANNER SPECIFIED IN SUCH MANUALS.

SOLE REMEDY:

CLUB CAR's liability under this limited warranty, or in any action whether based upon warranty, contract, negligence, strict product liability or otherwise, shall be the repair or replacement, at CLUB CAR's option, of the golf car or component thereof that CLUB CAR deems to be defective. Replacement shall mean furnishing, during the applicable limited warranty period, a new golf car or factory-reconditioned vehicle or component thereof that is identical or reasonably equivalent to the warranted product or component at no cost

to the purchaser. Repair shall mean remedying a defect in the golf car or component thereof at no cost to the purchaser during the applicable limited warranty period. If CLUB CAR elects to repair the golf car, it may provide factory-reconditioned parts or components. All parts and components replaced under warranty shall become the property of CLUB CAR.



PROPOSAL

DISCLAIMER:

THIS LIMITED WARRANTY IS EXCLUSIVE. CLUB CAR MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED. ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEED THE OBLIGATIONS OR TIME LIMITS STATED IN THIS WARRANTY ARE HEREBY DISCLAIMED BY CLUB CAR AND EXCLUDED FROM THIS WARRANTY. THE PURCHASER AND CLUB CAR EXPRESSLY AGREE THAT THE SOLE REMEDY OF THE REPLACEMENT OR REPAIR OF THE DEFECTIVE GOLF CAR OR COMPONENT THEREOF IS THE SOLE REMEDY OF THE PURCHASER. CLUB CAR MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, AND NO REPRESENTATIVE, EMPLOYEE, DISTRIBUTOR OR DEALER OF CLUB CAR HAS THE AUTHORITY TO MAKE OR IMPLY ANY REPRESENTATION, PROMISE OR AGREEMENT, WHICH IN ANY WAY VARIES THE TERMS OF THIS WARRANTY.

NO CONSEQUENTIAL DAMAGES:

IN NO EVENT SHALL CLUB CAR BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS RELATED TO PROPERTY OTHER THAN THE GOLF CAR, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, OR ANY OTHER ECONOMIC LOSS.

Some states allow neither limitation on the duration of an implied warranty nor exclusions or limitation of incidental or consequential damages. Therefore, the above limitations or exclusions may not apply to you.

This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state.

In the event that another pre-printed warranty document and/or certificate offered by or through Club Car at the time of sale of this vehicle (each an "Additional Warranty Document") is deemed to conflict with the limitations or exclusions contained herein, the limitations and exclusions contained herein shall continue to apply with respect to both this limited warranty statement and, to the maximum extent permitted by law, to each Additional Warranty Document.

INFORMATION:

For further information contact WARRANTY SERVICES, CLUB CAR, LLC, P.O. Box 204658, Augusta, Georgia 30917-4658, U.S.A., 706-863-3000.

WARRANTY TRANSFER:

The original owner shall have the right to transfer any remaining warranty coverage to one subsequent purchaser only. In order for the original owner to transfer any remaining warranty coverage to a subsequent purchaser, the vehicle must be re-registered by an Authorized Club Car Distributor or Dealer with the Warranty Department at Club Car, Inc.. Such transfer must take place within the first three years of the original in service date of the vehicle. *The Limited Lifetime section of the warranty coverage applies to the original purchaser or lessee only, and the subsequent purchaser will only have a four-year coverage period based on the original in service date. No transfers of any remaining warranty coverage shall be permitted by any subsequent purchasers.

WARNING:

Any modification or alteration of any golf car beyond factory specifications, including those that affect the weight distribution, stability, or speed of the golf car, can cause serious personal injury or death.



PROPOSAL



ViSAGE

Finally, a golf car that help course managers find their way to better customer service and a richer bottom line.

Visage™ helps your operation increase revenues, reduce expenses, manage your key assets and deliver a unique golf experience your customers never imagined. Familiar touch-screen technology powers Visage, so there's zero learning curve for your customer. Golfers can easily find the information and services they want just by touching the screen.

Visage is a full-featured mobile golf information system. It helps you protect your assets—your course, your golf car fleet, and your golfers. And if your fleet happens to comprise Club Car Precedent electric vehicles, Visage includes Club Car's built-in Guardian SVC system at no extra charge.

Increase Revenues

While we can't guarantee that Visage will bring thousands of new golfers to your course (at least not at first), we can tell you that it will impact your top and bottom lines. With Visage, you'll have a clear picture of what's going on at your course any given moment and enables just-in-time responses for your crew.

- Drive rounds even when the tee sheet is full, creating happy customers and more green fees.
- Promote higher margin goods and services via messages on the in-car display.
- Remind golfers of Pro Shop specials as they near the end of their round.
- Suggest advance tee-time bookings to golfers before they leave the course.

Reduce Expenses

One way to grow your bottom line is to reduce your operating expenses. Visage can help you better manage costs associated with your golf car fleet and your golf operation.

- Watch your payroll. You don't need more marshals to improve pace of play; you just need better, timely information.
- Cut your mowing costs—literally. With Visage and Club Car's Guardian SVC system, you merely program your vehicles to avoid all sensitive areas, including the wet ones; you'll have cut costs—and greens—in no time.

Manage Assets

Your course and your golf fleet are your biggest assets. Visage™ can help you manage both of them effortlessly. And because Visage offers a one-year-only commitment, there's no big financial investment.

- Know where your cars are at all times. See the whole picture. Breakdown on 6? Backup on 13? You'll know where the trouble is, and you can send help or a carefully worded message wherever it needs to go.
- Make your marshal more productive. A marshal's screen enables him or her to see the entire course—including every car and every hole, so trouble spots are addressed immediately.
- Ever worry about golf car vandalism? With Visage's Guardian SVC, you can place your fleet on 'lockdown' mode to render all cars completely immobile.

Deliver Experience

Golf cars equipped with the Visage Mobile Golf Information System enable unmatched customer service.

- Get to Know the Course like a Local – Full hole fly-overs, superior 3-D graphics, yardage, and distances and course maps are at your customer's fingertips.
- Improve Pace of Play – Knowledge of the course means golfers play faster.
- Order at the Turn – Visage allows you to offer a more extensive menu, and enables players to place orders 1–2 holes ahead of making a turn.
- When the round is complete, a golfer can email his score to his pals and himself.



PROPOSAL



FLEET VEHICLE PRICING (U.S. Communities) – based on July 2016 delivery

Purchase price - \$6,016.60

Trade-in Value for 2012 Club Car Precedent Electric – (\$2,100/car)

Net Price - \$3,916.60 car x 75 cars = \$293,745

FINANCING OPTIONS:

48 Month FMV Lease (trade-in value applied) - \$63.72/car/month

48 Month Municipal Lease Purchase (with \$1,450 balloon) - \$58.71/car/month

48 Month Municipal Lease Purchase (with \$1 out) - \$86.92/car/month

Customer: Old Fort Golf Club

Club Car: Tim Keller

Signature: _____

Signature: 

Title: _____

Title: Territory Manager

Date: _____

Date: 7/22/2016

Specifications:

(1) 2017 Carryall 500 Gas - \$8,916.90

48 month FMV lease: \$165.54/month

48 month Municipal Lease Purchase (with \$2,200 balloon) - \$155.10/month

48 month Municipal Lease Purchase (with \$1 out) - \$197.91/month

Should you have any questions regarding this, please call me on my cell phone. (615/670-6031)

Customer: Old Fort Golf Club

Club Car: Tim Keller

Signature: _____

Signature: 

Title: _____

Title: Territory Manager

Date: _____

Date: 7/22/2016

Specifications:

(3) 2017 Carryall 500 Electric w/ Canopy & windshield - \$9,291.53 per car x (3) = 27,874.59

48 month FMV lease: \$179.79/month per/car

48 month Municipal Lease Purchase (with \$1,900 balloon) - \$169.25/month per/car

48 month Municipal Lease Purchase (with \$1 out) - \$206.23/month per/car

Should you have any questions regarding this, please call me on my cell phone. (615/670-6031)

Customer: Old Fort Golf Club

Club Car: Tim Keller

Signature: _____

Signature: 

Title: _____

Title: Territory Manager

Date: _____

Date: 7/22/2016

Mr. Tracy Wilkins
Old Fort Golf Course

July 21, 2016

Ref: Utility Vehicles

Dear Tracy,

Per your request, please see the below proposals for the lease or purchase of each of the utility vehicles you requested. The prices below do not reflect any potential trades and is based off US Communitas contract.

Specifications:

(1) 2017 Carryall 300 Electric w/ canopy & windshield - \$8252.87

48 month FMV lease: \$165.91/month

48 month Municipal Lease Purchase (with \$1,400 balloon) - \$155.94/month

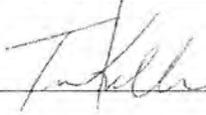
48 month Municipal Lease Purchase (with \$1 out) - \$183.17/month

Should you have any questions regarding this, please call me on my cell phone. (615/670-6031)

Customer: Old Fort Golf Club

Club Car: Tim Keller

Signature:

Signature: 

Title:

Title: Territory Manager

Date:

Date: 7/22/2016

STANDARD CITY CONTRACT

**MASTER CONTRACT FOR PRODUCTS AND SERVICES - THE CITY OF KANSAS CITY,
MISSOURI**

CONTRACT NO.: EV2024-02

**TITLE/DESCRIPTION: Utility, Transportation and Golf Vehicles, Plus Related Accessories,
Equipment, Parts, and Services**

THIS Contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("CITY"), and Club Car, LLC, ("CONTRACTOR").

Sec. 1. The Contract. The Contract between the CITY and CONTRACTOR consists of the following Contract Documents:

- (a) this Contract;
- (b) CONTRACTOR's Proposal dated 10-14-2014 that is attached hereto and incorporated into this Contract (CONTRACTOR'S Proposal) The CITY and CONTRACTOR agree to the following changes to CONTRACTOR's Proposal dated 10-14-2014:
 - Restocking fee reduced to 15% and CONTRACTOR also will review returns on a case by case basis in an effort to extend the highest level of support to the City of Kansas City, MO and all Participating Public Agencies;
 - CONTRACTOR agrees to increase the factory direct parts discount from 20% to 25% off MSRP to the City of Kansas city, MO and all Participating Public Agencies;
- (c) CITY's RFP No. EV2024 that is incorporated into this Contract by reference; (CITY's RFP)
- (d) **Attachment A – "Pricing;"** and
- (e) any and all Attachments and Exhibits attached to the Contract. All documents listed in this Section 1 shall be collectively referred to as the "Contract Documents" and are incorporated into this Contract. CITY and CONTRACTOR agree that the terms

"Agreement" and "Contract" and "Contract Documents" are used interchangeably in this Contract and the terms "Agreement" and "Contract" and "Contract Documents" each include all "Contract Documents."

- (f) In the event of any conflict of terms, the order or precedence shall be: the Contract, CONTRACTOR'S Proposal, and CITY's RFP.

Sec. 2. Initial Term of Contract and Additional Periods.

- (a) **Initial Term.** The initial term of this Contract shall begin on January 01, 2015 and shall end on December 31, 2017. The Manager of Procurement Services is authorized to enter into an amendment of this Contract with CONTRACTOR to extend the term of this Contract and time of performance for this Contract.
- (b) **Renewal Terms.** At any time prior to the expiration of the initial term or any subsequent term, the CITY, in its sole discretion, may renew this Contract for up to two (2) additional one (1) year terms.
- (c) **Transition Term.** Notwithstanding the expiration of the initial term or any subsequent term or all options to renew, CONTRACTOR and CITY shall continue performance under this Contract until the CITY has a new contract in place with either CONTRACTOR or another provider or until the CITY terminates the Contract but in no event for longer than six (6) months following expiration of termination of this Contract.

Sec. 3. Compensation.

CONTRACTOR shall timely provide all vehicles, equipment, accessories, repairs, parts, and services for the CITY in accordance with the Contract and the CITY shall pay CONTRACTOR the lowest Price set forth the Contract for all vehicles, equipment, accessories, repairs, parts, and services. CITY will order all vehicles, equipment, accessories, repairs, parts, and services, on an as needed basis. CITY shall order all vehicles, equipment, accessories, repairs, parts, and services to be provided by CONTRACTOR under this Contract by means of a Purchase Order issued by the CITY's Manager of Procurement Services for which funds have been certified and encumbered by the City's Director of Finance. CITY shall not have any financial obligations to CONTRACTOR under this Contract until the CITY issues a Purchase Order to CONTRACTOR. CONTRACTOR shall not provide any vehicles, equipment, accessories, repairs, parts, and services in excess of the dollar amount contained in any Purchase Order and CONTRACTOR shall not be entitled to any payment in excess of the dollar amount of the Purchase Orders from CITY without CITY's prior written authorization.

Sec. 4. Effective Date of Contract.

- (a) Notwithstanding Section 2 of this Contract, neither party has any obligation under this Contract until the Manager of Procurement Services issues a Purchase Order which shall be signed by the City's Director of Finance certifying there is a balance, otherwise unencumbered, to the credit of the appropriation to which the expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment will be made, each sufficient to meet the obligation incurred in the Purchase Order.
- (b) The date of the first Purchase Order issued by the CITY is the effective date of this Contract.
- (c) The date of the first Purchase Order issued by the CITY after the CITY renews this Contract shall be the effective date of the renewal term or transition term.

Sec. 5. Invoices.

- (a) CONTRACTOR shall submit to CITY a request for payment (hereinafter "Invoice") for all vehicles, equipment, accessories, repairs, parts, and services provided by CONTRACTOR in sufficient detail for the CITY to determine that the amount CONTRACTOR is requesting is in fact due and payable. CITY shall not process CONTRACTOR's Invoice unless CONTRACTOR's Invoice is in proper form, correctly computed, and is approved by CITY as payable under the terms of this Contract. CITY is not liable for any obligation incurred by CONTRACTOR except as approved under the provisions of this Contract.
- (b) CITY shall not pay any Invoice from CONTRACTOR unless CONTRACTOR is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by CITY as a result of breach or default by CONTRACTOR, CITY may withhold payment(s) to CONTRACTOR for the purpose of set off until such time as the exact amount of damages due to CITY from CONTRACTOR may be determined.
- (c) CITY and CONTRACTOR agree that CITY may make payments to CONTRACTOR electronically through the Automated Clearing House (ACH) network. CONTRACTOR shall complete any necessary forms for CITY to pay CONTRACTOR electronically through the Automated Clearing House.

Sec. 6. Representations and Warranties of CONTRACTOR. CONTRACTOR hereby represents and warrants to the CITY the following:

- (a) CONTRACTOR is in good standing under the laws of the state of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on CONTRACTOR's ability to perform this Contract in accordance with its terms.
- (b) The execution, delivery and performance by CONTRACTOR of this Contract have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of CONTRACTOR's board of directors; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to CONTRACTOR or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which CONTRACTOR is a party or by which it or its properties may be bound or affected.
- (c) CONTRACTOR shall not enter into any contract for the services to CITY that purports to grant a security interest or right of repossession to any person or entity respecting the services, or any portions thereof or chattels placed thereon.
- (d) There is no litigation, proceeding or other investigation pending or, to the knowledge of CONTRACTOR, threatened against CONTRACTOR which would prevent consummation of the transaction contemplated by this Contract or would have a materially adverse effect on CONTRACTOR.

Sec. 7. Survival of the Representations, Warranties and Covenants. All representations, warranties and covenants expressed herein shall survive the execution of this Contract for the benefit of the parties hereto.

Sec. 8. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and CONTRACTOR: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum *non conveniens* as an objection to the location of any litigation.

Sec. 9. Termination for Convenience. CITY may, at any time upon sixty (60) days written notice to CONTRACTOR specifying the effective date of termination, terminate this Contract, in whole or in part.

Sec. 10. Default and Remedies.

- (a) If CONTRACTOR shall be in default or breach of any provision of this Contract, CITY may terminate this Contract, suspend CITY's performance, withhold payment or invoke any other legal or equitable remedy after giving CONTRACTOR ten (10) days written notice and opportunity to cure such default or breach.
- (b) If CITY shall be in default or breach of any provision of this Contract, CONTRACTOR may terminate this contract or suspend CONTRACTOR's performance after giving CITY ten (10) days written notice and opportunity to cure such default or breach.

Sec. 11. Waiver. Waiver by CITY of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of CITY, and forbearance or indulgence by CITY in any regard whatsoever shall not constitute a waiver of same to be performed by CONTRACTOR to which the same may apply and, until complete performance by CONTRACTOR of the term, covenant or condition, CITY shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 12. Acceptance. No payment made under this Contract shall be proof of satisfactory performance of the Contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory services.

Sec. 13. Records.

- (a) For purposes of this Section:
 - 1 "CITY" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.
 - 2 "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.
- (b) CONTRACTOR shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. CITY shall have a right to examine or audit all Records, and CONTRACTOR shall provide access to CITY of all Records upon ten (10) days written notice from the CITY.

- (c) The books, documents and records of CONTRACTOR in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Human Relations and the City department administering this Contract within ten (10) days after the written request is made.

Sec. 14. Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- (a) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years.
- (b) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (c) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tenders a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 15. Tax Compliance. If the CITY's payments to CONTRACTOR exceed \$150,000.01 for the period of May 1st through April 30th, CONTRACTOR shall provide proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a precondition to the CITY making the first payment under this Contract. CONTRACTOR also shall submit to the CITY proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a condition precedent to the CITY making final payment under the Contract.

Sec. 16. Buy American Preference. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY Contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 17. Notices. All notices to be given hereunder shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Contract from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the CITY: City of Kansas City, Missouri
Procurement Services Division
414 East 12th Street, 1st Floor, Room 102 W
Kansas City, Missouri 64106
Attention: Cedric Rowan, C.P.M., Manager
Telephone: (816) 513-1592
Facsimile: (816) 513-1156

With copies to: William Geary, Esq.
City Attorney
Law Department of Kansas City, Missouri
414 East 12th Street, 28th Floor
Kansas City, Missouri 64106
Telephone: (816) 513-3118

If to the CONTRACTOR: Ryan McClellan, Global Strategic, Government, and OEM
Club Car LLC
4125 Washington Rd.
Evans, GA 30809
Telephone: (706) 513-2076
Facsimile: (706) 650-9206
E-mail: ryan_mcclellan@clubcar.com
With copy to: david.peterson@clubcar.com

and: Club Car General Counsel
Ingersoll-Rand Company
800-E Beaty Street
Davidson, NC 28036

Sec. 18. General Indemnification.

- (a) For purposes of this Section only, the following terms shall have the meanings listed:
1. Claims mean all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the CITY in the enforcement of this indemnity obligation.
 2. CONTRACTOR's Agents means CONTRACTOR's officers, employees, subcontractors, successors, assigns, invitees, and other agents.
 3. CITY means CITY, its Agencies, its agents, officials, officers and employees.
- (b) CONTRACTOR's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.
- (c) CONTRACTOR shall defend, indemnify and hold harmless CITY from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by CONTRACTOR or CONTRACTOR's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of CITY. CONTRACTOR is not obligated under this Section to indemnify CITY for the sole negligence of CITY.
- (e) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 19. Indemnification for Professional Negligence. If this contract is for professional services, CONTRACTOR shall indemnify, and hold harmless CITY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any negligent acts or omissions in connection with this Contract, caused by CONTRACTOR, its employees, agents, subcontractors, or caused by others for whom CONTRACTOR is liable, in the performance of professional services under this Contract. CONTRACTOR is not obligated under this Section to indemnify CITY for the negligent acts of CITY or any of its agencies, officials, officers, or employees.

Sec. 20. Insurance.

- (a) CONTRACTOR shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. CONTRACTOR must have:
- 1 Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a Severability of Interests Coverage applying to Additional Insureds
 - b Contractual Liability
 - c Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - d No Contractual Liability Limitation Endorsement
 - e Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
 - 2 Workers' Compensation Insurance and Employers Liability Policies as required by Missouri law.
 - 3 Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by CONTRACTOR.
 - 4 If this Contract is for professional services, CONTRACTOR shall obtain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

- (b) All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the CITY ten (10) days written notice of cancellation in the event that the cancellation is for CONTRACTOR's nonpayment of premiums and thirty (30) days written notice of cancellation to CITY for all other reasons of cancellation.
- (c) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. CONTRACTOR shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.
- (d) All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.
- (e) Regardless of any approval by CITY, CONTRACTOR shall maintain the required insurance coverage in force at all times during the term of this Contract. CONTRACTOR's failure to maintain the required insurance coverage will not relieve CONTRACTOR of its contractual obligation to indemnify the CITY pursuant to this Section of this Contract. In the event CONTRACTOR fails to maintain the required insurance coverage in effect, CITY may declare CONTRACTOR in default.
- (f) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 21. Interpretation of the Contract.

- (a) CITY selected CONTRACTOR through a negotiated procurement process rather than an Invitation for Bids (IFB) solicitation. Unlike the IFB, this process allows the CITY and CONTRACTOR to discuss and negotiate a contract at arm's length prior to entering a final contract that is acceptable to both the CITY and the CONTRACTOR. After negotiation and discussion, CONTRACTOR and CITY have incorporated multiple documents into this Agreement and the meaning of some of the words used in the Agreement may be uncertain, incomplete or duplicative and the Agreement may promise something at one place and take that promise away at another. In sum, the Agreement may contain words and provisions that are susceptible of more than one meaning so that reasonable persons of average intelligence may fairly and honestly differ in their construction of the words and provisions. It is the intent of the CITY and the CONTRACTOR that the CITY's taxpayers receive the benefit or advantage in the construction and interpretation of

this Agreement, regardless of the normal judicial rules of contract construction even if the construction and interpretation of the Agreement will cost the CONTRACTOR more money and time. CITY and CONTRACTOR agree that CITY's Manager of Procurement Services shall resolve all disagreements as to the meaning of this Agreement or any ambiguity in this Agreement, in favor of the CITY and its taxpayers even if it will cost the CONTRACTOR more money and time. The decision of CITY's Manager of Procurement shall be final and conclusive if the Manager of Procurement Services acted in good faith.

- (b) CONTRACTOR acknowledges and agrees that the CITY has provided CONTRACTOR with an opportunity to have CONTRACTOR's attorney review and advise CONTRACTOR on the Agreement and any potential ambiguities or areas of disagreement and the potential adverse legal consequences of CONTRACTOR agreeing to this Section as well as the entire Agreement. CONTRACTOR certifies that CONTRACTOR has provided the CITY written notice of all ambiguities, conflicts, errors or discrepancies that it has discovered in the Agreement and the written resolution thereof by the CITY as embodied in this final Agreement is acceptable to CONTRACTOR.
- (c) CONTRACTOR certifies that CONTRACTOR has either (1) waived its right to have CONTRACTOR's attorney review this Section and Agreement; or (2) CONTRACTOR has consulted with an attorney on this Section and Agreement.
- (d) CONTRACTOR knowingly and voluntarily agrees to this Section and the entire Agreement. CONTRACTOR certifies that this contract was not procured by fraud, duress or undue influence.

Sec. 22.Contract Execution. This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract shall be effective upon the execution of counterparts by both parties, notwithstanding that both parties may not sign the same counterpart. The parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Contract and shall be acceptable in a court of law.

Sec. 23.Guaranteed Lowest Pricing. CONTRACTOR certifies that this Contract contains CONTRACTOR's lowest and best pricing for all vehicles, equipment, accessories, repairs, parts, and services, supplied by CONTRACTOR to any government, governmental entity, political subdivision, city, state, school district or any other public entity in the United States as of the date of this Contract.

Sec. 24. Assignability and Subcontracting.

- (a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.

- (b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 25. Professional Services – Conflict of Interest Certification. If this Contract is for professional services other than for medical doctors or appraisers, CONTRACTOR certifies that CONTRACTOR is not an expert witness for any party in litigation against the CITY at the time of the issuance of this Contract.

Sec. 26. Intellectual Property Rights. CONTRACTOR agrees, on its behalf and on behalf of its employees and agents, that it will promptly communicate and disclose to CITY all computer programs, documentation, software and other copyrightable works ("copyrightable works") conceived, reduced to practice or made by CONTRACTOR or its agents, whether solely or jointly with others, during the term of this Contract resulting from or related to any work CONTRACTOR or its agents may do on behalf of CITY or at its request. All inventions and copyrightable works that CONTRACTOR is obligated to disclose shall be and remain entirely the property of CITY. It is agreed that all inventions and copyrightable works are works made for hire and shall be the exclusive property of CITY. CONTRACTOR hereby assigns to CITY any rights it may have in such copyrightable works. CONTRACTOR shall cooperate with CITY in obtaining any copyrights or patents.

Sec. 27. Reserved

Sec. 28. Employee Eligibility Verification. CONTRACTOR shall execute and submit an affidavit, in a form prescribed by the CITY, affirming that CONTRACTOR does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). CONTRACTOR shall attach to the affidavit documentation sufficient to establish CONTRACTOR's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration and Reform and Control Act of 1986. CONTRACTOR may obtain additional information about E-Verify and enroll at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. For those CONTRACTORs enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that CONTRACTOR will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this section. CONTRACTOR shall submit the affidavit and attachments to the CITY prior to execution of the contract, or at any point during the term of the contract if requested by the CITY.

Sec. 29. Emergencies.

- (a) Disaster means any large scale event such as an act of terrorism, fire, wind, flood, earthquake or other natural or man-made calamity which results in, or has the potential to result in a significant loss of life or property.
- (b) During and after a disaster, CONTRACTOR shall provide special services to the CITY including CONTRACTOR shall open CONTRACTOR's facilities even on nights and weekends as necessary to meet the needs of the City during a disaster.
- (c) CONTRACTOR shall not charge CITY any fee for opening facilities during an emergency or for extending CONTRACTOR's hours of operation during a disaster. CITY shall pay CONTRACTOR the agreed upon contract prices for all purchases made by CITY during the disaster and CONTRACTOR shall not charge CITY any additional mark-up, fee or cost for any purchases made by CITY during a disaster.
- (d) CONTRACTOR shall quickly mobilize CONTRACTOR's internal and external resources to assist CITY when a disaster unfolds.
- (e) Extended hours and personnel. During disasters, CONTRACTOR's facilities shall stay open 24 hours if requested by the CITY. CONTRACTOR shall utilize additional CONTRACTOR personnel to take CITY orders if necessary. CONTRACTOR's Call Center shall accept phone orders 24 hours a day.
- (f) CONTRACTOR shall use commercially reasonable efforts to coordinate with its dealer network to provide additional supplies and equipment quickly to CITY as needed.

- (g) CONTRACTOR shall cooperate with CITY to properly document any and all expenses incurred by CITY with CONTRACTOR and CONTRACTOR shall assist CITY in meeting any and all documentation requirements of the Federal Emergency Management Agency (FEMA).

Sec. 30. F.O.B. Destination Prepaid and Add. All deliveries of products shall be F.O.B. Destination and all freight charges will be prepaid by the CONTRACTOR and charged by CONTRACTOR to the CITY and CITY shall reimburse CONTRACTOR.

Sec. 31. Quality. All Products furnished by CONTRACTOR shall be new, in current production, and the best of their kind. When applicable, parts, and maintenance shall be reasonably available. New Product(s) that are obsolete or technically outdated are not acceptable to the CITY and will not be accepted by the CITY. Remanufactured or reconditioned Products are not considered new and will not be accepted by the CITY, except with the CITY's express consent. Products shall be properly packaged, packed, labeled, and identified in accordance with commercial standards acceptable to the trade and as required by ICC and other federal and state regulations. CONTRACTOR shall include packing slips in each shipment.

Sec. 32. Commercial Warranty. The CONTRACTOR agrees that the Products furnished to CITY under this Contract will be covered by the warranties and limitations set forth in CONTRACTOR'S Proposal.

Sec. 33. Inspection and Acceptance. The CITY will inspect and accept or reject Products at the destination set forth in the CITY Purchase Order unless specified otherwise.

Sec. 34. Damaged Shipments. The CITY has no obligation to accept damaged shipments and reserves the right to return damaged Products to CONTRACTOR at CONTRACTOR's expense even though the damage was not apparent or discovered until after receipt and acceptance of the Products.

Sec. 35. Time of Delivery. CONTRACTOR shall make commercially reasonable efforts to provide delivery in accordance with the schedule set forth in the solicitation and Purchase Order.

Sec. 36. Late Shipments. CONTRACTOR shall notify the CITY department receiving the Products and the Senior Buyer of any late or delayed shipments. The CITY reserves the right to cancel all or any part of an order if the shipment more than 14 days late.

Sec. 37. Risk of Loss. Only upon delivery of the Product(s) in accordance with the terms of this Contract to the CITY, the CITY shall bear the risk of damage, loss, theft, or condemnation of the Product(s) regardless of cause, and any and all repairs and replacements of the Product(s) or any part thereof shall be at the expense of the CITY subject, however, to the warranty and other terms of this Contract.

Sec. 38. Tax Exemption - Federal and State.

- A The CITY is exempt from Federal Excise and Transportation taxes on purchases under Chapter 32, Internal Revenue Code. The federal tax registration number issued by the St. Louis District Director on November 11, 1974 is No. 43740340K.
- B The CITY is exempt from payment of Missouri Sales and Use Tax in Accordance with Section 39(10) Article 3, of the Missouri Constitution and Sections 144.040 and 144.615 RSMo 1969 and supplement thereto. A copy of the exemption from Missouri Sales and Use Tax is available upon request.

Sec. 39. U.S. Communities Contract. CONTRACTOR agrees that any state, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agency or nonprofit organization (each a "Public Agency" and collectively, "Public Agencies") may purchase Products and Services at the prices indicated in this Contract upon prior registration with U.S. Communities, in which case the Public Agency becomes a "Participating Public Agency".

CONTRACTOR

I hereby certify that I have the authority to execute this document on behalf of CONTRACTOR.

Contractor: CLUB CAR, LLC
By: Ryan T. McCulloch
Title: GLOBAL STRATEGIC ACCOUNTS
Date: 1/9/15

APPROVED AS TO FORM

[Signature]
Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: Denee Medlin

Title: Procurement Manager

Date: 01-13-2015

NOTE: U.S. Communities Participating Public Agencies may choose to purchase using the following methods:

- 1) Purchase and be invoiced directly from Club Car or;**
- 2) Purchase and be invoiced by the local authorized Club Car dealer.**

To access pricing information, please use your login at www.uscommunities.org.



MODIFICATION OF CONTRACT

| | |
|---|---|
| 1. Modification No.: 1 Effective Date: 02-01-16 | 2. Contract No.: EV2024-02 Effective Date: 01-01-15 |
| 3. Senior Procurement Officer: Art Roberson, CPPB Telephone Number: (816) 513-0778 | 5. Vendor – Name and Address CLUB CAR LLC ATTN: RYAN MCCLELLAN 4125 WASHINGTON ROAD EVANS, GA 30809 |
| 4. Issued By CITY OF KANSAS CITY, MISSOURI Procurement Services Division 1st Floor, Room 102 W, City Hall 414 East 12 th Street Kansas City, Missouri 64106-2793 | |

6. **SPECIAL INSTRUCTIONS:** Retain this signed copy of the modification and attach it to the original contract that was previously provided by the Procurement Services Division.

7. Description of Modification:

UTILITY, TRANSPORTATION AND GOLD VEHICLES, PLUS RELATED ACCESSORIES, EQUIPMENT, PARTS AND SERVICES

Contract **EV2024-02** is approved for a blended average price increase of 1.2%. Some items increase up to 4% where others have no increase. A copy of the entire new price is attached.

Taxpayer Clearance Letter. In accordance with City Ordinance No. 010461, if the City renews a contract, the Vendor shall provide new proof of tax compliance dated not more than ninety (90) days prior to the renewal date of the contract. Submission of this proof shall be a condition precedent to the City making the first payment under such renewal. This tax clearance letter may be obtained from the City's Revenue Division at (816) 513-1135 or (816) 513-1083.

All other Terms and Conditions of Contract **EV2024-02** remain unchanged.

8. City of Kansas City, Missouri

By: **Renee Medlin, CPPB**

Procurement Manager

This Day: **January 27, 2016**

**CONTRACT AMENDMENT NO. 3
UTILITY, TRANSPORTATION AND GOLF VEHICLES, PLUS RELATED
ACCESSORIES, EQUIPMENT, PARTS, AND SERVICES**

**THE CITY OF KANSAS CITY, MISSOURI
CONTRACT NO. EV2024-02**

THIS CONTRACT AMENDMENT is made between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City" or "CITY"), and Club Car, LLC ("CONTRACTOR").

WHEREAS, the CITY and CONTRACTOR entered into Contract No. EV2024-02 ("Contract"); and

WHEREAS, the CITY and CONTRACTOR entered into Contract Amendment No. 1 and No. 2 to amend the Contract to authorize CONTRACTOR to offer leasing of equipment and vehicles that CONTRACTOR provides pursuant to the Contract to members of U.S. Communities; and

WHEREAS, the CITY and CONTRACTOR desire to add Section 41 to the Contract to permit participating Public Agencies to obtain preventive maintenance plans through a service contract with Club Car provided below; and

NOW THEREFORE, the CITY and CONTRACTOR agree to amend the Contract as follows:

- A. Section 41 of the Contract is added to permit participating Public Agencies to purchase optional service plans for preventative maintenance from Club Car as follows:**

Sec. 41. Planned Preventative Maintenance.

- (a) Club Car may provide planned preventative maintenance through a service contract through participating Club Car branches and a Public Agency may purchase the service contract through Club Car branches.
- (b) In the event a Public Agency and Club Car enter into a service contract, Club Car shall provide planned preventative maintenance plans to Public Agencies at the guaranteed lowest pricing rates offered to any Club Car customer in the applicable local market effective at the time of the service contract.

B. Sections and Subsections Not Amended. All other sections and subsections of the Contract not amended by this Contract Amendment shall remain in full force and effect.

C. Effectiveness Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

Date: 10/28/15

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

By: [Signature]

Title: Director of Sales

Date: 10/28/15

KANSAS CITY, MISSOURI

By: Cedric Rowan

Title: Manager of Procurement Services

Approved as to form:

[Signature]
Assistant City Attorney

**CONTRACT AMENDMENT NO. 2
UTILITY, TRANSPORTATION AND GOLF VEHICLES, PLUS RELATED
ACCESSORIES, EQUIPMENT, PARTS, AND SERVICES**

**THE CITY OF KANSAS CITY, MISSOURI
CONTRACT NO. EV2024-02**

THIS CONTRACT AMENDMENT is made between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City" or "CITY"), and Club Car, LLC ("CONTRACTOR")

WHEREAS, the CITY and CONTRACTOR entered into Contract No. EV2024-02; and

WHEREAS, the CITY and CONTRACTOR entered into Contract Amendment No. 1 to amend the Contract to authorize CONTRACTOR to offer leasing of equipment and vehicles that CONTRACTOR provides pursuant to the Contract to members of U.S. Communities; and

WHEREAS, the CITY and CONTRACTOR desire to amend Section 40 to clarify the leasing of equipment and vehicles to Public Agencies; and

WHEREAS, the CITY and CONTRACTOR desire to add pricing for dealer preparation/installation of field installed options;

NOW THEREFORE, the CITY and CONTRACTOR agree to amend the Contract as follows:

- A. Section 1 of the Contract is deleted and the following new Section 1 is substituted in lieu thereof to add Attachment A(1) Pricing for Local Delivery/Dealer Preparation/Installation Fees as a Contract Document.

Sec. 1. The Contract. The Contract between the CITY and CONTRACTOR consists of the following Contract Documents:

- (a) this Contract;
- (b) CONTRACTOR's Proposal dated 10-14-2014 that is attached hereto and incorporated into this Contract (CONTRACTOR'S Proposal). The CITY and CONTRACTOR agree to the following changes to CONTRACTOR's Proposal dated 10-14-2014:

Restocking fee reduced to 15% and CONTRACTOR also will review returns on a case by case basis in an effort to extend the highest level of support to the City of Kansas City, MO and all Participating Public Agencies;

CONTRACTOR agrees to increase the factory direct parts discount from 20% to 25% off MSRP to the City of Kansas city, MO and all Participating Public Agencies;

- (c) CITY's RFP No. EV2024 that is incorporated into this Contract by reference; (CITY's RFP)

(d) Attachment A — "Pricing;"

(e) Attachment A (1) - Pricing for Local Delivery/Dealer Preparation/Installation Fees

(f) any and all Attachments and Exhibits attached to the Contract. All documents listed in this Section 1 shall be collectively referred to as the "Contract Documents" and are incorporated into this Contract. CITY and CONTRACTOR agree that the terms "Agreement" and "Contract" and "Contract Documents" are used interchangeably in this Contract and the terms "Agreement" and "Contract" and "Contract Documents" each include all "Contract Documents."

(g) In the event of any conflict of terms, the order or precedence shall be: the Contract, CONTRACTOR'S Proposal, and CITY's RFP.

B. Section 40 of the Contract is deleted and the following new Section 40 is substituted in lieu thereof to authorize the CONTRACTOR to offer leasing of equipment and vehicles as follows

Sec. 40. Leasing of Equipment and Vehicles to U.S. Communities Members.

(a) Subject to subsection (c) of Section 40, CONTRACTOR is authorized to offer leasing on equipment and vehicles offered by CONTRACTOR in Contract No. EV2024-02 to any Participating Public Agency at the most favorable rates and terms consistent with Section 23. It shall be a precondition of any Lease becoming effective pursuant to this Contract that the Lease is approved and authorized by Participating Public Agency's Director of Finance (or equivalent officer).

(b) CONTRACTOR shall not lease any equipment or vehicles to the CITY unless the CITY executes a written amendment to this Contract executed by both the CITY's Director of Finance and the CITY's City Attorney. The CITY shall have no financial obligation to CONTRACTOR or anyone else for any Lease that does not comply with all of the requirements of this Section.

(c) Financing, if any, for the leasing of equipment or vehicles pursuant to subsection (a) and (b) will be available to the CITY or a Participating Public Agency through a third party lease source, including, but not limited to, De Lage Landen Financial Services, Inc. or Wells Fargo, and not through CONTRACTOR. Approval of the financing for the leasing of equipment or vehicles under this subsection is at the sole discretion of the third party lease source.

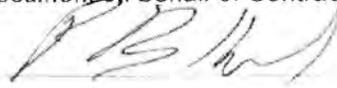
B. Sections and Subsections not Amended. All other sections and subsections of the Contract not amended by this Contract Amendment shall remain in full force and effect.

C. Effectiveness Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

By:

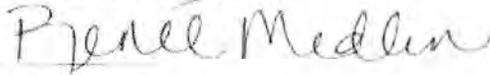


Title:

Global Strategic manager

KANSAS CITY, MISSOURI

By:



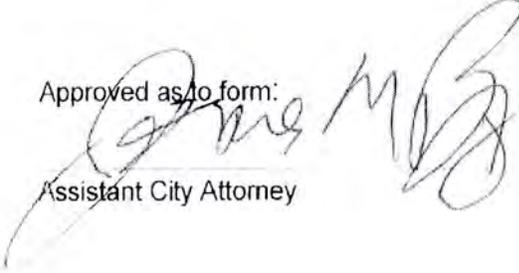
Title:

Procurement Manager

Date: 06/19/15

Date: 06/29/15

Approved as to form:



Assistant City Attorney

Attachment A.1 — Pricing for Local Delivery/Dealer Preparation /Installation Fees

Local Delivery/ Dealer Prep/Installation Fees

The following vehicle prep/installation charges will be charged by CONTRACTOR to participating Public Agencies and CITY:

Installation charge of \$300 per vehicle for canopy top, windshield and other options of a canopied vehicle. The installation charge applies to all vehicle types excluding fleet golf. CONTRACTOR agrees that \$300 per vehicle is the maximum amount per vehicle charge that CONTRACTOR will charge any Public Agency or CITY regardless of the number of options selected by a Public Agency or the CITY on any vehicle.

Installation charge of \$600 per vehicle for a cab and/or van box and other options on a cab vehicle. This installation charge applies to all vehicle types excluding fleet golf. CONTRACTOR agrees that \$600 per vehicle is the maximum amount per vehicle charge that CONTRACTOR will charge any Public Agency or CITY regardless of the number of options selected by a Public Agency or the CITY on any vehicle.

Installation charge of \$50 per vehicle for tops, windshields and other options. The installation charge applies only fleet golf and no other vehicles. CONTRACTOR agrees that \$50 is the maximum amount per golf vehicle charge that CONTRACTOR will charge any Public Agency or CITY regardless of the number of options selected by a Public Agency or the CITY on any golf vehicle.

CONTRACT AMENDMENT NO. 1
UTILITY, TRANSPORTATION AND GOLF VEHICLES, PLUS RRELATED
ACCESSORIES, EQUIPMENT, PARTS, AND SERVICES

THE CITY OF KANSAS CITY, MISSOURI
CONTRACT NO. EV2024-02

THIS CONTRACT AMENDMENT is made between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City" or "CITY"), and Club Car, LLC ("CONTRACTOR").

WHEREAS, the CITY and CONTRACTOR entered into Contract No. EV2024-02; and

WHEREAS, the CITY and CONTRACTOR desire to amend the Contract to authorize CONTRACTOR to offer leasing of equipment and vehicles that CONTRACTOR provides pursuant to the Contract to members of U.S. Communities;

NOW THEREFORE the CITY and CONTRACTOR agree to amend the Contract as follows:

- A. **Section 40 of the Contract is added to the Contract to authorize the CONTRACTOR to offer leasing of equipment and vehicles as follows**

Sec. 40. Leasing of Equipment and Vehicles to U.S. Communities Members.

- (a) CONTRACTOR is authorized to offer leasing on equipment and vehicles offered by CONTRACTOR in Contract No. EV2024-02 to any Participating Public Agency at the most favorable rates and terms offered to any other customer. It shall be a precondition of any Lease becoming effective pursuant to this Contract that the Lease of approved and authorized by Participating Public Agency's Director of Finance (or equivalent office).
- (b) CONTRACTOR shall not lease any equipment or vehicles to the CITY unless the CITY executes a written amendment to this Contract executed by both the CITY's Director of Finance and the CITY's City Attorney. The CITY shall have no financial obligation to CONTRACTOR or anyone else for any Lease that does not comply with all of the requirements of this Section.
- B. Sections and Subsections not Amended.** All other sections and subsections of the Contract not amended by this Contract Amendment shall remain in full force and effect.
- C. Effectiveness Date.** This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

Date: 5/5/2015

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

By: [Signature]

Title: Strategic Account Manager

Date: 5/13/2015

KANSAS CITY, MISSOURI

By: [Signature]

Title: Procurement Manager

Approved as to form:

[Signature]
Assistant City Attorney



... creating a better quality of life



July 25, 2016

Honorable Mayor and Members of City Council:

- RE:** I. Purchase of Pickup Truck and 15-Passenger Van
II. Change Order 1 Richard Siegel Park Fence Installation
III. Purchase of Ball Field and Turf Maintenance Equipment
IV. Bids for Purchase of Wrist Bands

As items for the **Consent Agenda**, it is recommended that the purchase of a 4 x 4 pickup truck, 15-passenger van, Change Order 1 for the Richard Siegel Park fence installation project, the purchase of ball field and turf maintenance equipment and bids for the purchase of wristbands be approved by City Council.

Item I – Purchase of Pickup Truck and 15-Passenger Van

Background

The Parks and Recreation Department has budgeted \$32,000 to replace a 4 x 4 pickup truck. This truck is available for purchase through the existing City contract with Country Ford in Southaven, Mississippi. The Department has also budgeted \$33,000 for a 15-passenger van. The van is available for purchase through the existing City contract with Ford of Murfreesboro.

Fiscal Impact

The 4 x 4 truck is listed as Item #41 in the City's bid pricing at a cost of \$28,295. Staff would like to add a brake controller at a cost of \$270, wench at a cost of \$1,990 and a spray-in bed liner at a cost of \$485, making the total cost of the truck \$31,050, which is within the amount budgeted.

The 15-passenger van is listed as item #47 in the City's bid pricing at a cost of \$28,562. Staff would like to add a trailer hitch, grill guard and roof upgrade for an additional \$3,127, making the total cost of the van \$31,689, which is within the amount budgeted.

Concurrences

These vehicles are essential to the operations of these parks and programs and need to be purchased as soon as possible.

Recommendation

Staff recommends the purchase of a 4 x 4 pickup truck per the City's contract with Country Ford at a cost of \$31,050 and purchase of the 15-passenger van per the City's contract with Ford of Murfreesboro at a cost of \$31,689.

Item II – Change Order 1 for the Richard Siegel Park Fence Installation

Background

At the June 2, 2016, City Council meeting, the bid from Langford Fence Co., Inc., for installation of a fence at the Richard Siegel Park was approved. The approved contract amount was \$61,157.

Due to the location of underground electrical service at the Richard Siegel Park, a larger gate is needed to replace the smaller gate that was originally specified.

Fiscal Impact

Change Order 1 will increase the contract price by \$677 making the contract price \$62,834.

Concurrences

I concur with the recommendation made by staff that this change order be approved.

Recommendation

I recommend that Change Order Number 1 in the amount of \$677 be approved, making the total project cost \$62,834.

Item III – Purchase of Ball Field and Turf Maintenance Equipment

Background

The Parks and Recreation Department has budgeted \$22,000 to purchase a heavy duty truckster and \$62,000 for a five-gang field mower to be used at Richard Siegel Park. The Department has also budgeted \$23,000 to purchase a heavy duty utility truckster, \$18,000 for a drag tractor for ball field maintenance, and \$15,000 for the purchase of two turbine debris blowers – one for Barfield Crescent Park and one for ball field maintenance. The total amount budgeted for these items is \$140,000.

Fiscal Impact

This equipment is available through the Tennessee State Purchasing Contract No. 45200. For Richard Siegel Park, the cost of the heavy duty truckster is \$20,796.93, and the cost of the five-gang field mower is \$60,914.70. The cost of the heavy duty utility truckster is \$21,949.62, and the cost of the drag tractor is \$18,262.86 for ball field maintenance. The cost of the two turbine debris blowers is \$13,798.40. The total of cost of these 6 pieces of equipment is \$135,722.51, which is within the amount budgeted.

Concurrences

This equipment is essential to the operations of these parks and needs to be purchased as soon as possible.

Recommendation

Staff recommends the purchase of the 2 heavy duty trucksters, 5-gang field mower, drag tractor and two debris blowers through the Tennessee State Contract No. 45200 in the amount of \$135,722.51.

Item IV – Bids for Wristbands

Background

The Parks and Recreation Department places disposable wristbands on patrons who use Patterson Park Community Center, Sports*Com and McFadden Community Center. These wristbands help staff track who should and should not be in the facilities.

Bids for the wristbands were opened on July 25, 2016. The bids are as follows:

| | |
|---------------------------------|-------------|
| Price Choppers | \$26,256.00 |
| Cole Enterprises | 32,227.50 |
| Ries | 26,625.00 |
| Products Unlimited Distribution | 30,000.00 |

Fiscal Impact

Funds are allocated in the 2016-2017 Parks and Recreation budget for this expense.

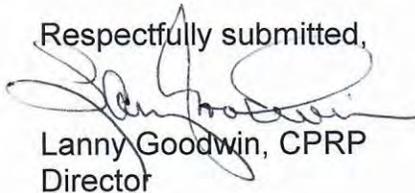
Concurrences

The City's Purchasing Department and Parks and Recreation Department reviewed the bids and found that the low bid from Price Choppers meets all specifications.

Recommendation

It is the recommendation of the Purchasing Department and Murfreesboro Parks and Recreation staff that the bid of Price Choppers for wristbands in the amount of \$26,256.00 be approved by City Council and that the Mayor be authorized to sign all necessary documents relating to the purchase of the wristbands.

Respectfully submitted,



Lanny Goodwin, CPRP
Director

CHANGE ORDER

ORDER NO. 1

Date: 7/15/16

NAME OF PROJECT: Siegel Park Fence Installation

OWNER: City of Murfreesboro Parks & Recreation Department

CONTRACTOR: Langford Fence Co., Inc.

The following changes are hereby made to the Contract Documents:

Justification: Add one 12' double swing gate to accommodate underground electrical service.

Change to Contract Price:

| | |
|---|--------------|
| Change to Contract Price: | \$ 677.00 |
| Original Contract Price | \$ 62,157.00 |
| Contract Price due to this Change Order will be increased by | \$ 677.00 |
| New Contract Price including this Change Order will be | \$62,834.00 |

Change to Contract time:

| | |
|---|------------------|
| The Contract time will be (increased) (decreased) by | 0 calendar days |
| The days for completion of all work will be | 60 calendar days |

Requested by City: Parks & Recreation Department – additional gate

Recommended by: Thomas Laird, Athletic Superintendent

Ordered by Shane McFarland, Mayor: _____

Accepted by Contractor: Vicki H. Langford

Police Department
KARL DURR
Chief of Police
(615) 849-2673
kdurr@murfreesborotn.gov



July 22, 2016

Honorable Mayor and Members of City Council:

CONSENT AGENDA

- RE: A.: Acceptance of Contract for School Traffic Enforcement Employee Between the City of Murfreesboro and St. Rose of Lima School**
B.: Acceptance of Contract for School Traffic Enforcement Employee Between the City of Murfreesboro and Middle Tennessee Christian School
C.: Acceptance of Contract for School Traffic Enforcement Employee Between the City of Murfreesboro and Providence Christian Academy
D.: Contract Amendment with Strategic Edge, Inc. for Government/Police Firing Range Membership
E.: Request Payment of Trittech Invoice for Public Safety Software

ITEM A: Acceptance of Contract for School Traffic Enforcement Employee Between the City of Murfreesboro and St. Rose of Lima School

As an item for the consent agenda at the next scheduled Council meeting, it is the recommendation of the Chief of Police that City Council approve the contract between the City of Murfreesboro and St. Rose of Lima School for a School Traffic Enforcement Employee.

Background

Purpose:

To provide a School Traffic Enforcement Employee for the school zone located at St. Rose of Lima School. Per the contract, the School Traffic Enforcement Employee will be subject to the personnel policies, rules and regulations established by the City. If approved, this contract will be for the school year period August 10, 2016 to May 25, 2017.

Fiscal Impact

Per the contract, St. Rose of Lima School agrees to pay The City of Murfreesboro the current sum of **\$9,491.92** for the services of the School Traffic Enforcement Employee at this location.

Recommendation

It is recommended that City Council approve the contract between the City of Murfreesboro and St. Rose of Lima School for the School Traffic Enforcement Employee.

Attachment

1. Contract with St. Rose of Lima School
2. School Billing Sheet Relative to all Three (3) Schools

ITEM B: Acceptance of Contract for School Traffic Enforcement Employee Between the City of Murfreesboro and Middle Tennessee Christian School

As an item for the consent agenda at the next scheduled Council meeting, it is the recommendation of the Chief of Police that City Council approve the contract between the City of Murfreesboro and Middle Tennessee Christian School for a School Traffic Enforcement Employee.

Background

Purpose:

To provide a School Traffic Enforcement Employee for the school zone located at Middle Tennessee Christian School. Per the contract, the School Traffic Enforcement Employee will be subject to the personnel policies, rules and regulations established by the City. If approved, this contract will be for the school year period August 8, 2016 to May 19, 2017.

Fiscal Impact

Per the contract, Middle Tennessee Christian School agrees to pay The City of Murfreesboro the current sum of **\$9,491.92** for the services of the School Traffic Enforcement Employee at this location.

Recommendation

It is recommended that City Council approve the contract between the City of Murfreesboro and Middle Tennessee Christian School for the School Traffic Enforcement Employee.

Attachment

1. Contract with Middle Tennessee Christian School

ITEM C: Acceptance of Contract for School Traffic Enforcement Employee Between the City of Murfreesboro and Providence Christian Academy

As an item for the consent agenda at the next scheduled Council meeting, it is the recommendation of the Chief of Police that City Council approve the contract between the City of Murfreesboro and Providence Christian Academy for a School Traffic Enforcement Employee.

Background

Purpose:

To provide a School Traffic Enforcement Employee for the school zone located at Providence Christian Academy. Per the contract, the School Traffic Enforcement Employee will be subject to the personnel policies, rules and regulations established by the City. If approved, this contract will be for the school year period July 27, 2016 to May 26, 2017.

Fiscal Impact

Per the contract, Providence Christian Academy agrees to pay The City of Murfreesboro the current sum of **\$9,491.92** for the services of the School Traffic Enforcement Employee at this location.

Recommendation

It is recommended that City Council approve the contract between the City of Murfreesboro and Providence Christian Academy for the School Traffic Enforcement Employee.

Attachment

1. Contract with Providence Christian Academy

ITEM D: Contract Amendment with Strategic Edge, Inc. for Government/Police Firing Range Membership

As an item for consent agenda at the next scheduled meeting, it is the recommendation of the Chief of Police that City Council approve the contract amendment with Strategic Edge, Inc. for Government/Police Firing Range Membership.

Background

Purpose:

To amend the contract with Strategic Edge, Inc. extending the contract for the Murfreesboro Police Department use of the Strategic Edge Firing Range in Chapel Hill, Tennessee for one (1) year for the City of Murfreesboro.

Scope of Work:

On Thursday, May 7, 2015 Council approved the request to enter into a contract with Strategic Edge, Inc. to secure a location for Rifle / Sniper Training to be conducted by the Police Department. Currently, there are no firing ranges located within Rutherford County that can accommodate Rifle / Sniper training at the distances required for proper qualification purposes.

The initial contract period for this proposal is from the date of contract execution until June 30, 2016. An extension of the term of this Contract will be affected through an amendment approved by the City Council for an additional period or periods of time representing increments of no more than one (1) year and a total contract term of no more than three (3) years. **This is the first extension requested.**

Selection Process:

The Strategic Edge Firing Range in Chapel Hill, TN is the closest fully functional firing range that can facilitate the type of Rifle / Sniper training necessary to qualify Police Officers with a rifle and that are willing to contract with the City of Murfreesboro to host this type of training.

Fiscal Impact

The funding **(\$5,250.00)** for this period will come out of the 2016-2017 Police Department Budget, Training & Travel Expense, ORG 10210008, OBJ Code 528300. This contract price allows for a maximum of four (4) range days per month and no more than five (5) equipment / shooting lanes per day. If approved, the contract extension will be effective from July 1, 2016 through June 30, 2017 with an option to renew for one (1) additional year.

Recommendation

It is recommended that City Council approve the 1st contract amendment between the City of Murfreesboro and Strategic Edge, Inc. for the Murfreesboro Police Department's use of the Strategic Edge Firing Range in Chapel Hill, Tennessee for Rifle / Sniper training.

Attachments

1. 1st Contract Amendment

**Honorable Mayor and Members of City Council
Consent Agenda Request
July 22, 2016**

ITEM E: Request Payment of Trittech Invoice for Public Safety Software

As an item for consent agenda at the next scheduled meeting, it is the recommendation of the Chief of Police that City Council approve the payment of the Trittech Invoice for annual maintenance of the Computer-Aided Dispatch (CAD), Records Management System (RMS), Mobile Data System and associated interfaces at a total cost of **\$180,344.10**.

Background

Purpose:

To allow for continued support on mission critical safety software network systems for Communications, Patrol, Records and Fire & Rescue.

Scope of Work:

Trittech is the sole provider of services related to the maintenance and support of their public safety software suite of products. We have an annual software support agreement which was put in effect on October 14, 2015 with automatic renewal provided neither party terminates 90 days prior.

Fiscal Impact

If approved, the cost totaling **\$180,344.10** for the annual maintenance will be funded from the 2016-2017 Police Department Budget from the following accounts:

| ORG | OBJ Code | Description | Amount |
|-------------------|-----------------|---|---------------------|
| 10210008 | 526300 | Repair & Maintenance – Furn. & Machines | \$65,846.52 |
| 10210008 | 526904 | Repair & Maintenance - MDTs | \$100,502.68 |
| 10210009 | 594701 | Computer Software Expense | \$13,994.90 |
| Total Cost | | | \$180,344.10 |

Recommendation

It is recommended that City Council approve the payment of the invoice amount for the annual maintenance at a total cost of **\$180,344.10** from the 2016-2017 Police Department Budget as outline above.

Attachment

1. Trittech Invoice

James K. Durr
Chief of Police

C: Deputy Chief Mike Bowen
Assistant Chief Eric Cook

**CONTRACT
BETWEEN
THE CITY OF MURFREESBORO
AND
ST. ROSE OF LIMA SCHOOL**

THIS CONTRACT, by and between the **City of Murfreesboro**, acting through its Police Department, hereinafter referred to as “City”, and **St. Rose of Lima School**, hereinafter referred to as “School”, is for the provision of a school traffic enforcement employee located at 1601 N. Tennessee Blvd. for the benefit of the St. Rose of Lima School.

W I T N E S S E T H

In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein.

The City agrees to provide a school traffic enforcement employee for the School located at 1601 N. Tennessee Blvd. at opening and dismissal times on school days as shown on the School calendar, Attachment A, subject to changes for snow days or make-up days. If such services are required for additional dates or times not reflected on Attachment A, the School shall notify the Murfreesboro Police Department contact person of such dates and times no later than seventy-two (72) hours prior to the additional date and/or time. The service of the school traffic enforcement employee shall not include special events.

The School agrees to compensate the City in the amount of Nine Thousand Four Hundred Ninety One Dollars and 92/100 (**\$9,491.92**) for the services of a school traffic enforcement employee located at 1601 N. Tennessee Blvd. Payment to the City shall be made within thirty (30) days of execution of this contract. In no event shall the liability of the School under this Contract exceed Nine Thousand Four Hundred Ninety One Dollars and 92/100 (**\$9,491.92**).

The parties further agree that the following shall be essential terms and conditions of this Contract:

1. At all times pursuant to this Contract, the school traffic enforcement employee performing the services rendered in accordance with this Contract shall be an employee of the City of Murfreesboro and subject to the personnel policies, rules and regulations established by the City. The City shall establish the duties and responsibilities for such school traffic enforcement employee.

2. This Contract shall not be binding upon the parties until it has been signed first by the School and then approved by the City Council and signed by the Mayor. When it has been so signed, this Contract shall be effective as of the first day of school, August 10, 2016.

3. The term of this Contract shall be from August 10, 2016 to May 25, 2017.

4. Either party may terminate this Contract by giving written notice to the other at least thirty (30) days before the effective date of termination. In that event, the School shall be entitled to a refund of the prorated cost for services not rendered by the City. The "prorated cost" shall not include a 10% administrative fee of \$862.90.

5. If the School fails to fulfill in timely and proper manner its obligations under this Contract, or if the School shall violate any of the terms of this Contract, the City shall have

the right to immediately terminate this Contract. Notwithstanding the above, the School shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the School.

6. This Contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required. Minor modifications to the Contract may be approved by the City Manager.

7. Any notice to the City from the School relative to any part of the Contract shall be sent to:

City of Murfreesboro
Robert J. Lyons, City Manager
111 West Vine Street
Murfreesboro, TN 37130
Phone: (615) 849-2629
Fax: (615) 849-2679

8. The School must notify the contact person for the City if the dates or times agreed upon based on Attachment A change in any manner. Such notice must be received seventy-two (72) hours prior to such alteration. The Murfreesboro Police Department contact person is:

Murfreesboro Police Department
Sgt. Greg Walker
324 South Church Street
Murfreesboro, TN 37130
Phone: (615) 895-3874
Fax: (615) 849-2628

9. Notices to the School shall be sent to:

St. Rose of Lima School.
Sister Mary Patrick
1601 N. Tennessee Blvd.
Murfreesboro, TN 37085
Phone: (615) 898-0555

CITY OF MURFREESBORO

ST. ROSE OF LIMA SCHOOL

Shane McFarland, Mayor

Sister Mary Patrick, Principal

Approved as to form:

Craig Tindall, City Attorney

Private School Patrol Billing

| | |
|--------------------------------|-------------------------------|
| Base Wage | 7,228.80 |
| FICA @ 6.2% | 448.19 |
| Medicare @ 1.45% | 104.82 |
| Workers' Compensation @ 9% | 650.59 |
| State Unemployment Tax @ 2.72% | 196.62 |
| Subtotal | <u>8,629.02</u> |
| 10% Administrative Fee | 862.90 |
| Total | <u><u>9,491.92</u></u> |

Base Wage is calculated by the average daily pay of all crossing guards, divided by 33, multiplied by 180

**CONTRACT
BETWEEN
THE CITY OF MURFREESBORO
AND
MIDDLE TENNESSEE CHRISTIAN SCHOOL**

THIS CONTRACT, by and between the **City of Murfreesboro**, acting through its Police Department, hereinafter referred to as “City”, and **Middle Tennessee Christian School**, hereinafter referred to as “School”, is for the provision of a school traffic enforcement employee located at Memorial Boulevard and MTCS Drive for the benefit of the Middle Tennessee Christian School.

W I T N E S S E T H

In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein.

The City agrees to provide a school traffic enforcement employee for the School located at Memorial and MTCS Drive at opening and dismissal times on school days as shown on the School calendar, Attachment A, subject to changes for snow days or make-up days. If such services are required for additional dates or times not reflected on Attachment A, the School shall notify the Murfreesboro Police Department contact person of such dates and times no later than seventy-two (72) hours prior to the additional date and/or time. The service of the school traffic enforcement employee shall not include special events.

The School agrees to compensate the City in the amount of Nine Thousand Four Hundred Ninety One Dollars and 92/100 (**\$9,491.92**) for the services of a

school traffic enforcement employee located at Memorial Boulevard and MTCS Road. Payment to the City shall be made within thirty (30) days of execution of this contract. In no event shall the liability of the School under this Contract exceed Nine Thousand Four Hundred Ninety One Dollars and 92/100 (**\$9,491.92**). The parties further agree that the following shall be essential terms and conditions of this Contract:

1. At all times pursuant to this Contract, the school traffic enforcement employee performing the services rendered in accordance with this Contract shall be an employee of the City of Murfreesboro and subject to the personnel policies, rules and regulations established by the City. The City shall establish the duties and responsibilities for such school traffic enforcement employee.

2. This Contract shall not be binding upon the parties until it has been signed first by the School and then approved by the City Council and signed by the Mayor. When it has been so signed, this Contract shall be effective as of the first day of school, August 8, 2016.

3. The term of this Contract shall be from August 8, 2016 to May 19, 2017.

4. This Contract may be terminated by either party by giving written notice to the other at least thirty (30) days before the effective date of termination. In that event, the School shall be entitled to a refund of the prorated cost for services not rendered by the City. The "prorated cost" shall not include a 10% administrative fee of \$862.90.

5. If the School fails to fulfill in timely and proper manner its obligations under this Contract, or if the School shall violate any of the terms of this Contract, the

City shall have the right to immediately terminate this Contract. Notwithstanding the above, the School shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the School.

6. This Contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required. Minor modifications to the Contract may be approved by the City Manager.

7. Any notice to the City from the School relative to any part of the Contract shall be sent to:

City of Murfreesboro
Robert J. Lyons, City Manager
111 West Vine Street
Murfreesboro, TN 37130
Phone: (615) 849-2629
Fax: (615) 849-2679

8. The School must notify the contact person for the City if the dates or times agreed upon based on Attachment A change in any manner. Such notice must be received seventy-two (72) hours prior to such alteration. The Murfreesboro Police Department contact person is:

Murfreesboro Police Department
Sgt. Greg L. Walker
324 South Church Street
Murfreesboro, TN 37130
Phone: (615) 895-3874
Fax: (615) 849-2628

9. Notices to the School shall be sent to:

Middle Tennessee Christian School
Matt Tiller
100 MTCS Road
Murfreesboro, TN 37129
Phone: (615) 893-0601

CITY OF MURFREESBORO

MIDDLE TN CHRISTIAN SCHOOL

Shane McFarland, Mayor

Matt Tiller, President

Approved as to form:

Craig Tindall, City Attorney

**CONTRACT
BETWEEN
THE CITY OF MURFREESBORO
AND
PROVIDENCE CHRISTIAN ACADEMY**

THIS CONTRACT, by and between the **City of Murfreesboro**, acting through its Police Department, hereinafter referred to as “City”, and **Providence Christian Academy**, hereinafter referred to as “School”, is for the provision of a school traffic enforcement employee located at 410 DeJarnette Lane for the benefit of the Providence Christian Academy.

W I T N E S S E T H

In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein.

The City agrees to provide a school traffic enforcement employee for the School located at 410 DeJarnette Lane at opening and dismissal times on school days as shown on the School calendar, Attachment A, subject to changes for snow days or make-up days. If such services are required for additional dates or times not reflected on Attachment A, the School shall notify the Murfreesboro Police Department contact person of such dates and times no later than seventy-two (72) hours prior to the additional date and/or time. The service of the school traffic enforcement employee shall not include special events.

The School agrees to compensate the City in the amount of Nine Thousand Four Hundred Ninety One Dollars and 92/100 (**\$9,491.92**) for the services of a school traffic enforcement employee located at 410 DeJarnette Lane. Payment to the City shall be made within thirty (30) days of execution of this contract. In no event shall the liability of the School under this Contract exceed Nine Thousand Four Hundred Ninety One Dollars and 92/100 (**\$9,491.92**).

The parties further agree that the following shall be essential terms and conditions of this Contract:

1. At all times pursuant to this Contract, the school traffic enforcement employee performing the services rendered in accordance with this Contract shall be an employee of the City of Murfreesboro and subject to the personnel policies, rules and regulations established by the City. The City shall establish the duties and responsibilities for such school traffic enforcement employee.

2. This Contract shall not be binding upon the parties until it has been signed first by the School and then approved by the City Council and signed by the Mayor. When it has been so signed, this Contract shall be effective as of the first day of school, July 27, 2016.

3. The term of this Contract shall be from July 27, 2016 to May 26, 2017.

4. This Contract may be terminated by either party by giving written notice to the other at least thirty (30) days before the effective date of termination. In that event, the School shall be entitled to a refund of the prorated cost for services not rendered by the City. The "prorated cost" shall not include a 10% administrative fee of \$862.90.

5. If the School fails to fulfill in timely and proper manner its obligations under this Contract, or if the School shall violate any of the terms of this Contract, the City shall have

the right to immediately terminate this Contract. Notwithstanding the above, the School shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Contract by the School.

6. This Contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the City Council may be required. Minor modifications to the Contract may be approved by the City Manager.

7. Any notice to the City from the School relative to any part of the Contract shall be sent to:

City of Murfreesboro
Robert J. Lyons, City Manager
111 West Vine Street
Murfreesboro, TN 37130
Phone: (615) 849-2629
Fax: (615) 849-2679

8. The School must notify the contact person for the City if the dates or times agreed upon based on Attachment A change in any manner. Such notice must be received seventy-two (72) hours prior to such alteration. The Murfreesboro Police Department contact person is:

Murfreesboro Police Department
Sgt. Greg L. Walker
324 South Church Street
Murfreesboro, TN 37130
Phone: (615) 895-3874
Fax: (615) 849-2628

9. Notices to the School shall be sent to:

Providence Christian Academy
Dr. Bill Mott
410 DeJarnette Lane
Murfreesboro, TN 37130
Phone: (615) 904-0902

CITY OF MURFREESBORO

PROVIDENCE CHRISTIAN ACADEMY

Shane McFarland, Mayor

Dr. Bill Mott, Headmaster

Approved as to form:

Craig Tindall, City Attorney

**FIRST AMENDMENT
TO THE
CONTRACT
BETWEEN THE CITY OF MURFREESBORO
AND
STRATEGIC EDGE, INC.
FOR
GOVERNMENT/POLICE FIRING RANGE MEMBERSHIP**

This First Amendment ("First Amendment") to the Contract entered May 4, 2015 ("Contract") is effective as of this ____ day of July, 2016, by and between City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Strategic Edge, Inc., a corporation of the state of Tennessee, ("Contractor").

RECITALS

WHEREAS, on May 4, 2015, the City entered into a contract with Strategic Edge, Inc., for Annual Firing Range Membership services for the Murfreesboro Police Department; and,

WHEREAS, the term of the contract between the City and Contractor is currently from July 1, 2015 to June 30, 2016; and,

WHEREAS, the City and Contractor wish to extend the Contract term pursuant to provision 3.a. of the current Contract for an additional year;

NOW THEREFORE, the City and Contractor mutually agree to extend the term of the current Contract, from July 1, 2016 until June 30, 2017.

CITY OF MURFREESBORO

STRATEGIC EDGE, INC.:

By: _____
Robert J. Lyons, City Manager

By: _____
Tony Shankle, CEO

Approved as to form:

Craig D. Tindall, City Attorney



| | |
|----------|------------|
| Invoice | IVC4004453 |
| Date | 5/24/2016 |
| Page | 1 |
| Date Due | 7/1/2016 |
| User | rawyh |

5601 Barbados Boulevard
 Castle Hayne, NC 28429

www.tritech.com
 800-882-2108
 Fax: 858-799-7015

Bill To:

Murfreesboro Police Department
 302 South Church Street
 Murfreesboro TN 37130-3732

Tax ID: EXEMPT
 Contact: Bill Terry
 Email: wterry@ci.murfreesboro.tn.us
 Fax: (615) 848-3260 Ext. 0000

| Purchase Order No. | Customer ID | Maint. Beg. Date | Maint. End Date | Payment Due Date: | Master No. |
|--------------------|-------------|---|-----------------|-------------------|------------|
| 2016.2017 | TN060 | 7/1/2016 | 6/30/2017 | 7/1/2016 | |
| Quantity | Item Number | Description | Unit Price | Ext. Price | |
| 1 | V-VMCAD002 | CAD 24x7 Software Support #086002 CAD Server, 10 workstations and interfaces, 2 CAD monitors, & 10 GeoRelay | \$22,877.87 | \$22,877.87 | |
| 1 | V-VMCAD002 | CAD 24x7 Software Support #12061066 - 1 CAD license, 1 cad connection manager | \$1,780.80 | \$1,780.80 | |
| 1 | V-VMCAD002 | CAD 24x7 Software Support SO#5982 - 5 VisionCAD License (Call Taker, Dispatch, Supervisor) 24x7, Yr1 \$8316.00 - Add Jurisdiction Rutherford EMS - prorated 5/4/16-6/30/17 = 423 days | \$9,724.18 | \$9,724.18 | |
| 1 | V-VMCAD002 | CAD 24x7 Software Support SO#5982 - 5 VisionCAD Connection Manager Software License, 24x7, Yr1 \$1247.40 - Add jurisdiction Rutherford EMS-prorated 5/4/16-6/30/17 = 423 days | \$1,458.63 | \$1,458.63 | |
| 1 | V-VMCAD002 | CAD 24x7 Software Support SO#5982 - 1 VisionCAD Server Access License - 24x7, Yr1 \$726.00 - Add jurisdiction Rutherford EMS - prorated 5/4/16-6/30/17 = 423 days | \$848.94 | \$848.94 | |
| 1 | V-VMEOH002 | Custom Solution Software Support TN Tracs Interface #086002 | \$2,756.71 | \$2,756.71 | |
| 1 | V-VMFBR001 | FBR 8x5 Software Support #086002 FBR Server, 135 workstations | \$14,225.42 | \$14,225.42 | |
| 1 | V-VMINF001 | INFORM 8x5 Software Support #086002 #086002 - INFORM (end of life 12.31.14) | \$0.00 | \$0.00 | |
| 1 | V-VMEOH001 | MNHS 8x5 Software Support #086002 | \$3,685.44 | \$3,685.44 | |
| 1 | V-VMEMBL002 | Mobile 24x7 Software Support #086002 Mobile Server | \$5,368.01 | \$5,368.01 | |
| 1 | V-VMEMBL001 | Mobile 8x5 Software Support #086002 Mobile Fire Vehicle 20, AVL 175, Mobile Law Office 50, Mobile Law Vehicle 155 | \$46,890.06 | \$46,890.06 | |
| 1 | V-VMERMS001 | RMS 8x5 Software Support #086002 RMS Server and 10 w/s, RMS Bar Coding, Equip Mtc, Traffic, IA, #10101076 30 w/s | \$17,694.69 | \$17,694.69 | |



TRITECH

SOFTWARE SYSTEMS

| | |
|----------|------------|
| Invoice | IVC4004453 |
| Date | 5/24/2016 |
| Page | 2 |
| Date Due | 7/1/2016 |
| User | rawyh |

5601 Barbados Boulevard
Castle Hayne, NC 28429

www.tritech.com
800-882-2108
Fax: 858-799-7015

Bill To:

Murfreesboro Police Department
302 South Church Street
Murfreesboro TN 37130-3732

Tax ID: EXEMPT
Contact: Bill Terry
Email: wterry@ci.murfreesboro.tn.us
Fax: (615) 848-3260 Ext. 0000

| Purchase Order No. | Customer ID | Maint. Beg. Date | Maint. End Date | Payment Due Date: | Master No. |
|--------------------|-------------|------------------|-----------------|-------------------|------------|
| 2016.2017 | TN060 | 7/1/2016 | 6/30/2017 | 7/1/2016 | 44,011 |

| Quantity | Item Number | Description | Unit Price | Ext. Price |
|----------|-------------|---|-------------|-------------|
| 1 | V-VMEOTH002 | Custom Solution Software Support #083004 - CryWolf to VisionCAD Bi-Diretional Interface, Top Gun Interface, Auto Citation Importer | \$6,712.71 | \$6,712.71 |
| 1 | V-GEOMTE002 | GeoComm GeoLynx 9-1-1 Software Support Per Client #086002 10 GeoLynx | \$7,775.97 | \$7,775.97 |
| 1 | V-GEOMTE010 | GeoComm GeoLynx Mobile Software Support Per Client #086002 GeoLynx Mobile 175 | \$34,019.19 | \$34,019.19 |
| 1 | V-GEOMTE014 | GeoComm CrimeAnalyst Software Support #10102037 1 license - (end of life 12.31.15) | \$0.00 | \$0.00 |
| 3 | V-VOTOTH021 | VisionDATA VAULT Additional Server Backup Agents Annual Subscription | \$250.00 | \$750.00 |
| 1 | V-VOTOTH016 | VisionDATA VAULT Disaster Recovery Option 20GB Annual Subscription | \$1,950.00 | \$1,950.00 |
| 1 | V-VMEOTH002 | Custom Solution Software Support SO#5982 - 5 VisionCAD EMD Interface Software License, 24x7, Yr1 \$1219.05 - Add jurisdiction Rutherford EMS - prorated 5/4/16-6/30/17 = 423 days | \$1,425.48 | \$1,425.48 |
| 1 | V-VOTOTH002 | Remote Support Connectivity (Formerly Go To Assist) | \$400.00 | \$400.00 |

Tax ID 95-3871079

For questions-call 858-799-7401

INVOICES ARE EMAILED BUT NO HARD COPY IS MAILED.
THANK YOU

| | |
|-----------------|--------------|
| Subtotal | \$180,344.10 |
| Misc | \$0.00 |
| Tax | \$0.00 |
| Total | \$180,344.10 |

Remit to: TriTech Software Systems, PO Box 203223, Dallas, TX 75320-3223

July 20, 2016

The City Council of the City of Murfreesboro, Rutherford County, Tennessee, met in special joint session at The Heritage Room, 352 W. Northfield Boulevard, with the Planning Commission and the 2035 Task Force on Wednesday, June 20, 2016, at 6:00 p.m. Mayor Shane McFarland presided over this special meeting. The following members of the Council were present:

Rick LaLance
Bill Shacklett
Eddie Smotherman
Doug Young

Council Members Madelyn Scales Harris and Ron Washington 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
Jennifer Moody, Assistant City Manager
David Ives, City Attorney
Craig Tindall, City Attorney
Melissa Wright, City Recorder/Finance Director
Department Heads & Staff
Georgia A. Meshotto, Administrative Assistant
City Council/City Recorder

Mayor McFarland called this session of the City Council meeting to order.

Chairman Bob Lamb was present and presided over the special meeting of the Planning Commission. The following Commission Members were present:

Tom Clark
Ken Halliburton
Kathy Jones
Kirt Wade
Eddie Smotherman
Doug Young

Chairman Lamb called this session of the Planning Commission to order.

The following members of the 2035 Task Force were also present:

Susan Allen
Ross Bradley
Jim Dickson
Beth Duffield
Scott Graby
Bill Jakes
Bill Jones

Mr. Aaron Tuley, Consultant with Kendig Keast Collaborative, presented Chapter 8 of the Comprehensive 2035 Plan which outlined the Plan Administration, Comprehensive Plan Evaluation and Plan Implementation Action Plan. The Implementation Action Plan prioritizes a list of action recommendations derived from the various plan elements of the Murfreesboro 2035 Comprehensive Plan Update. He gave an overview of the Executive Summary which outlined strategies for administration of the 2035 Plan that would look at Growth Capacity & Infrastructure; Land Use & Character; Housing & Neighborhoods; Parks, Recreation & Open

Space; Economic Development & Implementation; and Intergovernmental Coordination. The Implementation Plan details the "to do" list of priority action items showing the general time frame for initial implementation and who is responsible for initiation, administering and participating in the implementation process. Additionally, action strategies have been categorized regarding those that will involve capital investments; programs and initiatives; regulations and standards; partnerships and coordination; and targeted planning/study. Most capital projects will also require, to varying degrees, additional feasibility analysis, construction documentation, specifications, and detailed cost estimates. The Implementation Action Plan provides a starting point for determining immediate, near-term, and longer term task priorities which is an important first step toward Plan Implementation and should occur in conjunction with the City's annual budget process, during Capital Improvements Program (CIP) preparation, and in support of departmental work planning. A City staff member, designated as the Comprehensive Plan Administrator, should initiate a first-year work program in conjunction with City Management, other departments, and other public and private implementation partners. Mr. Tuley provided hard copies of Chapter 8 - Implementation Action Plan and requested that everyone identify the top 15-20 strategies that the City is doing or should be doing within the next couple of years and submit these to the City Manager. The outcome will become part of the Executive Summary with a recommendation to follow as to what should happen in subsequent years. Mr. Tuley responded to questions and comments from those present.

There being no further business, Chairman Lamb adjourned the special meeting of the Planning Commission at 7:31 p.m.

BOB LAMB - CHAIRMAN

There being no further business, Mayor McFarland adjourned the special meeting of the City Council at 7:31 p.m.

SHANE MCFARLAND - MAYOR

ATTEST:

MELISSA B. WRIGHT - CITY RECORDER

ORDINANCE 16-OZ-28 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 5.6 acres in the Planned Commercial Development (PCD) District located along West Northfield Boulevard and Sulphur Springs Road, as indicated on the attached map; Tarver Properties, Inc., applicant [2016-417].

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 Unit Development (PUD) District, as indicated on the attached map, for the purpose of changing the name of the project, subdividing the property into Lot 1 and Lot 2, allowing a self-storage facility to be constructed on Lot 1 and reserving Lot 2 for future neighborhood commercial development.

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 second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

Craig D. Tindall
City Attorney

SEAL



SINKING CREEK

SULPHUR-SPRINGS RD

SADDLEBROOK DR

RS-10

PUD

RS-15

OAKHAVEN DR

PCD Amended

SANDERS CT

W. NORTHFIELD BLVD

PCD

RM-16

ELLIOTT DR

Ordinance 16-OZ-28

RS-15

WOODMONT DR

W. KINGWOOD DR

RM-12





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July 21, 2016

Honorable Mayor and Members of City Council:

RE: Fiscal Year 2017 Budget Amendment

As an agenda item for the June 28, City Council meeting it is requested you approve Ordinance 16-O-31 to amend the City's June 30, 2017, budget.

1. Drug Fund

Background

On April 7, 2016, City Council approved on Consent the purchase of eight vehicles from the Drug Fund. These vehicles were budgeted and ordered prior to June 30, 2016, but did not arrive prior to June 30, 2016. Therefore the purchases need to be funded in FY 17.

Fiscal Impact

This amendment will increase the Use of Fund Balance (cash) in the Drug Fund by \$209,184.

2. Community Development

Background

An error in the revenue formula caused the Federal Grant revenue for the Community Development Emergency Shelter Grant (ESG) program to be omitted from the FY 17 budget. ESG expenses were correctly included in the budget, this is the corresponding funding of those budgeted expenses.

Fiscal Impact

This amendment will decrease the Use of Fund Balance (cash) in the General Fund by \$159,366.

Recommendation

It is recommended that Council approve this amendment to Ordinance 16-O-31.

Melissa B. Wright
City Recorder, Finance Director

| Department | Account | BUDGET AS PASSED | AMENDED BUDGET | AMENDMENT INCREASE (DECREASE) |
|---------------------|-------------------------------|------------------------|-------------------|-------------------------------------|
| <u>GENERAL FUND</u> | | | | |
| REVENUES | State Grant - Comm Dev ESG | \$ - | \$ 159,366 | \$ 159,366 |
| | | | | <u>159,366</u> |
| | CHANGE IN FUND BALANCE (CASH) | \$ (2,905,061) | (2,745,695) | <u>(159,366)</u> |
| <u>DRUG FUND</u> | | | | |
| EXPENDITURES | Fixed Assets | \$ 193,500 | \$ 402,684 | \$ 209,184 |
| | | | | <u>209,184</u> |
| | CHANGE IN FUND BALANCE (CASH) | \$ (131,850) | (341,034) | <u>209,184</u> |

ORDINANCE 16-O-31 amending the 2016-2017 Budget (1st amendment).

WHEREAS, the City Council adopted the 2016-2017 Budget by motion; and,

WHEREAS, the City Council adopted an appropriations ordinance, Ordinance 16-O-24, on June 24, 2016 to implement the 2016-2017 Budget; and,

WHEREAS, it is now desirable and appropriate to adjust and modify the 2016-2017 Budget by this Ordinance to incorporate expenditure decisions made during the 2016-2017 fiscal year.

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

SECTION 1. The 2016-2017 Budget adopted by the City Council is hereby revised and amended as shown on Exhibit A, attached hereto.

SECTION 2. That this Ordinance take effect immediately upon and after its passage upon second and final reading, as an emergency Ordinance, an emergency existing, and it being imperative to provide for the necessary expenses, general and special, of said City of Murfreesboro for the Fiscal Year 2016-2017 at the earliest practicable time, the welfare of the City requiring it.

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

Craig D. Tindall
City Attorney

SEAL

| Department | Account | BUDGET AS PASSED | AMENDED BUDGET | AMENDMENT INCREASE (DECREASE) |
|---------------------|-------------------------------|------------------------|-------------------|-------------------------------------|
| <u>GENERAL FUND</u> | | | | |
| <u>REVENUES</u> | | | | |
| | State Grant - Comm Dev ESG | \$ - | \$ 159,366 | <u>\$ 159,366</u> |
| | | | | <u>159,366</u> |
| | CHANGE IN FUND BALANCE (CASH) | \$ (2,905,061) | (2,745,695) | <u>(159,366)</u> |
| <u>DRUG FUND</u> | | | | |
| <u>EXPENDITURES</u> | | | | |
| | Fixed Assets | \$ 193,500 | \$ 402,684 | <u>\$ 209,184</u> |
| | | | | <u>209,184</u> |
| | CHANGE IN FUND BALANCE (CASH) | \$ (131,850) | (341,034) | <u>209,184</u> |



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REGULAR AGENDA

July 28, 2016

Honorable Mayor and Members of City Council

RE: FOOD TRUCK ORDINANCE AND REGULATIONS

Background

In response to requests from our citizens, food truck operators, and various organizers of special events in the community, city staff proposes the following revisions to our current City Code related to mobile food vending. The revised Ordinance intends to balance the desire for loosening restrictions on food trucks in the city limits of Murfreesboro with minimizing any real or perceived detrimental impacts of food trucks on the health, safety, and welfare of the public.

Our Approach

In revising the Ordinance, the following guiding principles were applied:

- Regulations should be concise, easy to understand, and thereby easy to comply with.
- Regulations should focus on balancing the demand for additional food choices provided by food trucks, with the city's responsibility to minimize the impact of their operations on pedestrian safety, traffic, brick-and-mortar businesses, and other concerns.
- Locations for food trucks should be amendable at the administrative level in order to be timely and responsive to emerging or future needs.
- Rather than recovering administrative costs on each permit fee, the application fee should be set low as to encourage operators to seek a permit, while those found operating without a permit or operating in violation of a permit should be required to pay a more significant fee to encourage remediation and compliance.

Food Trucks On Public Property

Food trucks, with required permits to operate in the City of Murfreesboro, would be welcome to begin vending at designated locations upon the effective date of the proposed Ordinance. Public right-of-way and other public property designated for food truck locations will be listed on the City's website. In the future, any revisions to the list of designated locations will be subject to approval by the City Manager.

The proposed, designated locations would be maintained on the city website, rather than within the Ordinance. Our intent with managing locations administratively is to be able to respond quickly to valid requests to consider new locations. Additionally, placing responsibility at the administrative level will allow the Ordinance to be efficiently adjusted when necessary, such as for large events or the particular needs of a park venue.

Administration Department

Proposed designated areas include on-street and off-street locations, primarily in the downtown and near MTSU. Food trucks are prohibited from operating in public alleys. A list of the proposed designated locations will be additionally attached.

Food Trucks In City Parks

In developing the proposed Ordinance, staff recognizes that the operation of food trucks within City parks has unique and different consequences than their operation on city streets, city-owned parking lots or other public property. In addition to compliance with the proposed Ordinance, food truck operators should also adhere to rules and regulations developed by Murfreesboro Parks and Recreation Department. City staff will seek approval for establishing, and any future amendment to, such rules and regulations from the Murfreesboro Parks and Recreation Commission.

Food Trucks On Private Property

Food trucks will be allowed to operate on private property within all zoning districts that allow for retail uses or restaurants and bars, subject to the following conditions (*see Section 13-23(A)(3)*):

- a) Permission: Food trucks must have the written permission of the property owner(s), which must be available for inspection upon request;
- b) Unimproved Sites: Regardless of an agreement with the property owner, food trucks may not operate without a Mobile Food Service Permit on any unimproved parcel or portion of a parcel that is not permanently improved (an improved parcel is one that has a paved surface and paved driveway access to a City street);
- c) Frequency: Food Trucks may operate no more than two (2) days per calendar week at a location on privately owned property;
- d) Maximum Number: No more than two (2) mobile food trucks may operate at any location with coordinated advertising to the public unless a Food Truck Rally Permit has been secured;
- e) Existing Parking Space: Mobile food trucks may not require the use of more than 25% of existing parking spaces located on the property for which it has an agreement to operate.

Food Truck Rallies and Special Events

A “Food Truck Rally” is defined as any coordinated, advertised gathering of 2 or more food trucks in one location on a date certain with the intent to serve the public. These events, whether on public or private property, will require a separate Food Truck Rally Permit. Similarly, the City will continue to consider the approval of food trucks under the existing Special Event Permit. A Special Event Permit is required from any person or organization desiring to conduct a special event (parade, bicycle or foot race, fair, festival, or other activity) affecting the use of City streets, right-of-ways, sidewalks, or other infrastructure. In granting these applications, the City may impose reasonable conditions to ensure that any detrimental impacts are mitigated to a reasonable degree.

Other Requirements

As proposed, food trucks would be restricted to operations only after 7:00 a.m. and before 11:00 p.m., unless otherwise restricted by its Mobile Food Service permit. All food trucks would be required to provide a copy of their Murfreesboro business license as part of the permit application process; additionally, all must be licensed in accordance with any other local, state, and federal agency having jurisdiction. The proposed Ordinance includes several additional regulations intended to further to reduce potential negative impacts on the health, safety, and welfare of the public; related topics include business access, distance between units, noise, pedestrians, electrical inspection, fire extinguishers required, spills, waste collections, insurance, etc.

Application Process and Fee

Upon adoption of the proposed Ordinance, city staff will finalize an application and permitting process, as well as develop resources to assist operators of food trucks with compliance. The City will make available in paper and electronic copy a permit application for mobile food services. The proposed application fee is \$50 for a one-year term. The City has the right to suspend, revoke, reinstate, revoke, or deny a permit. As proposed, the Planning Director will serve as the administrator charged with Mobile Food Service Permit compliance. Any appeals would be directed to the City Manager for a final decision.

Recommendation

City Council is recommended to adopt a revised Ordinance 16-O-32, amending the Murfreesboro City Code, Chapter 13 – Food and Food Products, adding Sections 13-20 through 13-26, regarding mobile food vending.

Attachments

Proposed Public Locations

Sincerely,

Jennifer Moody
Assistant City Manager

Proposed List of Designated Locations for Food Trucks:

Public Right-of-Way

Pursuant to § 13-23(A)(1) of the Murfreesboro City Code, Food Truck are permitted to operate in the right-of-way at the following locations:

- Along the north side of Vine Street between South Spring Street and South Walnut Street
- Along South Maney Avenue from Main Street and north of East State Street
- Along North Spring Street south of East Lytle Street and north of East Vine Street
- Along North Academy Street south of East College Street and north of East Main Street
- Along North Academy Street south of East Main Street and north of East State Street
- North Walnut Street south of West Lytle Street and south to West Main Street
- South Walnut Street south of West Main Street and north of West Vine Street

Public Property

Pursuant to § 13-23(A)(2) of the Murfreesboro City Code, Food Truck are permitted to operate in the right-of-way at the following locations:

- Within a City park after securing the approval of the Murfreesboro Parks Department and consistent with Park Regulations.
- City parking lot located south of East Sevier Street and east of South Church after 5:00 p.m. Monday through Friday and any time Saturday or Sunday.
- City parking lot located south of East Lytle Street and west of North Spring Street after 5:00 p.m. Monday through Friday and any time Saturday or Sunday.

ORDINANCE 16-O-32 amending the Murfreesboro City Code, Chapter 13—Food and Food Products, adding Sections 13-20 through 13-26, regarding mobile food vending.

WHEREAS, the food truck industry is a growing and vital economic generator and there is increased popularity of food trucks in the City of Murfreesboro; and,

WHEREAS, the City desires to promote economic development through the encouragement of vibrant entertainment alternatives, including accommodating the popularity and growth of the food truck industry.

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

SECTION 1. Section 13-1 through 13-19 of the Murfreesboro City Code are hereby designated as “ARTICLE I. GENERAL.”

SECTION 2. Chapter 13, Food and Food Products, of the Murfreesboro City Code is hereby amended by adding Article II, Mobile Food Vending, as follows:

“ARTICLE II. MOBILE FOOD VENDING

SECTION 13-20 PURPOSE.

This article recognizes the unique physical and operational characteristics of mobile food vending and establishes standards for the typical range of activities and mitigates or prohibits practices that are contrary to the health, safety, and welfare of the public.

SECTION 13-21 DEFINITIONS.

- (A) Canteen Trucks are vehicles that operate to provide food services to employees at a location where access to other good service is impractical (e.g., a construction site); from which the operator vends fruits, vegetables, pre-cooked foods such as hot dogs, pre-packaged foods, and pre-packaged drinks that require no preparation or assembly of foods or beverages except for the heating of pre-cooked foods; which operate at a location for a period not longer than 1.5 hours; and which do not advertise in any form to the general public except by virtue of signage on the vehicle. Canteen Trucks that operate other than as defined herein are Food Trucks and must comply with all Food Truck regulations.
- (B) Food Trucks are vehicles from which the operator cooks, prepares, or assembles food items (including products sold by Canteen Trucks and Ice Cream Trucks) with the intent to sell such items to the general public and which may market their products to the public via advertising, including social media.
- (C) Food Truck Rallies are coordinated and advertised gatherings of more than two Food Trucks in one location on a date certain with the intent to serve the public.
- (D) Ice Cream Trucks are vehicles from which the operator vends only pre-packaged frozen dairy or frozen water-based food products, soft serve, or hand-dipped frozen dairy products or frozen water-based food products, and pre-packaged beverages.
- (E) Location means any single property parcel and all other parcels that is contiguous or cumulatively contiguous to that owned or controlled by a single or affiliated entities.
- (F) Mobile Food Service Permit means a permit issued by the City for the operation of Food Trucks, special events, City co-sponsored events, or an approved Food Truck Rally.
- (G) Mobile Food Service Vehicle means a Food Truck, a Canteen Truck, or an Ice Cream Truck and includes any other portable unit that is attached to a motorized

vehicle and that is intended for use or in service to the operations of the Mobile Food Service Vehicle.

- (H) Operate means to promote or sale food, beverages, and other permitted items from the Mobile Food Service Vehicle and includes all tenses of the work.
- (I) Operator means any person owning, operating, or permitted to operate a Food Truck and collectively refers to all such persons.
- (J) Vehicle, as used in this article, means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

SECTION 13-22 GENERALLY.

- (A) It is a violation to operate a Mobile Food Service Vehicle at any location except in compliance with the requirements of this article.
- (B) Mobile Food Service Vehicle operators must comply with all state and local business tax regulation.

SECTION 13-23 LOCATIONS AND HOURS OF OPERATION.

(A) *Food Trucks*

- (1) *Rights-of-way.* Food Trucks may operate consistent with this section from the right-of-way only at the locations listed on the City's website as right-of-way upon which Food Trucks can operate.
- (2) *Public Property.* Food Trucks may operation on City property only at the locations listed on the City's website as public property upon which Food Trucks can operate.
- (3) *Private property.* Food Trucks may operate on private property within all zoning districts that allow for retail uses or restaurants and bars subject to the following conditions:
 - (a) *Permission.* Food Trucks selling to the public from private property shall have the written permission of the property owner, which shall be made available to the City immediately upon request.
 - (b) *Unimproved Properties.* Regardless of an agreement with the owner of the property, a Food Truck may not operate without a Mobile Food Service Permit on an unimproved parcel or portion of a parcel that is not permanently improved. Improved parcel is one that has a paved surface and paved driveway access to a City street.
 - (c) *Frequency.* A Food Trucks may operate no more than two (2) days per calendar week at a location on privately owned property.
 - (d) *Maximum Number of Food Trucks.* No more than two (2) mobile food trucks may operate at any location with coordinated advertising to the public unless a Food Truck Rally Permit has been secured.
 - (e) *Existing Parking Spaces.* Mobile food trucks may not require the use of more than twenty-five percent (25%) of existing parking spaces located on the property for which it has an agreement to operate.
- (4) *Restroom Facility.* Food Trucks operating at a location for a duration of more than three (3) hours must have a written agreement, available upon request by the City, that permits employees to have access to a flushable restroom no more than 150 feet of the vending location during all the hours of operation.
- (5) *Hours of Operation.* Food Trucks may operate after 7:00 a.m. and before 11:00 p.m. unless otherwise restricted by its Mobile Food Service Permit. The City may permit extended hours of operation for a Food Truck Rally.

(B) *Canteen Trucks*

- (1) *Locations.*
 - (a) *Right-of-way.* Canteen Trucks may operation from the right-of-way to cater to on-site employees of a clearly delineated location for a limited period of time not greater than one (1) hour. A clearly delineated location is one in which the boundaries are defined by the use of fencing fully enclosing the location or all of the surrounding area is undergoing construction activity.

- (b) *Private property.* A Canteen Truck may operate on private property only within a location that is clearly delineated through the use of fencing fully enclosing the location is the site of construction activity.
- (c) *Food Truck Rallies.* A Canteen Truck may operate at a Food Truck Rally only after complying with all requirements applicable to a Food Truck.
- (2) *Hours of Operation.* Canteen Trucks may operate after 5:00 a.m. and before 6:00 p.m. in all areas.
- (C) *Ice Cream Trucks*
 - (1) *Locations.*
 - (a) *Right-of-way.* An Ice Cream Truck may not operate from the right-of-way at any one location for more than 15 minutes without relocating to another location not less than one-quarter mile from the previous location.
 - (b) *Private Property.* An Ice Cream Truck may operate on private property with written permission of the property owner, which will be immediately available to the City upon request. An Ice Cream Truck may not require use of more than twenty-five percent (25%) of existing parking spaces. No Ice Cream Truck may operation on the same or adjoining private property more than two (2) days per week.
 - (2) *Hours of Operation.* Ice Cream Trucks may operate after 11:00 a.m. and before sunset.

SECTION 13-24 OPERATING REQUIREMENTS.

- (A) *Vehicle Requirements.*
 - (1) *Design and Construction.* Mobile Food Service Vehicles must be specifically designed and constructed for the purpose of preparation and sale of the specific type of food being sold and may not operate in any manner that is not compatible with the purpose for which the vehicle has been designed and constructed.
 - (2) *Licensing.* Mobile Food Service Vehicles must be licensed in accordance with the rules and regulations of any local, state, and federal agency having jurisdiction over motor vehicles and all products sold therein must be properly licensed, permitted, and allowed by local, state, and, federal laws or regulations.
- (B) *Right-of-Way.*
 - (1) Mobile Food Service Vehicles may not operate, stop, stand, or park in any area of the right-of-way that is intended for use by vehicular travel or that in any way impedes the use of the right-of-way or that present an unsafe condition for patrons, pedestrians, or other vehicles.
 - (2) Food Trucks may operate within right-of-way only at locations designated as Food Truck locations on the City's website and it is the duty of all Operators to obtain current knowledge of the right-of-way designations prior to establishing operations in any area.
 - (3) Unless authorized in writing by the City, Mobile Food Service Vehicle are prohibited from operating in public alleys.
 - (4) Units shall park in the same direction as traffic, with no more than eighteen inches (18") between the curb face or edge of pavement and with the service window of the Unit facing the curb.
- (C) *Business Access.* No Mobile Food Service Vehicle may operate in a location that impedes the ingress to, egress from, or signage of another business or otherwise causes undue interference with access to other businesses or emergency areas, paths, or facilities.
- (D) *Pedestrians.* A Mobile Food Service Vehicle may not reduce the clear pedestrian path of travel on the sidewalk to less than six feet (6'). This includes all components of the Unit and any patron queue. All awnings or canopies of the Unit shall be at least six feet, eight inches (6'8") above the sidewalk.
- (E) *Distance between Units.* A Mobile Food Service Vehicle may not operate within three (3) feet of any other Mobile Food Service Vehicle.
- (F) *Types of Cooking Apparatuses.* Open flame cooking (other than with a gas range specifically constructed and design within the Food Truck) either within or outside a Mobile Food Service Vehicle is prohibited; except where such activity is specifically permitted by the Fire Department. Canteen Trucks may have installed within the vehicle a heating apparatus that is used only for serving heated pre-cooked foods

provided such apparatus is permitted by state and local regulations. Ice Cream Trucks can have no heating apparatus installed within the vehicle for the purpose of food service.

- (G) *Noise*. Amplified music or other sounds from any Mobile Food Service Vehicles may not at any time unreasonably disturb nearby businesses, pedestrians, or vehicles.
- (H) *Commissary*. If the Operator has a fixed, non-mobile establishment or any other place that is used for the storage of supplies, the preparation of food to be sold or served at or by Mobile Food Service Vehicle, or the cleaning and servicing of the Mobile Food Service Vehicle, such a commissary location must be located in the property zoning district and cannot be located in any residential district.
- (I) *Electrical Inspection*. All Mobile Food Service Vehicles that operate on private property and use electrical service provided by the private property owner, operator, or tenant are required to be inspected by the appropriate City department prior to placing any electrical line into service. All Mobile Food Service Vehicles shall comply with the version of the electrical code currently adopted by the City.
- (J) *Fire Extinguishers Required*. All Mobile Food Service Vehicle must be equipped with a 2-A:10-B:C fire extinguisher that is certified annually by a licensed company. Additionally, any Mobile Food Service Vehicle that produce grease laden vapors (e.g., those units with deep fat fryers or flat top griddles) must be equipped with a K-Class fire extinguisher that is certified annually by a licensed company.
- (K) *Support Methods*. No Mobile Food Service Vehicle may use stakes, rods, or any method of support that must be drilled, driven, or otherwise fixed, into or onto asphalt, pavement, curbs, sidewalks, or buildings.
- (L) *Pedestrian Service Only*. Units shall serve pedestrians only and a drive-thru or drive-in service is prohibited.
- (M) *Spills*. To prevent discharges into the storm drain system and river, each Unit shall comply with all stormwater regulations of the City. In addition, each Unit shall have a spill response plan and kit on board to contain and remediate any discharge from the Unit.
- (N) *Waste Collection*. The area of a Mobile Food Service Vehicle operation must be kept neat and orderly at all times. Operation of a Mobile Food Service Vehicle in an area is deemed acceptance by the Operator of the responsibility for cleanliness of the reasonable area surrounding the operations (not less than 20 feet from all parts of the Vehicle) regardless of the occurrence or source of any waste in the area. The Operator must provide proper trash receptacles for public use that are sufficient and suitable to contain all trash generated by the Mobile Food Service Vehicle during the period of operation at a location. All trash within the area of operations regardless of the source must be removed and all garbage, trash, and trash receptacles must be removed when full and prior to departure of a Mobile Food Service Vehicle from a location.
- (O) *Signage*. Mobile Food Service Vehicles are limited to signs mounted to the exterior of the mobile food establishment and one (1) sandwich board sign with dimensions no larger than twenty-five inches by forty-five inches (25" x 45"). All signs mounted on the Unit shall be secured and mounted flat against the Unit and shall not project more than six inches (6") from the exterior of the Unit. Sandwich board signs shall not obstruct or impede pedestrian or vehicular traffic. All signage and must at all times conform to community standards of decency.
- (P) *Alcohol sales*. Food Trucks may not sell alcoholic beverages, except as may be specifically allowed by state law and City ordinance. Canteen Trucks and Ice Cream Trucks are prohibited from selling alcoholic beverages.
- (Q) *Insurance Requirements*. Mobile Food Service Vehicles shall obtain, at a minimum, any motor vehicle insurance required by any local, state, or federal laws and regulations.
 - (1) Food Trucks operating on City property other than the right-of-way are required at all times to maintain insurance coverage in the form and amounts required by the City. In the event the required coverage is not properly maintained, the Operator's Mobile Food Service Permit will be immediately revoked. The failure of the Operator to notify the City of any change in coverage will preclude the Operator from obtaining a permit for a period of six months from the date the City learns of the failure to provide the required notification of change.

- (2) Canteen Trucks and Ice Cream Trucks shall not operate on City property other than the right-of-way only upon permission from the City and may be required to obtain insurance consistent with the type of operation permitted.

SECTION 13-25 MOBILE FOOD SERVICE PERMITS.

- (A) *Applicable.* No Mobile Food Service Vehicle may operate within the City without a Mobile Food Service Permit issued by the City. A Mobile Food Service Permit authorizes the holder only to engage in the vending of products from a Mobile Food Service Vehicle in compliance with City Code and as specified on the permit. The Mobile Food Service Permit must be prominently displayed when the Mobile Food Service Vehicle is in operation.
- (B) *Application.* A Mobile Food Service Vehicle operator shall apply for a Mobile Food Service Permit by payment of a \$50 application fee and the following:
- (1) Complete an application form provided by the City, which shall include the following information:
 - (a) Name and address of the owner of the vehicle;
 - (b) Name and address of the operator of the vehicle;
 - (c) Three color photographs of the exterior (front, side, and back) and interior food service portion of the vehicle in the final condition and with and with all markings under which it will operate;
 - (d) A copy of the vehicle license and registration form reflecting the vehicle identification number (VIN) of the Mobile Food Service Vehicle.
 - (e) A copy of the state or county health department license or permit applicable to mobile food providers;
 - (f) A copy of any alcoholic beverage licenses, if applicable; and
 - (g) A copy of the operator's business license issued by the City.
 - (2) Permittee has an on-going duty to provide the City with notice of any change to any of the information required by the City to obtain a Mobile Food Service Permit, including current photographs of the Mobile Food Service Vehicle in the event of any change in the appearance of or signage on the vehicle.
 - (3) This section does not apply to contractual arrangements between a Mobile Food Service Vehicle Operator and an individual, group, or the City for catering at a specific location, for a period of not more than four (4) hours, and that is not open to or serving the public.
- (C) *Issuance.* A Mobile Food Service Permit shall be issued upon full completion and review of the application required by this section except that no Mobile Food Service Permit will be issued to:
- (1) an Operator that operated within the prior six (6) months notwithstanding a Mobile Food Service Permit that is suspended or has been revoked; or
 - (2) an Operator, or any person affiliated with the Operator for purposes of operating a Mobile Food Vehicle that is the subject of a suspended Mobile Food Service Permit or has held a Mobile Food Service Permit revoked with the prior twelve (12) months.
- (D) *Expiration.* A Mobile Food Service Permit expires on the date twelve (12) months after issuance and may be renewed provided that all City requirements are met and the license has not been suspended or revoked.
- (E) *Transferability.* A Mobile Food Service Permit may not be transferred except as part of the sale of an interest in a business holding the license or a sale of substantially all of the assets of a business holding the license.
- (F) *Enforcement.*
- (1) *Temporary Permit.* If an Operator is found to be operating within the City and without a Mobile Food Service Permit, the Operator will be cited and the City will issue a Temporary Permit that will allow the Operator to operate for not more than one hour after which time the Temporary Permit will be revoked. The Operator will pay a fine of \$500 to offset the City's costs of compliance measures, inspections and inspections, and correction of any circumstance resulting from Operators failure to comply with this Article.

- (2) *Warnings.* A City Enforcement Officer may provide one (1) warning to any Operator for a violation of this section except that a citation shall be issued as set forth in the section.
- (3) *Citation.* A City Enforcement Officer must issue a citation to the mobile food service Operator for the following:
 - (a) A second violation of this section is found to have occurred after a warning has been issued within the previous six (6) months; or
 - (b) Any violation that constitutes ground for revocation of a mobile food service permit.
- (4) *Suspension.* A Mobile Food Service Permit shall be suspended until restatement upon issuance of a citation for the following reasons:
 - (a) A second violation of this section is found to have occurred after a warning has been issued within the previous six (6) months;
 - (b) The required vehicle license, health permit, or business tax license for the Operator or the Mobile Food Service Vehicle has expired or been suspended, revoked, or otherwise terminated;
 - (c) The Operator fails to obtain or maintain the insurance coverages required by this section.
- (5) *Revocation.* The City shall revoke a Mobile Food Service Permit after two (2) suspensions within a twelve (12) month period except that the Mobile Food Service Permit revoked (i) if an Operator fails to obtain a permit and upon expiration of the Temporary Permit as set forth in the Article; or (ii) the Operator operates in an unlawful manner such a manner as to constitute a breach of the peace, interferes with the normal use of the right-of-way, or otherwise constitutes a menace to the health, safety, or general welfare of the public.
- (6) *Reinstatement.*
 - (a) *Suspension.* An Operator may reinstate a suspended Mobile Food Service Permit by payment of a fee of \$500 to offset the City's costs of compliance measures, necessary inspections and inspections, and the correction of any circumstance that lead to the suspension.
 - (b) *Revocation.* The City may allow an Operator to reapply for a Mobile Food Service Permit after three (3) month from the date of revocation, the Operator corrects all circumstances that lead to the violations, and the Operator pays a fee of \$500 to offset the City's costs of compliance measures, necessary inspections and inspections, and the correction of any circumstance that lead to the suspension.
- (G) *Notice.* Upon denial, suspension or revocation of a Mobile Food Service Permit, the City shall give notice to the Operator in writing. There shall be no refund of any other fee paid to the City.
- (H) *Appeal.* Citation may be appealed to the City Manager, whose decision, which will be based upon a written summation of the facts submitted by the City administrator charged with Mobile Food Service Permit compliance and the permit holder, is final.

SECTION 13-26 FOOD TRUCK RALLY PERMIT.

- (A) *Applicability.* All Food Truck Rallies on public or private property require a Food Truck Rally Permit. Applications for a Food Truck Rally Permit must be secured in accordance with the applications and procedures established by the City. In granting the application, the City may impose reasonable conditions to ensure that any impacts are mitigated to a reasonable degree.
- (B) *Application.* A Food Truck Rally Permit application shall include the following information and any additional information required:
 - (1) A site plan of the subject property;
 - (2) Written description of the temporary use and anticipated hours of operation;
 - (3) The City may also require the following:
 - (a) Documentation from the county health department regarding arrangement for temporary sanitary facilities and such assurances as the City may require concerning compliance.
 - (b) Information concerning length of operation.
 - (c) Provision for adequate parking.

- (d) A financial guarantee in an amount determined by the City to ensure that the premises will be cleared of all debris during and after the event.
 - (e) A financial guarantee in an amount determined by the City guaranteeing the repair of rights-of-way of any damage resulting to the rights-of-way as a result of the event.
 - (f) A list of all Operators participating in the Food Truck Rally and copies of their Mobile Food Service Permit.
- (4) The application shall be filed at least thirty (30) days prior to the date on which the permit is to take effect. The City may approve a lesser time period.
 - (5) Upon receipt of the application, the City shall determine whether the application conforms to all applicable requirements contained in the City Code. If the City determines that there will be substantial adverse offsite effects, public notice to property owners within 100 feet of the location shall be required. The decision to require public notice shall be made within five days of receipt of the completed application. The applicant shall be responsible for all required notice to property owners. Notice shall be provided a minimum of 15 days in advance of the event.
 - (6) If the City determines that the application sufficiently complies with the standards for a Food Truck Rally and that appropriate measures have been taken to protect the public health, safety, and welfare, the Food Truck Rally permit shall be issued.
 - (7) If the City denies the application, such denial shall be in writing and provided to the applicant within 15 days of receipt of a complete application.
- (C) *Issuance.*
- (1) In order to protect the health, safety, and welfare of the general public, to obtain compliance with local, state or federal laws, and to assure the Food Truck Rally is a benefit to the community, the City may add special conditions and restrictions, which shall be binding upon the applicant, to any permit or other form of approval that may be issued. Such conditions and restrictions may include, but are not limited to, hours of operation, locations, parking, traffic access, and safety requirements.
 - (2) All Food Truck Rally Permits shall comply with the following conditions:
 - (a) All participants must obtain or hold a valid Mobile Food Service Permit.
 - (b) No permanent or temporary lighting shall be installed without an electrical permit and an inspection;
 - (c) No structures shall be erected without a building permit and required inspections;
 - (d) The location shall be cleared of all trash and debris at the end of the event and cleared of all temporary structures within five days after the end of the event. The location shall be restored to its previous condition within three (3) days after the end of the event;
 - (e) Traffic control and pedestrian safety in the vicinity of the event shall be the responsibility of the permittee of the event. The City costs for these services shall be estimated by the City and paid at least ten days in advance by the permittee as a condition of the permit (after the event, any overpayment shall be refunded to the permittee and any underpayment shall be billed to the Permittee).
- (D) *Expiration.* A Food Truck Rally Permit may be issued for a maximum of seven (7) days and expiration upon the date set forth in the permit.
- (E) *Appeal.* Decisions of the City to approve, extend, or deny a permit or to impose conditions or restrictions upon a Food Truck Rally Permit may be appealed to the City Manager, whose decision shall be deemed the final decision of the City.

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

Passed:

1st reading _____

2nd reading _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

Craig D. Tindall
City Attorney

SEAL

**City of Murfreesboro
Request for Certificate of Compliance for
Wine in Retail Stores**

Summary of information from the application:

Name of Business Entity Aldi Inc.
Name of Business Aldi #41
Business Location 1640 Robert Rose Drive

Type of Application:

New - wine sale in retail store

Corporation _____ X
Partnership _____
Sole Proprietor _____

Store Manager

Name Walter Renee Horton
Age 58
Home Address 2228 Sassafras Dr.
Residency City/State Murfreesboro, TN
Race/Sex Black/M

10 Year Background Check Findings:

City of Murfreesboro: None
Davidson County: None
FBI: No indication of any record that may preclude the applicant for consideration.

Application Completed Properly? Yes

The actual application is available in the office of the City Recorder.

**City of Murfreesboro
Request for Certificate of Compliance for
Wine in Retail Stores**

Summary of information from the application:

Name of Business Entity Sprouts Farmer's Market, LLC
Name of Business Sprouts Farmer's Market #581
Business Location 143 Wendelwood Drive

Type of Application:

New - wine sale in retail store

Corporation _____ X
Partnership _____
Sole Proprietor _____

Store Manager

Name Patrick Trueheart
Age 56
Home Address 732 Fleming Farms Dr.
Residency City/State Murfreesboro, TN
Race/Sex Caucasian/M

10 Year Background Check Findings:

City of Murfreesboro: None
TBI/FBI: None

Application Completed Properly? Yes

The actual application is available in the office of the City Recorder.



... creating a better quality of life

July 28, 2016

Honorable Mayor and Members of City Council:

RE: Recommendation to Hire The Parent Company

As an item for the agenda, it is the recommendation of the Fire Chief that City Council approve a contract with The Parent Company to serve as Construction Manager at Risk (CMAR) for the Murfreesboro Fire & Rescue Department Fire Station 4 relocation.

Background

Funds of \$1,925,000 are included in the 2016 Capital Improvement Plan for the relocation of Fire Station 4 from Jones Boulevard to Medical Center Parkway. Fire Station 4 was built in 1959 and needs to be reconstructed due to the age of the facility, height and length of the bay, and small size of the building. The cost to renovate the aging structure was not feasible. The station cannot house a large aerial due to the size of the bay nor can the station be renovated to create a female locker room and restroom due to the size of the building.

The City owns property on Medical Center Parkway which is appropriate for relocation for Fire Station 4. The relocation of the fire station will place it closer to an area of the City that has multi-story structures and commercial businesses including the hospital and several hotels.

The City entered an agreement with Johnson + Bailey Architects P.C. to provide architectural services for this project after City Council approved the recommendation in February 2016. Architectural services include design development, construction documents, bidding or negotiation, and construction phase services. Johnson + Bailey Architects, P.C. proposed architectural fee is \$123,570.

Competitive Sealed Proposals

The City issued a Request for Competitive Sealed Proposals for a Construction Manager at Risk (CMAR) and received five responses. A cross functional team interviewed each firm and selected The Parent Company as the top ranked firm. The city negotiated the attached contract with The Parent Company.

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.

The Parent Company

The Parent Company opened for business in 1984 as a century old contracting firm when Foster and Creighton Company closed its operation. The founders of The Parent Company were all part of Foster and Creighton. Their vision was to create a firm dedicated to professional construction services, built on relationships of trust and integrity. The quality of their work is not only seen in the projects themselves, but also in the fact that 90% of their business is made up of repeat clients.

The Parent Company has worked on the following municipal projects in Middle Tennessee:

Floyd Stadium Club Level Renovations, Murfreesboro, TN
Williamson County Fire Station, Public Safety Center & County Jail, Franklin, TN
Brentwood Service Station, Brentwood, TN
Dickson County Government, Charlotte, TN
North Data Center Renovations, Nashville, TN

Proposed Contract

Attached is a contract between the City and The Parent Company for the construction of Fire Station 4 in substantial final draft form. The contract is a modification of an industry standard

form construction contract for construction manager at risk projects. 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, The Parent Company will be engaged in preconstruction work with the project architect, Johnson + Bailey Architects P.C. Preconstruction services are included in the not-to-exceed amount of the GMP.

Concurrences

The contract has been reviewed and approved by the Purchasing and Legal Departments.

Recommendation

It is recommended that City Council approve a contract between the City and The Parent Company for the construction of Fire Station 4 on Medical Center Parkway.

Attachments

City and The Parent Company Contract

Respectfully submitted,

Mark Foulks
Fire & Rescue Chief

C: Melissa Wright, City Recorder



Document A133™ – 2009

SUBSTANTIAL FINAL DRAFT

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 Twenty Second (22nd) day of July in the year Two Thousand Sixteen (2016)
(In words, indicate day, month and year.)

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

City of Murfreesboro
111 East Vine Street
Murfreesboro, Tennessee 37130

and the Construction Manager:
(Name, legal status and address)

The Parent Company
241 Wilson Pike Circle
Brentwood, Tennessee 37027

for the following Project:
(Name and address or location)

Murfreesboro Fire & Rescue Department
Station No. 4 Replacement
Medical Center Parkway
Murfreesboro, TN

The Architect:
(Name, legal status and address)

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

The Owner's Designated Representative:
(Name, address and other information)

Rob Lyons, City Manager
City of Murfreesboro
111 East Vine Street
Murfreesboro, Tennessee 37130

The Construction Manager's Designated Representative:
(Name, address and other information)

Bob Sarratt, Vice President

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.

The Parent Company
241 Wilson Pike Circle
Brentwood, Tennessee 37027

The Architect's Designated Representative:
(Name, address and other information)

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

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

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 prepared by the Owner with the assistance of the Architect and furnished by the Owner 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

.1 The Construction Manager shall schedule and conduct meetings with the Architect and 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 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 Design Review. The Construction Manager shall review the Schematic Design Documents, Design Development Documents, Construction Documents, Drawings, Specifications, and other Contract 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.

.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 on 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.

.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.

.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's 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 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.

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 delivery. 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 not 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.

(Paragraphs deleted)

§ 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:

- .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 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.

- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project.)
- .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.
- .5 The Owner shall at all times have the right of access to stored materials in the possession of the Construction-Manager.
- .6 The Construction Manager assumes total responsibility for the stored materials.
- .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, the Construction 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.

- .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 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 Guaranteed Maximum Price. In no event shall the Construction Manager be entitled to compensation in excess of the 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.

§ 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.

§ 2.3.2 Administration

(Paragraph deleted)

§ 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.

- .1 The Construction Manager may self-perform work on the Project not exceeding 15% of the GMP excluding taxes, fees, and contingencies. All self-performed work will be at cost-plus labor burden and an agreed-upon fixed fee. Construction Manager shall bid out the work and provide a Self-Performance Work Package to the Owner. Owner may choose the bid or the Construction Manager's Self-Performance Work Package. If Owner chooses Construction Manager's Self-Performance Work Package, any overtime to be charged to the project budget must be preapproved by Owner. The total of the self-performed work will be included in the GMP.
- .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.
- .3 The Construction Manager shall bid out Subcontractor bid packages in accordance with its approved Subcontracting Plan, including the work to be submitted in the Self-Performance Work Package. 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.
- .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.
- .5 When in the best interests of the Project and critical to the successful completion of a

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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.

- .1 Include information concerning both the entire Project and each Subcontractor bid package;
- .2 Identify variances between scheduled and probable completion dates and recommend action required to meet scheduled completion dates;
- .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.
- .4 Provide summary reports for each Construction Schedule update;
- .5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change, and the reasons therefor;
- .6 Record in writing and by photographs the progress of the Project;
- .7 Identify significant problems in scheduling together with recommended corrective action;
- .8 Maintain and report a QC log;
- .9 Document any outstanding RFIs and any and risks associated with delayed responses;
- .10 List outstanding submittals and risks associated with delayed responses;
- .11 Document any outstanding Change Orders and any risks associated with delayed responses;
- .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

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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 (vii) 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 disputes with Subcontractors and obtain the Owner's concurrence or approval of all settlements before executing change orders 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 Ma

§ 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 deli very, 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 ("OFCI") 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.

§ 2.3.2.14 The Construction Manager will provide to Architect all necessary information to assist in the preparation of record drawing in CADD computer files for the Project. This information shall include, but

not be limited to, changes made to the Project by Change Orders, Construction Change Directives and information provided by the Subcontractors. The Construction Manager shall be responsible for providing to the Owner one set of paper (hard) copy and one electronic file. For electronic file, format to be as follows:

- .1 All files shall be saved in auto CADD release 2006 or latest version;
- .2 All X references shall be included on CD and each drawing file shall be binned. The X references list within each drawing shall be black;
- .3 The last view saved shall be with zoom extends preferably in paper space;
- .4 Title purge command shall be used prior to the final save command to minimize file size and free debris

§ 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 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.

§ 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 B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. 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.)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months 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 () 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, add the percentage amount that was used for the establishment of the GMP fee:

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.

§ 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) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

§ 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 and Construction Manager's Fee 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 from 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 the Owner and the Construction Manager agree. "Cost savings" is the net difference obtained by deducting from the Guaranteed Maximum Price (as amended by any Change Orders signed by the Owner pursuant to the General Condition, § 7.2), the documented 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.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval and that portion of the wages of Construction Manager's designated Project Manager and administrative staff equal to the amount of time specifically dedicated to the Project, regardless of location, and approved by the City.

§ 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 otherwise 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 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 required coverage is permitted only with the Owner's prior written approval.

§ 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, and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 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 or 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;
- .13 Safety costs not included in the Negotiated Support Services or Specified General Conditions;
- .14 Liquidated damages;

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- .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 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.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the 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 () days after the Architect receives the Application for Payment. Application for Payment should be received not later than the last business day of the month and payment will be made by the last business day of the following month. For Applications for Payments received later, payment will be made within 30 days.

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

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 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:

Init.

- .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.
- .4 5% Five percent retainage on self performed work.
- .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% from the subcontracted 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 has 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 has made exhaustive or continuous on-site inspections; or that the Architect and the Owner has 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 A201-2007 General Conditions are met.

The Owner’s final payment to the Construction Manager shall be made in accordance with the Contract Documents.

§ 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 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 proceed in accordance with Article 9 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 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 undisputed amount in the final Application 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.)*

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

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.

§ 9.2

(Paragraphs deleted)

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 Owner may terminate this Agreement upon not less than seven (7) days written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement in accordance with and for the reasons set forth in Section 14.1 of A201–2007.

§ 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 stated 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.

(Paragraphs deleted)

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.

§ 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.

NOT FOR SIGNATURE
FINAL DRAFT TO FOLLOW

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

Init.

Additions and Deletions Report for **AIA® Document A133™ – 2009**

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 15:37:20 on 07/21/2016.

PAGE 1

AGREEMENT made as of the Twenty Second (22nd) day of July in the year Two Thousand Sixteen (2016)

...

City of Murfreesboro
111 East Vine Street
Murfreesboro, Tennessee 37130

...

The Parent Company
241 Wilson Pike Circle
Brentwood, Tennessee 37027

...

Murfreesboro Fire & Rescue Department
Station No. 4 Replacement
Medical Center Parkway
Murfreesboro, TN

(Name, legal status and address)

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

...

Rob Lyons, City Manager
City of Murfreesboro
111 East Vine Street
Murfreesboro, Tennessee 37130

...

Bob Sarratt, Vice President
The Parent Company
241 Wilson Pike Circle
Brentwood, Tennessee 37027

PAGE 2

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

PAGE 3

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 prepared by the Owner with the assistance of the Architect and furnished by the Owner 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.

...

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.

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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.

...

.1 The Construction Manager shall schedule and conduct meetings with the Architect and 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 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 Design Review. The Construction Manager shall review the Schematic Design Documents, Design Development Documents, Construction Documents, Drawings, Specifications, and other Contract 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.

.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 on 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.

.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.

.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's 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; Priceproposal 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.

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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.

...

§ 2.1.5.1 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's~~ Architect and 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's 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.

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 delivery. 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 not 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 Subcontractors and Suppliers~~

~~The Construction Manager shall develop bidders' interest in the Project.~~

§ 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's review and the Owner's acceptance, 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-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:

- .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 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.
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project.)
- .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.
- .5 The Owner shall at all times have the right of access to stored materials in the possession of the Construction-Manager.
- .6 The Construction Manager assumes total responsibility for the stored materials.
- .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.

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§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction 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-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 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 the Construction Manager's Fee; and other items, and the Construction Manager's Fee (any Allowances must be limited and pre-approved by the Owner);

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§ 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.

...

- .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 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.

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§ 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 Guaranteed Maximum Price. In no event shall the Construction Manager be entitled to compensation in excess of the 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.

...

§ 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.

...

~~§ 2.3.2.1 These portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~

§ 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.

- .1 The Construction Manager may self-perform work on the Project not exceeding 15% of the GMP excluding taxes, fees, and contingencies. All self-performed work will be at cost-plus labor burden and an agreed-upon fixed fee. Construction Manager shall bid out the work and provide a Self-Performance Work Package to the Owner. Owner may choose the bid or the Construction Manager's Self-Performance Work Package. If Owner chooses Construction Manager's Self-Performance Work Package, any overtime to be charged to the project budget must be preapproved by Owner. The total of the self-performed work will be included in the GMP.
- .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.
- .3 The Construction Manager shall bid out Subcontractor bid packages in accordance with its approved Subcontracting Plan, including the work to be submitted in the Self-Performance Work Package. 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.
- .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.
- .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.

§ 2.3.2.6 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-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.

...

- .1 Include information concerning both the entire Project and each Subcontractor bid package;
- .2 Identify variances between scheduled and probable completion dates and recommend action required to meet scheduled completion dates;
- .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.
- .4 Provide summary reports for each Construction Schedule update;
- .5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change, and the reasons therefor;
- .6 Record in writing and by photographs the progress of the Project;
- .7 Identify significant problems in scheduling together with recommended corrective action;
- .8 Maintain and report a QC log;
- .9 Document any outstanding RFIs and any and risks associated with delayed responses;
- .10 List outstanding submittals and risks associated with delayed responses;
- .11 Document any outstanding Change Orders and any risks associated with delayed responses;
- .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 (vii) 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 disputes with Subcontractors and obtain the Owner's concurrence or approval of all settlements before executing change orders 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 Ma

§ 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 deli very, 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 ("OFCI") 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.

§ 2.3.2.14 The Construction Manager will provide to Architect all necessary information to assist in the preparation of record drawing in CADD computer files for the Project. This information shall include, but not be limited to, changes made to the Project by Change Orders, Construction Change Directives and information provided by the Subcontractors. The Construction Manager shall be responsible for providing to the Owner one set of paper (hard) copy and one electronic file. For electronic fi le, format to be as follows:

- .1 All files shall be saved in auto CADD release 2006 or latest version;
- .2 All X references shall be included on CD and each drawing file shall be binded. The X references list within each drawing shall be black;
- .3 The last view saved shall be with zoom extends preferably in paper space;
- .4 Title purge command shall be used prior to the final save command to minimize file size and free debris

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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.

...

§ 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.

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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: Work, add the percentage amount that was used for the establishment of the GMP fee:

...

§ 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 and Construction Manager's Fee 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.

...

All cost savings from 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 the Owner and the Construction Manager agree. "Cost savings" is the net difference obtained by deducting from the Guaranteed Maximum Price (as amended by any Change Orders signed by the Owner pursuant to the General Condition, § 7.2), the documented 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

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§ 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.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval approval and that portion of the wages of Construction Manager's designated Project Manager and administrative staff equal to the amount of time specifically dedicated to the Project, regardless of location, and approved by the City.

...

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.

...

§ 6.4.2 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.

...

§ 6.5.1 ~~Costs~~ 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 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.

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§ 6.6.1 ~~Premiums~~ 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. 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 by the Contract Documents, required coverage is permitted only with the Owner's prior written approval.

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§ 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-Work~~, provided the legal or mediation costs are not the result of the Construction Manager's negligence, willful misconduct, breach of contract, or malfeasance, and with the Owner's prior approval, which shall not be unreasonably withheld.

...

§ 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.

...

- .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 or 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;
- .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

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§ 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.

...

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.

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§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and 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 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows: 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.~~

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the 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 () days after the Architect receives the Application for Payment. Application for Payment should be received not later than the last business day of the month and payment will be made by the last business day of the following month. For Applications for Payments received later, payment will be made within 30 days.

...

§ 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.

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- ~~3~~ Add the Construction Manager's Fee, less retainage of percent (—%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be manager's Fee, which portion shall be an amount that bears the same ratio to that the fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; completion.
- ~~4~~ Subtract retainage of percent (—%) from that portion of the Work that the Construction Manager self-performs; 5% Five percent retainage on self performed work.

...

.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% from the subcontracted work as a fund for the protection and payment of claims of any person or entity arising out of the Work.

...

§ 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 has 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 has made exhaustive or continuous on-site inspections; or that the Architect and the Owner has 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.

...

.3 Final Completion has been achieved and a final Certificate for Payment has been issued by the Architect. ~~Architect; and.~~

.4 The requirements for Final Acceptance in the revised A201-2007 General Conditions are met.

The Owner's final payment to the Construction Manager shall be made ~~no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~ in accordance with the Contract Documents.

...

§ 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 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 ~~request mediation of the disputed amount proceed in accordance with Article 9 without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager~~ 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 request mediation 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 undisputed amount in the final Application for Payment.

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§ 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 ~~mediation or binding dispute resolution, proceeding in accordance with this Article 9 and Article 15 of A201-2007~~ and Section 9.3 of this Agreement shall not apply.

§ 9.2 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 Construction Manager 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)*

~~Deleted~~

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§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' ~~(7) days~~ written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, Agreement in accordance with and for the reasons set forth in Section 14.1.1-14.1 of A201-2007.

...

.2 Add the Construction Manager's Fee computed ~~upon and prorated based on the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~

~~.3~~ 5.1.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase ~~services~~ services and

.4 Adjust for retainage.

...

§ 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 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~ 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.

~~§ 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 and 5.3.5 of this Agreement.~~

§ 11.1 Terms in this Agreement shall have the same meaning as those in the revised A201–2007.

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Section 1.5 of the revised A201–2007 shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of the revised A201–2007 shall apply to both the Preconstruction and Construction Phases.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, James H. Bailey III, 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 15:37:20 on 07/21/2016 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 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, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

To be completed prior to
final contract

THE OWNER:

(Name, legal status and address)

To be completed prior to
final contract

THE ARCHITECT:

(Name, legal status and address)

To be completed prior to
final contract

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ADDITIONS AND DELETIONS:

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

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

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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.

§ 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.

§ 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.

§ 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

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 which 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.

§ 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

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

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.

§ 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.

§ 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.

§ 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

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.

§ 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.

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.

§ 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

§ 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.

§ 15.4 ARBITRATION

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

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 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 11:14:54 on 08/17/2010.

PAGE 1

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Certification of Document's Authenticity

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I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:14:54 on 08/17/2010 under Order No. 6812386425_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

City of Murfreesboro Fire Station No. 04

- A. **General Conditions.** The *General Conditions of the Contract for Construction*, AIA Document A201, 2007 edition, Articles 1 through 15 inclusive, are a part of the Contract and are 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” and all section (§) references in these Supplementary Conditions are the sections of the General Conditions.
- B. **Supplements.** The following supplements modify, change, delete from, and add to the General Conditions as stated herein. 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 (or should know), recognizes (or should recognize), and discovers (or should discover) 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 Disclaimer of 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. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
 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) the addenda issued by the Architect; (3) these Supplementary

Conditions; (4) the Agreement; (5) the General Conditions of the Contract; (6) the Drawings; (7) the Specifications.

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, unless Contractor knew or should have known of inconsistencies, 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 Drawings and specifications, the requirements of the Drawings 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. 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. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions, or inaccuracies of the said survey data

21. § 2.2.5 This section is deleted in its entirety and restated as follows:
Upon request the selected Contractor shall be supplied with three (3) copies of specifications and construction documents for execution of work. Additional copies may be obtained at the Contractor's expense.
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 the physical condition or safety of the Project site or any improvements located on 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 exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner.
 - .2 The Contractor shall, therefore, 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 When the Contractor, while providing pre-construction services or with prior approval of the Owner, proposes changes or substitutions, the Owner will be responsible 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.

30.1. The following new section is added:

§ 3.4.4 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.

- .1 By making requests for substitutions in accordance with this Section, the Contractor:

- a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;
- c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.2 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order and no adjustment will be made unless so reflected.

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 new sections:

§ 3.5.1 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Contractor shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

§ 3.5.2 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, to the extent such charges, assessments, or fees are provided as a sum-certain or maximum amount, 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 Five copies of the shop drawings and brochures shall be submitted. 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,"

- 44.1 § 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 principal designer as listed on the individual drawings and throughout these Contract Documents. 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. If required, the Contractor shall provide owner with evidence that all proposed Subcontractors are competent to execute the various parts of the work assigned to them by their subcontracts. The Architect may reply within 14 days to the Contractor in writing stating (1) additional information in needed to assess a subcontract or subcontractor; (2) whether the Owner or the Architect has reasonable objection to any such proposed persons or entities; or (3) 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. No work shall be commenced until Subcontractors have been approved in writing by the Owner
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 The following new section is added:
- 6.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.
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 each Contractor, for Work performed by the Contractor's own forces, 15% of the cost.
 - .2 For the Contractor, for work performed by the Contractor's Subcontractor, 7.5% of the amount due the Subcontractor.
 - .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 15% of the cost.
 - .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 15% of the amount due the Sub-Subcontractor.
 - .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
 - .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost

items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§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. § 8.3.1 After the "Change Order", all language is deleted and restated as follows:

to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one day.

69. § 8.3.3 This section is deleted and restated as follows:

8.3.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1 and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

.1 The Contractor shall be permitted an adjustment in the Contract Sum if any Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 25 days (the "Elimination Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period

.2 Both the Owner and the Contractor acknowledge and agree that the Elimination Period shall not apply to a Delay caused by the Owner or any delay caused by the Architect or its consultants. Any extension in the Contract Time in connection with

an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Elimination Period.

- .3 Extended overhead profit or damages will not be allowed, including those relating to weather delays will not be allowed. If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner, the amount specified on the Bid Form, not as a penalty, but as liquidated damages.
- .4 The Contractor shall assure that all of Subcontractors and suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from its failure to do so.

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. § 9.3.3 The following new sections are added:

- .1 The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.
- .2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without

limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

- .3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

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.

- 75.1. § 9.5.4 The following new section is added:

§ 9.5.4 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Contractor or any Subcontractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or (iii) if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

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:

- .1 Without creating any obligation to do so, 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.
- .2 Without creating any obligation to do and notwithstanding any other provisions to the contrary, the Owner reserves the right to make payment directly to any Subcontractor of the Contractor in such amounts as the Owner determines to protect the Owner's interest and the Owner's property from a lien or asserted lien or other claim, and the amount owed the Contractor shall be reduced by the amount of any claim, and the amount owed the Contractor shall be reduced by the amount of any such payment by the Owner. Exercise of this option shall not create any claims or rights by any Subcontractor or other party against the Owner or the Owner's funds. This right may also be exercised through the Owner's title company making such payments.

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 8 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 new sections are added:

- .1 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.

82.1. § 9.10.2 The following is added at the end of this section:

Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers' lien releases may be

provided by the Contractor.

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, its 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.

83.1. § 9.11.1 The following new section is added:

§ 9.11.1 The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss or incurred additional expenses if Contractor does not achieve Substantial Completion upon the date set, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, as amended by this Supplementary Conditions, and reflected in a written, signed Change Order. The parties also recognize the delays, expense, and difficulties will be unduly burdensome or impossible to determine with a reasonable degree of accuracy and, therefore, Owner and Contractor agree that Contractor will pay to Owner liquidated damages for such delay—which liquidated damages are recognized as a reasonable estimation of damages the Owner will incur and not a penalty—as specified in the Agreement for each day that expires after the Substantial Completion Date.

84. § 10.1.1 The following new section is added:

§ 10.1.1 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 TOSHA 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 adjacent to 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 cooperate 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 Contractor knows or reasonably should know 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. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable. 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 as set forth here; (ii) endorse the Indemnitees as additional insureds under the Subcontractor's comprehensive general liability policy; and (3) furnish a Certificate of Insurance and required endorsements for each line of coverage required on AIA G705 for or such a form approved by the Architect. 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 in its entirety and restated as follows:

Unless otherwise specifically provided by the Owner for the Work, the Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.

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 section is deleted in its entirety and restated as follows:

§ 11.3.7 Waiver 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 of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Section 11.3, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. Notwithstanding the above, this waiver shall not apply to property insurance or self-insurance retention purchased or held by the Owner after completion of the Work or Final Payment, whichever occurs first. Furthermore, the scope of this waiver is limited to damages to the Work itself. 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.

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. The bonding company shall furnish a letter to the Owner from the home office acknowledging the bonds. Separate bonds are required.
- .5 The costs of all bonds furnished hereunder shall be included in the Contract Sum; provided however, should the Owner waive any bonds required to be provided hereunder, the amount of the premium of any such waived bond shall be deducted from the Contract Sum by appropriate Change Order.
- .6 Every Bond under this Section 11.4.1 must display the Surety's Bond Number.
- .7 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.
- .8 Upon 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 permit a copy to be made.
- .9 All bonds shall bear the follow statement: "It is the intent of the parties that this Bond comply with T.C.A. § 12-4-201 and any provision in this Bond conflicting with the requirements of that statute shall be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The parties further intend that this Bond be construed as a statutory bond and not as a common law bond."

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 one-year correction period in connection with the Work requiring correction shall be renewed and recommence. 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.

116.1 § 13.9 The following new sections are added:

§ 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.

116.2 § 13.10 The following new sections are added:

§ 13.10 NOTICES REGARDING LIENS

§ 13.10.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.10.2 Contractor shall provide Owner with copies of all notices received by Contractor from subcontractors, sub-subcontractors, and/or suppliers to Contractor.

116.3 § 13.11 The following new sections are added:

§ 13.11 EXECUTED NON-COLLUSION AFFIDAVIT OF SUBCONTRACTOR

The Contractor shall require each of the subcontractors identified in Subsection 8. of the Supplementary Conditions to execute the attached Non-Collusion Affidavit of Subcontractor.

116.4 § 13.12 The following new sections are added:

§ 13.12 PRE-BLAST SURVEY

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

116.5 § 13.13 The following new sections are added:

§ 13.13 UTILITY SERVICE

The Contractor shall provide and maintain at his own expense any water, electric, or other utility service used in the construction of the work.

117. § 14.1.1.3 This section is deleted in its entirety.

118. § 14.1.1.4 This section is deleted in its entirety.

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”.

122.1 § 14.2.1.3 The word “repeatedly” is replaced with the word “persistently”.

122.2 § 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.

122.3. § 14.2.5 The following new sections are added:

§ 14.2.5 When the Owner terminates the Contract for one of the reasons state in Section 14.2.1, the Contractor shall be liable to the Owner for the expenses for additional managerial and administrative services provided in Article 14 hereof and also for the per diem liquidated damages, if any, agreed upon in the Agreement:

- .1 for each day the Contractor is in arrears in the Work at the time of said termination as determined by the Architect, and

- .2 for each day of thirty (30) additional calendar days hereby stipulated and agreed to be the time it will require the Surety to effect another contract for completion of the Work, including resumption of Work thereon,
- .3 provided, however, that the sum of Subparagraphs 14.2.5.1 and 14.2.5.2 shall not exceed the number of days beyond the original agreed completion date, or any extension thereof as herein provided, reasonably required for completion of the Work.

§ 14.2.6 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.

125.1 § 15.5.5.2 This section is deleted in its entirety and restated as follow:

§ 15.1.5.2 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed. Extensions of time will not be granted for delays caused by weather or weather related conditions as follows unless properly documented and accepted per the project specifications.

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.

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 Owner 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 employer's 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 Owner as an Additional Insured. Contractor must also provide to the Owner 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 Owner 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 Owner. 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 Owner 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.** Unless otherwise instructed by the Owner, Contractor will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Project (not merely the Work), including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner;
- 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 Owner; and

- 12.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner 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 Owner with certificates and endorsements;
- 13.2 Upon the Owner request, Contractor must provide the Owner 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 Owner 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 Owner.
- 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

- 16.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner'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 Owner 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 Owner 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 Owner 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 will be an attorney qualified for the AAA Construction Arbitrators Panel or the AAA large Complex Construction Case Panel within 15 days after Notice that a Party desire to resolve a dispute by arbitration. In the event the parties cannot agreement, the parties will submit the dispute to arbitration by AAA and assignment of an arbitrator.
- 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.
- 3.2 The parties will agree upon an Arbitrator who is qualified for the AAA Construction Arbitrators Panel or the AAA large Complex Construction Case Panel within 15 days after Notice that a Party desire to resolve a dispute by arbitration. In the event the parties cannot agree, the parties will submit the dispute to arbitration by AAA and assignment of an arbitrator.
- 3.3 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators’ award.

- 3.4 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.
- 3.5 The arbitration hearing must be held within 150 days of the appointment of the arbitrators.
- 3.6 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 Owner will continue to make payment to Contractor in accordance with the Contractor Agreement.
5. **Exceptions**
- 5.1 Neither the Owner 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 Owner and Contractor.
 - 5.2 The Owner 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 Owner (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.



Regular Agenda

July 28, 2016

Honorable Mayor McFarland and Members of City Council:

- A. Asbestos Abatement for the Former Franklin Heights Housing Complex**
 - B. Purchase of 3 Lots at the Corner of SE Broad Street and S. Church Street**
-

Item A. Asbestos Abatement for the Former Franklin Heights Housing Complex

As an Agenda, City Council is recommended to approve an asbestos abatement contract for the former Franklin Heights Housing Complex.

Background

The Murfreesboro Housing Authority (MHA) is currently in negotiations with the City of Murfreesboro to transfer the former Franklin Heights property located at the corner of Bridge Avenue and SR-99 (New Salem Highway) for a potential public safety training facility. The potential public safety training facility will require several different approvals including HUD, MHA, BZA, Planning Commission and City Council. In order to expedite the conversion of the property, staff proposes to abate asbestos containing materials prior to completion of the land transfer. Asbestos containing materials must be removed prior to partial or full demolition of structures. Additionally, removal of asbestos containing materials is desirable prior to conversion of buildings to alternate uses. MHA has tentatively agreed to reimburse the City for direct expenses related to asbestos abatement should the transfer of the property not materialize.

In order to accomplish this task, Staff requested a proposal from Griggs and Maloney to remove the identified, asbestos containing material in each of the structures, conduct confirmation sampling, certify removal results, and provide documentation reports. Once asbestos containing material removal has been certified, buildings can then proceed to demolition or beneficial reuse as appropriate. If the property is converted to a public safety training facility, it is envisioned that 5 to 8 the buildings may be retained for conversion to support facilities or training facilities for support facilities, firefighting, search and rescue, and police.

Griggs and Maloney has provided the attached proposal for asbestos removal. The proposal in a time and materials proposal with a not to exceed budget of \$261,750.00. Additionally, the proposal includes allowances a generator since house power has been

removed for \$4,000 if needed and \$9,500 additional allowance for removal of existing toilets and cabinets that are not removed. The project is envisioned to take approximately 10 weeks with a project start of August 1 and completion in the first part of October.

Fiscal Impact

The contract with Griggs and Maloney for the asbestos abatement is based on Time and Materials used with a not to exceed amount of \$261,750.00 plus an additional allowance of \$13,500 for the two contingency items with funding from the 2016 CIP loan for the Public Safety Training Facility.

Recommendation

Staff recommends approval of the contract with Griggs and Maloney in an amount not to exceed \$275,250.00 including generator and toilet and cabinet removal contingencies subject to review by the City Attorney and Purchasing Director and an agreement from MHA to reimburse the City for direct expenses for asbestos abatement in a form acceptable to the City Attorney.

Attachments

1. Griggs and Maloney contract

Item B. Purchase of Three (3) Parcels at the Corner of Southeast Broad Street and South Church Street

As an agenda, City Council is recommended to approve the purchase of three parcels located at the corner of Southeast Broad Street and South Church Street.

Background

City staff has been working with JRN, the current property owner, and a potential purchaser (American Development Partners, ADP) looking to redevelop all or a portion of the subject three parcels. The properties are commonly known as the location of the former KFC, where Town Creek crosses the property diagonally from Murfree Springs to South Church Street. Town Creek improvements are programmed in the City Stormwater Capital Improvement Plan. An exhibit is attached showing the parcels and Town Creek alignment on the property. Additionally, an exhibit is attached showing the extent of Town Creek from Murfree Springs to Cannonsburgh.

In 2007, the City replaced a 45-foot section of culverts crossing the KFC property following a culvert failure. Evaluation, video inspection, and engineering inspections identified that several portions of the remaining culverts are in need of maintenance and repair. City staff has evaluated and developed a conceptual design, in consultation with Griggs and Maloney, of the potential to daylight Town Creek across the properties rather than repair and maintain the existing culvert system. Daylighting is a term that refers to uncovering some or all of the flow of a waterway that has been previously buried in underground pipes and culverts. By returning the creek to view, where feasible, our

intention would be to improve the riparian environment and restore this waterway as a community amenity.

In recent months, individuals looking at the potential redevelopment options for these parcels have faced the hurdle of coordinating with a significant public infrastructure project. City staff is currently working on a proposal to acquire the parcels for completion of the daylighting project. Once complete, a portion of the property could then be released for redevelopment.

ADP has a pending agreement to purchase the property from JRN and has offered to transfer the property to the City at their cost. ADP and the City would additionally enter into a purchase agreement and a buyback option, allowing ADP to purchase at the same per acre cost a redevelopment parcel upon the completion of the Town Creek daylighting project. The potential redevelopment parcel would generally be located at the former KFC building between South Church and Murfree Springs as shown on the attached exhibit.

Fiscal Impact

The purchase price of the three parcels is \$700,000. In addition, the City would provide earnest money of \$20,000 to be applied to the purchase price. We anticipate usual and customary closing costs and real estate transfer fees of not more than \$35,000 to be required for closing and transfer. The purchase price and closing costs are proposed to be paid from Stormwater Utility Fee Capital Reserves. If ADP exercises the buyback option, the sales price of approximately \$350,000 would be refunded to the Stormwater Capital Reserve account.

Recommendation

City Council is recommended to approve the purchase of the three parcels in the amount of \$700,000 plus closing costs for an estimated total of \$735,000 from Stormwater Capital Reserves and, upon execution of a purchase agreement with ADP, to authorize the earnest money of \$20,000 for disbursement as required by the anticipated purchase agreement. Further, City Council is recommended to authorize the Mayor to execute the purchase agreement, buyback agreement, and recordable buyback notice along with other necessary property transfer documents, subject to review by the City Attorney.

Attachments

1. JRN Parcels
2. Town Creek Exhibit

Thank you for your consideration.

Sincerely

Sam A. Huddleston, PE
Assistant City Engineer



P.O. Box 2968
Murfreesboro, TN 37133-2968
(615) 895-8221
Fax: (615) 895-0632

July 21, 2016

Mr. Sam Huddleston, Assistant City ~~Manager~~
City of Murfreesboro
111 W. Vine Street
Murfreesboro, Tennessee 37130

Engineer Sam H

RE: PROPOSAL FOR FRANKLIN HEIGHTS ASBESTOS ABATEMENT SERVICES

Dear Sam:

I am pleased to have another opportunity to work with you. Thank you again for considering Griggs & Maloney, Inc. (G&M) to assist you in this endeavor. This proposal is for the performance of asbestos abatement for the structures within the Franklin Heights housing development including twenty residential buildings, a pre-kindergarten daycare building, and the family resource center building. This proposal is based upon findings of the pre-demolition inspection report prepared by Resolution Inc. dated October 26, 2015.

Proposed Asbestos Abatement Scope of Work:

The scope of work for this proposal includes asbestos abatement, regulatory coordination, and project monitor oversight for the above mentioned structures. Each of the structures were discovered to have asbestos-containing material (ACM) during the pre-demolition asbestos survey. To avoid much more costly disposal of all demolition debris as asbestos waste and based on state regulations, G&M recommends removal and disposal of the ACMs prior to demolition. The asbestos survey identified the following ACM in 22 structures:

- **Residential Buildings:**
Transite asbestos flue pipe, an estimated 2,050 linear feet and 103,600 square feet mastic beneath floor tile.
- **Pre-Kindergarten Daycare Building:**
The area of the asbestos-containing mastic is estimated to cover approximately 2,000 square feet and appears to be completely on concrete slab substrate.
- **Family Resource Center building:**
The area of the asbestos-containing mastic is estimated to cover approximately 2,240 square feet and appears to be completely on concrete slab substrate, and a security safe containing asbestos insulation.

DAPC requires a ten (10) – day written notification prior to the removal of regulated ACM. DAPC also requires a ten (10) – day written notification prior to the demolition of any structure in Tennessee, whether it includes ACM in-place or removed prior to demolition. The notification allows DAPC to respond to public inquiry without a DAPC site visit or inspection. DAPC requires that a trained asbestos inspector be present during demolition of any building to monitor the previously unexposed materials for the potential presence of asbestos. Meeting the regulatory criteria for the DAPC will bring the project into compliance with U.S. EPA regulatory requirements as well.

Mr. Sam Huddleston
July 21, 2016
Page 2 of 2

Proposed Project Schedule:

G&M estimates the work will take approximately 8-10 weeks to complete.

Proposed Fees:

G&M will perform the work on a time and expense basis in accordance with the attached, previously agreed to Standard Terms and Conditions for contract work between G&M and the City of Murfreesboro. The cost for abatement is estimated at \$261,750.00 and includes disposal, air space monitoring and clearance sampling, regulatory coordination, and abatement oversight by G&M.

The estimated cost above assumes that water and electricity will be made available for use during abatement, the buildings are free of trash, debris, and furniture. If a generator(s) need to be brought in, the estimated fee will increase by \$4,000.00. Removal of toilets and cabinets will add an additional \$9,500.00 to the estimated total.

Until removal by a qualified abatement contractor, state regulations require that the identified ACM not be disturbed by activities in a manner that would create potentially asbestos-containing dust. Such activities would include, but not be limited to, drilling, sawing, sanding, or cutting. Furthermore, it is important that no alterations and/or salvage from the house be allowed that could result in damage to the identified ACM.

We appreciate the opportunity to assist you with this project. If you have any questions or concerns regarding this proposal, please contact me or Kerry Given at (615) 895-8221. If this proposal is acceptable to you, please sign below and return it to me to authorize G&M to proceed.

Sincerely,
GRIGGS & MALONEY, INC.



Ryan Maloney, P.E.
Vice President

Copy: Kerry Given, Griggs & Maloney, Inc.

ACCEPTED BY CITY OF MURFREESBORO

Shane McFarland, Mayor

Date

APPROVED AS TO FORM

Craig Tindall, City Attorney

Date

GRIGGS & MALONEY, INC. STANDARD TERMS AND CONDITIONS

1. ACCESS TO THE SITE/JOB SITE SAFETY

Unless otherwise stated, Griggs & Maloney, Inc., hereinafter referred to as the CONSULTANT, will have access to the site for activities necessary for performance of the services. The CONSULTANT will take precautions to minimize damage resulting from these activities, but has not included in the project fee the cost of restoration of any resulting damage.

The CONSULTANT has not been retained or compensated to provide services relating to the CONTRACTOR's safety precautions or means, methods, techniques, sequences or procedures for the CONTRACTOR to perform his work. The CLIENT understands that the CONSULTANT is not responsible, in any way, for the means, methods, techniques, sequences, procedures, scheduling, or for job site safety, and will not be responsible for any losses or injuries that occur at the Project site.

2. INSURANCE

The CONSULTANT shall secure and endeavor to maintain such insurance including general liability and errors and omissions insurance in the amount of \$1,000,000 as will protect the CLIENT from claims of negligence, bodily injury, death, or property damage that may arise out of the performance of the CONSULTANT's services under this agreement.

3. TERMINATION OF SERVICES:

This Agreement may be terminated by the CLIENT or by the CONSULTANT upon not less than seven days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating termination. If this Agreement is terminated by the CLIENT, the CONSULTANT shall be paid for services performed to the termination notice date, including reimbursable expenses.

4. REIMBURSABLE EXPENSES:

Reimbursable expenses include actual expenditures made by the CONSULTANT, his employees, or his SUB-CONSULTANTS on behalf of the Project. Reimbursable expenses include, but are not necessarily limited to, the following: (a) expenses of transportation and living when traveling in connection with the Project: long distance communications; overnight mail; and fees paid for testing and/or securing approval of authorities having jurisdiction over the Project; (b) expenses of printing, reproduction, postage and handling of drawings and specifications, including duplicate sets at the completion of each phase of the Project for the CLIENT's review and approval; and (c) expenses related to SUB-CONSULTANTS and specialists when authorized by the CLIENT. Reimbursable expenses shall be billed as cost plus 15% incurred by the CONSULTANT.

5. DISPUTES RESOLUTION:

All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or breach thereof shall be presented to non-binding mediation, subject to the parties agreeing to a mediator.

6. OWNERSHIP OF DOCUMENTS:

It is understood by and between the parties to this agreement that all drawings, specifications, reports and other work products of the CONSULTANT for this Project shall remain the property of the CONSULTANT and are instruments of the service for this Project only and shall apply to this particular Project and any reuse of the instruments of service of the CONSULTANT by the CLIENT for any extensions of the PROJECT or for any other project without the written permission of the CONSULTANT shall be at the CLIENT's sole risk, and the CLIENT agrees to defend, indemnify and hold harmless the CONSULTANT from all claims, damages and expenses, including attorney's fees, arising out of any unauthorized reuse of the CONSULTANT's instruments of service by the CLIENT or by others acting through or on behalf of the CLIENT to the extent permitted by law. Any reuse or adoption of the CONSULTANT's instruments of service on other projects shall entitle the CONSULTANT to additional compensation in an amount to be agreed upon by the CLIENT and the CONSULTANT.

7. GOVERNING LAW:

Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Tennessee. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

8. PAYMENT TO THE CONSULTANT:

If the CLIENT fails to make payment due to the CONSULTANT, the CONSULTANT may, after giving seven days written notice to the CLIENT, suspend services under this Agreement and retain all work products deliverable to the CLIENT until full payment. The project completion date shall be automatically extended by the number of days services are suspended.

No deductions shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payment(s) to CONTRACTORS.

9. CLIENT RESPONSIBILITIES:

The CLIENT shall designate a person to act with authority on his behalf in respect to all aspects of the Project, shall examine and respond promptly to CONSULTANTS submissions, and shall give prompt written notice to the CONSULTANT whenever he observes or otherwise becomes aware of any defect in or problem with the Project.

The CLIENT shall also provide to the CONSULTANT all criteria and full information as to his requirements for the Project, and shall:

- Provide the CONSULTANT with escorts and means of access to all areas of the Project; this being necessary for the orderly progress of the work, the CONSULTANT shall be entitled to rely upon the efficiency and completeness thereof.
- Compensate the CONSULTANT for services rendered under this Agreement and pay all costs incidental to CLIENT furnished items.
- The CONSULTANT may justifiably rely upon information supplied by the CLIENT without the need for additional verification by the CONSULTANT.
- Provide such legal, accounting, and insurance counseling services as may be required for the Project.
- Guarantee access to and make all independent cost estimating, and insurance counseling services as may be required for the Project.

10. EXTENT OF AGREEMENT:

This Agreement represents the entire and integrated Agreement between the CLIENT and the CONSULTANT and supersedes all prior negotiations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CLIENT and the CONSULTANT.

The CONSULTANT intends to render services under the terms of this Agreement in accordance with generally accepted professional practices consistent with the intended use of the Project and makes no warranty either expressed or implied.

Any *opinion of construction* cost prepared by the CONSULTANT represents his judgment as a design professional and is supplied for the general guidance of the CLIENT. Since the CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, the CONSULTANT does not guarantee the accuracy of such opinions as compared to CONTRACTOR bids or actual cost to the CLIENT.

11. CHANGES IN THE SCOPE OF SERVICES:

The CLIENT may request changes in the *Scope of Services* of the Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the CLIENT and the CONSULTANT shall be incorporated into this Agreement by written amendment.

Any changes made to construction documents by the CLIENT, or by the CLIENT's representative's, are strictly prohibited without the knowledge and written consent of the CONSULTANT. The CONSULTANT shall be released from any liability resulting from damages, injuries, and or death from the unauthorized alteration of construction documents.

12. EXISTING AND/OR HIDDEN CONDITIONS:

A condition is hidden if it is concealed by existing finishes or features or if it cannot be investigated by reasonable visual observation. If the CONSULTANT has reason to believe that such a condition may exist, the CONSULTANT will notify the CLIENT who then shall authorize and pay for all costs associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If (1) the CLIENT fails to authorize such investigation or correction after due notification, or (2) the CONSULTANT has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and the CONSULTANT shall not be responsible for the existing condition nor any resulting damages to persons or property. Further, the CONSULTANT will not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence the CONSULTANT cannot reasonably ascertain.

13. STANDARD OF CARE

Services provided by the Design Professional under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any loss, claim or cost, including reasonable attorney's fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarification, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

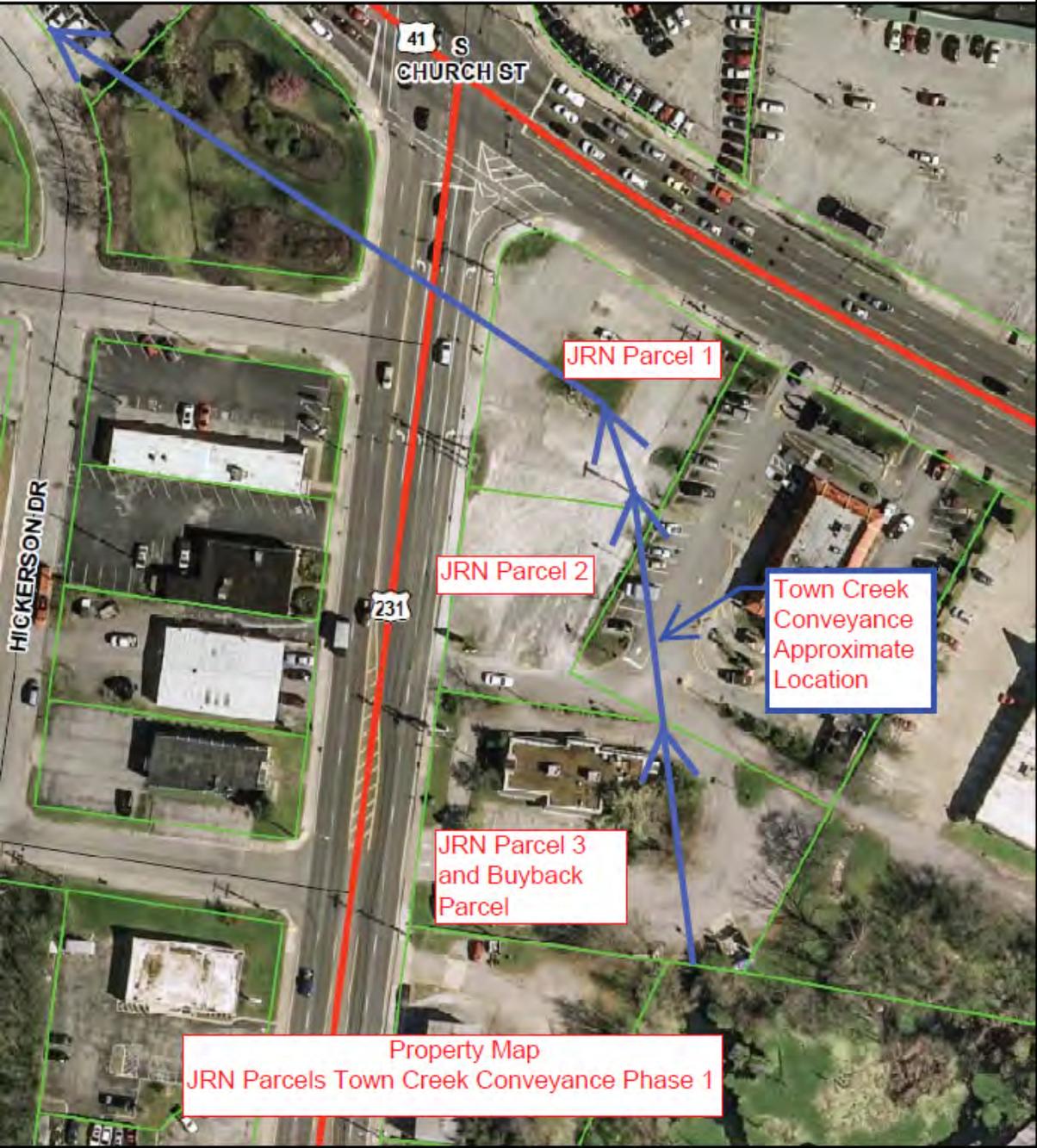
14. DESIGN WITHOUT CONSTRUCTION SERVICES

It is understood and agreed that the CONSULTANT's Basic Services under this Agreement do not include project observation or review of the CONTRACTOR's performance or any other construction phase services, and that such services will be provided by the CLIENT or by another party selected at the sole discretion of the CLIENT. Further, the CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation and/or supervision and waives any claims against the CONSULTANT that may be in any way connected thereto.

In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any loss, claim or cost, including reasonable attorney's fees and costs of defense, arising or resulting from the performance of services under this contract by other persons or entities and from any and all claims arising from modifications, clarification, interpretations, adjustments or changes made to the Contract Documents to reflect changes field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

If the CLIENT requests in writing that the CONSULTANT provide any specific construction phase service and if the CONSULTANT agrees in writing to provide such services, then the CONSULTANT shall be compensated for ADDITIONAL Services as provided in the Agreement.

END OF STANDARD TERMS AND CONDITIONS



41 S
CHURCH ST

JRN Parcel 1

JRN Parcel 2

Town Creek
Conveyance
Approximate
Location

JRN Parcel 3
and Buyback
Parcel

Property Map
JRN Parcels Town Creek Conveyance Phase 1

HICKERSON DR

231



SE Broad St

Murfree Springs
Sand Springs

South Church Street

Town Creek Conveyance

Cannonsburgh

051255, 0370



... creating a better quality of life.

REGULAR AGENDA

July 21, 2016

Honorable Mayor and Members of City Council:

RE: Budget Amendment to the Debt Service Fund

It is recommended that City Council amend the FY 2017 Debt Service budget to take full advantage of the refunding of \$30.943 million of the Tennessee Municipal Bond Fund Loan, Series 2010. Due to a protested pre-payment penalty to First Tennessee Bank and a sizeable premium bid on the new debt, an additional \$672,530.64 will be needed in the Debt Service fund to pay principal and interest during Fiscal Year 2017. Staff recommends increasing the appropriation in the Debt Service Fund by \$675,000.00, with revenue to come from General Fund balance.

1. Overview

The City borrowed \$47.6 million in 2010 by way of a negotiated placement at First Tennessee Bank through the Tennessee Municipal Bond Fund at a 2.89% fixed interest rate.

Cumberland Securities, financial advisors to the City, identified a refinancing opportunity on the remaining \$30.943 million of the outstanding bank loan. The City had nine bidders for the refunding bonds on Wednesday, July 20, 2016, with the low proposer being Citigroup Global Markets at a true interest cost of 1.33%. Over the nine years of the refunding bonds, the City will save over \$2,136,880 in total savings with a net present value \$2,034,030.

The low bid of Citigroup Global Markets was offered with a substantial premium which was used to reduce the amount of new bonds required to complete the refunding to \$27.43 million. Because of the timing of the sale, interest on a portion of the existing loan to be refinanced as well as the interest on the new bonds will exceed the current budget for debt service in the FY 2017 budget by \$363,100.64.

Administration Department

111 West Vine Street * PO Box 1139 * Murfreesboro, Tennessee 37133-1139 * Phone 615 849 2629 * Fax 615 849 2679
TDD 615 849 2689 www.murfreesborotn.gov

Additionally, First Tennessee Bank has refused to accept the refinancing of their existing loan without the payment of a \$309,430 penalty. The City has protested the penalty and retained legal counsel to contest this payment. First Tennessee Bank has agreed to accept the penalty payment under the City's dispute until a settlement or litigation reaches a conclusion. This \$309,430 penalty was not budgeted and cannot be paid from the bond proceeds.

2. Recommendation

The tremendous savings from the refunding of the 2010 First Tennessee Bank loan of over \$2 million requires an adjustment to the FY 2017 Debt Service Fund to pay additional interest due to the timing of the sale and a disputed, unforeseen pre-payment penalty to First Tennessee Bank.

Staff recommends City Council increase the appropriation to the Debt Service Fund by \$675,000, with revenue from a transfer from General Fund balance.

Attached:
Savings Analysis on Bond Refunding

Sincerely,

James H. Crumley
Assistant City Manager



SAVINGS ANALYSIS

City of Murfreesboro, Tennessee General Obligation Refunding Bonds, Series 2016B Refunding of TMBF Loan, Series 2010

| Date | Principal | Coupon | Interest | Total P+I | Refunded D/S | Savings | Present Value to 08/12/2016 at 1.213612% |
|------------|---------------|--------|--------------|---------------|---------------|--------------|--|
| 06/30/2017 | | | 931,944.72 | 931,944.72 | 894,252.70 | (672,530.64) | (669,798.49) |
| 06/30/2018 | 2,500,000.00 | 5.000% | 1,098,400.00 | 3,598,400.00 | 3,912,006.80 | 313,606.80 | 317,153.87 |
| 06/30/2019 | 2,635,000.00 | 5.000% | 970,025.00 | 3,605,025.00 | 3,910,243.40 | 305,218.40 | 305,059.37 |
| 06/30/2020 | 2,760,000.00 | 5.000% | 835,150.00 | 3,595,150.00 | 3,907,907.90 | 312,757.90 | 308,502.18 |
| 06/30/2021 | 2,900,000.00 | 5.000% | 693,650.00 | 3,593,650.00 | 3,905,928.05 | 312,278.05 | 304,193.87 |
| 06/30/2022 | 3,050,000.00 | 5.000% | 544,900.00 | 3,594,900.00 | 3,904,217.15 | 309,317.15 | 297,604.87 |
| 06/30/2023 | 3,200,000.00 | 5.000% | 388,650.00 | 3,588,650.00 | 3,901,702.95 | 313,052.95 | 297,320.82 |
| 06/30/2024 | 3,365,000.00 | 5.000% | 224,525.00 | 3,589,525.00 | 3,900,298.75 | 310,773.75 | 291,481.66 |
| 06/30/2025 | 3,480,000.00 | 2.000% | 105,600.00 | 3,585,600.00 | 3,897,917.85 | 312,317.85 | 289,473.33 |
| 06/30/2026 | 3,540,000.00 | 2.000% | 35,400.00 | 3,575,400.00 | 3,895,488.00 | 320,088.00 | 293,039.43 |
| | 27,430,000.00 | | 5,828,244.72 | 33,258,244.72 | 36,029,963.55 | 2,136,880.21 | 2,034,030.90 |

| | |
|------------------------------------|--------------|
| Net Present Value Benefit | 2,034,030.90 |
| Net PV Benefit/ Refunded Principal | 6.5735% |
| Dated | 08/12/2016 |
| First Coupon Date | 12/01/2016 |
| Weighted Average Maturity | 5.59 |
| Average Coupon | 3.7929% |
| Bond Yield for Arbitrage Purpose | 1.2136121% |
| True Interest Cost (TIC) | 1.3263893% |



Regular Agenda

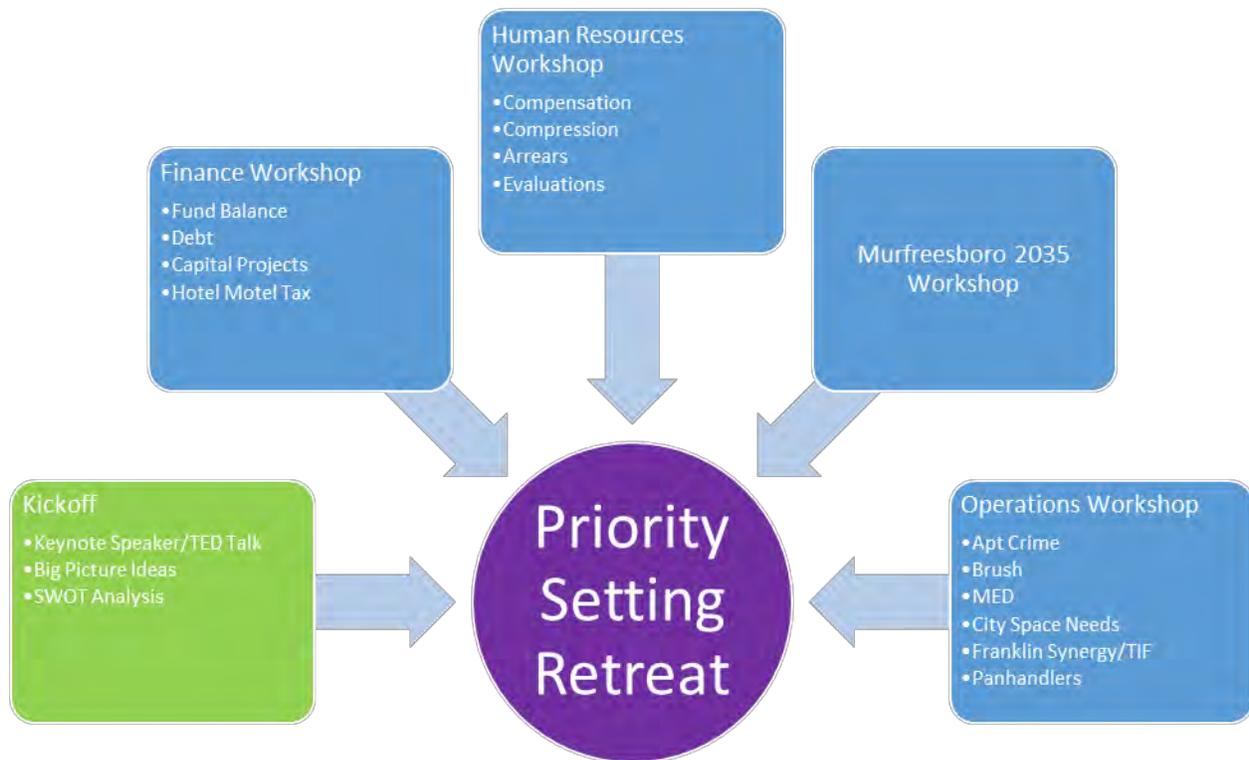
July 21, 2016

Members of City Council:

RE: Retreat

I have met with the City Manager to develop a plan for City Council to think strategically. We believe there are three major components to having a clear and focused plan: 1) A kickoff session; 2) series of City Council study sessions and 3) a formal retreat. This combination of big picture and detailed analysis sets a solid foundation for a retreat to organize the priorities for the coming year.

We evaluated a single day retreat and believe there is too much ground to cover to make meaningful progress. We have worked to outline a better approach. The approach outlined below should provide us a big picture focus and a detailed study of topics to be identified by the Council.



Administration Department

111 West Vine Street * PO Box 1139 * Murfreesboro, Tennessee 37133-1139 * Phone 615 849 2629 * Fax 615 849 2679
TDD 615 849 2689 www.murfreesborotn.gov

1. Kickoff Session

The kickoff session would focus on some big picture discussions and brainstorming.

The kickoff session would include a council conversation that might address questions like:

- What is the one game changer that would take Murfreesboro to the next level?
- What is unique about Murfreesboro that we need to preserve?
- How can the city improve conditions for entrepreneurs, small business owners and other businesses?
- What would you like to see in downtown?

Council would be solicited for input on some of these big picture ideas. I think the goal would be to think about bold ideas and programs. These wouldn't have right or wrong answers, but your thoughts about "raising the bar."

2. Series of Council Workshops

Council has identified a number of areas that it wanted to "dive deeper" and analyze. I suggest that at the end of the kickoff meeting, Council would identify the subjects for the workshops. Some of the ideas already mentioned could include:

2.1 Financial

- Fund Balance
- Debt
- Capital Projects
- Hotel Motel Tax

2.2 Human Resources

- Compensation
- Compression
- Payroll in Arrears
- Performance Evaluation

2.3 Murfreesboro 2035

- Priorities and Implementation

2.4 Operations

- City Space Needs
- Franklin Synergy and TIF Districts
- Panhandlers
- Apartment crime
- Brush pickup
- Solid Waste and Recycling
- Road Projects

Please note that these are examples and the selected topics would be decided by Council.

3. Retreat

After developing the layers from the kickoff and the study sessions, I expect that we would have information needed to identify priorities.

Mr. Lyons maintains a list of city projects, goals and initiatives and it currently exceeds 140 items. We all recognize that as a growing community, there is much work to be done. Prioritizing these 140 items and others identified by Council members should give us increased accountability and focus so we are working on the right things in the right time.

Timing

I believe this strategic planning process can be completed in 45 to 90 days. The kickoff session is suggested for late August and after the election. Ms. Tigg has determined that August 22 is available for this first session.

Facilitator

While no facilitator is needed for the Council workshops, I think that a facilitator for the kickoff session and retreats will be best. There are a couple of no cost or low cost options for facilitators, including MTAS, MTSU or a Murfreesboro CEO like Gordon Ferguson or Barb Ford who handled the Library Foundation retreat.

Please let me know if this approach is acceptable. If so, we will start with the August 22 kickoff session followed by Council workshops in September. I would hope the capstone priority setting session could be done by late September or early October.

As always, thank you for what you do and it is an honor to serve side by side with you.

Sincerely,



Shane McFarland
Mayor

- C: Craig Tindall
- Melissa Wright
- Rob Lyons